

Belgium

Non-profit formation

Like many European countries, Belgian law allows for two basic forms of non-profit organisations, the association and the foundation. Associations can take a number of legal forms: the non-profit association (in French: ASBL or in Flemish: VZW) and the international non-profit association, (in French AISBL or in Flemish: IVZW). Charitable activities can also be exercised through a de facto association (association de fait/feitelijkevereniging); this type of organization is not incorporated and has no legal personality.

The foundation is the result of a legal act from individuals or entities that assign assets to a non-profit objective, and it has no members. The public benefit foundation has to utilise its financial resources for educational, cultural, religious, social or other public benefit purposes. The private foundation, which has been introduced by a recent law, is not required to serve the general interest; it may also pursue private purposes, such as estate planning. Beside these forms, Belgian legislation has also created a hybrid entity, the social purpose company, which can be considered as an alternative to non-profit associations. Unlike these associations, a social purpose company may perform a commercial activity, but this activity should be carried out in a non-profit context.

Governance and charitable purpose

The primary criterion to establish non-profit status is the purpose mentioned in the articles of association, which must be of a non-profit nature. Non-profit associations and international non-profit associations are not allowed to perform industrial or commercial activities (unless these activities are ancillary to the non profit objective), nor to seek to grant any advantage to its members. Contrarily to associations, a foundation can carry out commercial activities, even if these activities are not ancillary, provided that the surpluses are exclusively used for its statutory purpose. The coming into existence of public benefit foundations and international non profit associations results from state recognition/authorization which is enacted in a Royal Decree. Non-profit associations and private foundation do not need this recognition.

A new law passed in May 2002 modified the existing laws which govern domestic and international non-profit organisations and imposed new obligations on reporting and control of these organisations. For every incorporated non-profit organisation (ASBL/VZW, AISBL/IVZW, public utility foundations and private foundations) a file is created at the clerk's office of the court of commerce of the seat of the organisation. The file has to contain the by-laws, decisions concerning nomination, resignation, or termination of directors, persons in charge of the daily management, representatives and auditors; and a register of members (only for non-profit associations i.e. ASBL/VZW).

Large associations and foundations must keep yearly accounts according to the Law of July 17th 1975 if they fulfill certain size criteria enumerated by the law. Small associations and foundations are allowed to keep a simplified accounting system. Legacies and donations to non-profit organisations are subject to approval by the government or by Royal Decree, unless under the value of 100,000 Euros.

Taxation

Non-profit organisations are normally exempted from corporate tax and subject to the tax on legal entities. It should be stressed that the income tax status of non-profit organisations does not only depend upon their corporate legal status. In order to benefit from the exemption, the organisation may not carry out profit making operations. However the tax law foresees that some operations are not considered as profit-making, namely isolated or exceptional operations, investment of funds, or activities that include only incidentally industrial, agricultural or commercial operations, or operations that are not undertaken by using industrial or commercial methods.

The Income Tax Code provide a second exception in which a non-profit organisation can still be tax exempt, even if it carries out profit-making operations exceeding the limits of the aforementioned exceptions. This regime is meant to apply to the non profit organizations active in the so called 'privileged areas' enumerated by the tax law (including, amongst others, support of education, distribution of social allowances, organization of business or other exhibitions, etc). Organizations which are exempt from corporate tax are subject to the tax on legal entities; this tax is only levied on income from specific sources, notably, income from real estate, movable income and capital gains on specific items. Movable income is taxed by way of a final withholding tax.

Donor reliefs

Income tax deduction: Gifts made in cash to approved social, scientific, or cultural institutions are deductible from total income, provided that each gift is at least 30 Euros. Gifts of certain works of art of international renown which are made to Belgian museums are also eligible for tax relief, if the work of art is recognized as qualifying by the Ministry of Finance. For individuals, the aggregate value of the gifts cannot exceed 10% of the taxable income, with an absolute maximum of *346 100 Euros*. The income tax deduction is also available for companies. In that case the aggregate value of the gifts, cannot exceed 5% of the company's taxable income, with an absolute maximum of *500 000 Euros*.

Gift and inheritance taxes: Non-profit organisations are liable for inheritance or gift tax on legacies or formal donations, though the amount will vary depending on the testator or donor's place of residence. If the testator resided in Belgium at the time of death, inheritance tax is levied on worldwide net property. Formal donations (i.e. enacted in a notary deed) are subject to gift tax in if the donor resides in Belgium. Informal donations (i.e. gifts from hand to hand of movable assets) are not taxable. Donations of real estate located abroad, are not subject to gift tax in Belgium.

It should be noted that the competency for determining tax rates, fixing conditions to be eligible for tax reductions or exemptions (i.e. in the case of donations or legacies to qualifying charities), and the rules for calculating the taxable basis have been devolved to the Belgian regions. The applicable regional legislation depends on the donor's domicile or the testator's domicile at the moment of their death. Each of the three regions has foreseen reduced rates for donations or legacies to charities. The tax rates vary between 5.5% and 25.0%, depending on the donor's/testator's region and the legal form of the charity to which the transfer has been made. Public benefit foundations generally benefit from a lower tax

rate than associations or private foundations; this is especially the case in the Brussels Region. Unincorporated associations do not benefit from this privileged regime. According to the legislation of each of the three regions, donations of movable assets to any (non-related) person are subject to a flat rate tax of 7%.

Establishment and taxation of international organisations

The law of 2002 clarified the procedure for foreign associations seeking to establish offices in Belgium, providing for freedom of establishment of an operation centre of a legally created association of another state, while imposing the same liabilities towards third parties and obligations of publicity as a Belgian association. Foreign foundations established under the law of another state can also form an operations centre in Belgium. A non-resident organization (i.e. whose statutory seat is located outside Belgium) can claim the same exemption from corporate tax as a resident organisation, except if the exemption is based on the sole fact that it carries out its activities in one of the privileged areas (see above). This legal restriction seems to be in conflict with the Treaty of Rome.

Income tax deductions for gifts to foreign charities

According to the new law, gifts made to charities located in a member state of the European Economic Area are tax deductible by the individual/corporate donor for Belgian income tax purposes. In order to generate tax relief for the Belgian donor, the foreign institution should be considered as comparable to a domestic institution and should be licensed in a similar manner in its country of residence. The donor should bring all the evidences showing that these conditions are met. A Royal Decree will be issued in 2011. It will provide specific requirements on this level.

In case the collection of documents would be too cumbersome for the donor, he could still use the Transnational Giving Europe (TGE) network as an intermediary through the King Baudouin Foundation. Donors can obtain the same tax relief when making a gift to an overseas charity as they would when donating to national charitable organisations within Belgium. A fee of 5% is deducted from the gift. More details can be found at:

<http://www.givingineurope.org/site/index.cfm?TID=2&BID=1&SID=1&LG=2&ART=247&back=1>

Inheritance and gift taxes on cross border gifts

Legacies and donations to charities located in foreign countries are in principle not eligible for the application of reduced rates. However, as a consequence of an *infringement procedure* of the EC against Belgium, the three Belgian Regions have modified their legislation. Legacies or donations to charities established in any of the countries within the European Economic Area (EEA) can now benefit from the reduced rates, as long as the recipient charity is set up in a legal form which is *similar* to one of the qualifying forms of charity in Belgium. Transfers to organisations located in non EEA countries is still subject to a tax calculated at the full rate. The testator should however consider the alternative of making a donation in movable assets, which is subject to a flat rate of 7% for donors residing in any of the three regions. This flat rate is also applicable to donations to foreign beneficiaries.



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