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# Chapter 1

## Introduction<sup>1</sup>

### 1.1. Setting the scene

Belgium is a federal state consisting of three regions: Brussels, Flanders and Wallonia. Each region has a great deal of autonomy, making Belgium one of the most modern states in the world. The regions' powers and responsibilities include trade, the economy, employment, industry, agriculture and the environment. They each pursue a dynamic economic policy geared to their own requirements and provide free, confidential, professional support to help you make your business plans a success.

Belgium is a leading business destination thanks to its geographical location at the heart of Europe, its multicultural population and its history. For centuries, it has been a crossroads and trading hub, retaining the best of the Roman, Germanic and Anglo-Saxon cultures. The people of Belgium enjoy a fine reputation for their high level of productivity, loyalty and openness.

#### 1.1.1. Solution-minded, multilingual workforce

Belgians have earned themselves a well-deserved international reputation for being flexible, innovative, multilingual and solution-minded. Many Belgians make daily use of a language other than their mother tongue, a key asset that makes them among the most productive in the world. Dutch, French, English and German are all widely spoken in Belgium. Over 140,000 Europeans of non-Belgian nationality live and work in Brussels alone and this in itself reinforces the country's multilingual workforce.

Belgium's high-quality manpower is linked to its education and training. Belgian schools and universities are of a high-ranking world class. International reports, the International Labour Organization and the OECD all rate Belgian workers as some of the most productive in the world, ahead of their counterparts in France, the United States, the Netherlands and Germany. Experts are unanimous in their view that Belgium has the highest concentration of brainpower in Europe; and its government has introduced a range of pro-business measures to reduce labour costs.

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1. More information on investments in Belgium is available at: [www.invest.belgium.be](http://www.invest.belgium.be).

### 1.1.2. Life is good in Belgium

Quality of life is a significant factor in deciding where to set up a business or develop an investment project. Belgium's high human development index makes it a very amenable country to live in.

One key benefit for investors is Belgium's social security system, which guarantees harmonious industrial relations and makes calculating medium-term wage costs a smooth, uncomplicated process. The Belgian health care system is one of the best in the world, offering its citizens almost universal coverage. For a low cost, they enjoy access to high-quality health care.

### 1.1.3. A highly developed transport network

Belgium is especially well served by all modes of transport, facilitating travel within the country and abroad. The Belgian motorway and rail networks are the densest in the world, and its fine network of waterways links the ports to the rest of the country. Belgium has four seaports, including Antwerp, which is one of the world's largest ports, and a range of inland harbours.

### 1.1.4. Associations and schools in all languages

Belgium is home to a multitude of cultural associations for expatriates. They are useful sources of information and support networks, which are highly appreciated by new arrivals. In Belgium – Brussels especially – European and international schools provide children with education in their mother tongue.

### 1.1.5. Set up a company in just 3 days

It takes just 3 days to complete all incorporation formalities and get your business up and running.

### 1.1.6. Research & development

Collaborative ventures between businesses and universities are pursued in the fields of technological and industrial research, and in other areas. Companies can also obtain public finance for their own research projects.

## 1.2. The Federal State structure in Belgium and how power is devolved

Belgium has a complex three-level structure: (i) at the top are the Federal State,<sup>2</sup> the Communities<sup>3</sup> and the Regions<sup>4</sup> (the State, Communities and Regions all rank equally from a legal viewpoint, albeit possessing different jurisdictional powers in terms of subject matter); (ii) the next level down is held by the Provinces;<sup>5</sup> (iii) at the bottom of the pyramid are local authorities, or municipalities,<sup>6</sup> which form the level of public administration that is closest to the general populace. Like the provinces, they are under the supervision of the higher authorities. Depending on the powers exercised, they are supervised by the Federal State or the relevant Community or Region.

## 1.3. Business-friendly government administrations

If you're looking to set up shop in Europe, expand your business or establish an operational hub, then Belgium is the right place. The official Belgian agencies are keen to help you. You will be provided with a customized, confidential service.

The Belgian federal and regional administrations provide flexible, un-bureaucratic, pro-investor support free of charge. For more information on investments in Belgium, take a look at [www.invest.belgium.be](http://www.invest.belgium.be) and at the website of the Agency for Foreign Trade, [www.abh-ace.org](http://www.abh-ace.org).

For support and mediation with your tax file, you can contact the Fiscal Department for Foreign Investments.<sup>7</sup> Their job is to provide fiscal assistance to new investors and those already established in Belgium. This team of experts was set up within the Federal Public Service Finance in 1997 and is under the direct authority of the chairman of the management committee. They are subject to strict professional confidentiality obligations and will help you find the best opportunities for your business in Belgium.

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2. *État fédéral* (French)/*Federale Staat* (Dutch)/*Bundesstaat* (German).

3. *Communautés/Gemeenschappen/Gemeinschaften* – three in number according to language (French, Dutch and German)

4. *Régions/gewesten/regionen* – also three in number according to geographical position (Flanders in the north, Wallonia in the south, and the greater Brussels area).

5. *Provinces/provincies/Provinzen* – ten in number: five in Flanders, five in Wallonia.

6. *Communes/gemeenten/Gemeinden* – 589 in number.

7. Available at: [minfin.fgov.be/portail2/belinvest/en/presentation/who.htm](http://minfin.fgov.be/portail2/belinvest/en/presentation/who.htm).

You can contact the Department at:  
Fiscal Department for Foreign Investments  
Federal Public Service Finance  
Parliament Corner  
Wetstraat 24 Rue de la Loi  
1000 Brussels  
taxinvest@minfin.fed.be

If you're seeking assistance on other matters (locations, incentives, partners, etc.), regional authorities are also available to provide you with professional help.

In Brussels, the Brussels Enterprise Agency<sup>8</sup> will provide you with the support you need to launch your business in the capital of Europe. The Agency is the central, one-stop shop set up by the regional authorities to provide advice and consulting services for undertakings wanting to set up business in Brussels. It provides support to foreign investors on such crucial matters as finding an ideal business location, dealing with legal issues and enquiring whether government grants are available.

Flanders Investment & Trade (FIT)<sup>9</sup> helps foreign businesses seeking to set up or expand in Flanders, the northern region of Belgium and one of Europe's most favourable business locations. Whether your company is considering setting up a production plant, R&D facilities, contact centres, headquarters, logistics operations or any combination of these, FIT will provide you the right kind of advice and guidance free of charge.

In Wallonia, Belgium's southern region, foreign investors are catered for by the Office for Foreign Investors (OFI).<sup>10</sup> This one-stop shop for all prospective investors is part of the *Agence Wallonne à l'Exportation et aux Investissements étrangers*, Wallonia's export and foreign investment agency. With the support of public and private players, the OFI will assist you each and every step of the way toward successfully establishing your business in Wallonia, providing invaluable advice and guiding you through all aspects of your project.

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8. Available at: [www.investinbrussels.com](http://www.investinbrussels.com).

9. Available at: [www.investinlanders.com](http://www.investinlanders.com).

10. Available at: [www.investinwallonia.be](http://www.investinwallonia.be).

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## Chapter 6

### What Is an Advance Decision?

#### 6.1. Introduction

Belgium had a long tradition of informal tax agreements between taxpayers and local or central tax offices. Taxpayers could rely on them for past acts, but only provided the acts were not in breach of tax law. The downside of such agreements was that they could be cancelled for future tax years and that no standard proceedings were available, which was clearly detrimental to the principle of legal certainty.

In 1993, a formal ruling procedure was introduced, in addition to informal agreements. In the wake of the “valid economic or financial needs” requirement, created for certain reorganizations in 1991, and the 1993 introduction of a general anti-abuse measure, an Advance Rulings Commission was operational from 1993 until the end of 2002, with a limited working scope.

In 1999, a second step was taken with the creation of an Advance Decisions Service. However, the scope of the available rulings was still restricted to certain tax provisions, including transfer pricing.

In a third step, the Act of 24 December 2002<sup>24</sup> introduced the legal basis for a generalized advance tax rulings system as from 1 January 2003, allowing all taxpayers and prospective investors to request an advance decision from the Federal Tax Authority regarding the application of Belgian tax laws to a particular situation or transaction. Applications can only be lodged if the situation or transaction has not yet produced any effects from a tax point of view. Contrary to the previous rulings systems, the scope is generalized: almost all matters relating to direct, indirect and international taxation can be the subject of a ruling application. At the same time, the Advance Rulings Commission was abolished and all ruling applications had to be filed with the Advance Decisions Service.

The organization soon encountered two major problems: a lack of manpower and a limited decision-making competence resulted in major delays in processing ruling applications. Following an evaluation in mid-2004, the government created a fully independent Rulings Office with sufficient dedicated

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24. Promulgated on 31 December 2002.

staff and power to issue all advance rulings regarding all tax issues. This service, established in 2005 and extended for 5 years in 2010, is a response to the needs of (potential) investors or taxpayers for upfront certainty with respect to the tax treatment of envisaged investments or operations.

### 6.2. What is an advance decision?

An advance decision, or ruling, is “the legal act whereby the Federal Tax Authority determines in accordance with the provisions in force how the law will apply to a particular situation or transaction that has not yet produced any effects from a tax point of view.”<sup>25</sup>

The term “provisions in force” refers to the rules of law generally in force such as tax treaties, statutes and secondary legislation (royal decrees). When a ruling is applied for, the RO analyses how these “provisions in force” should govern the specific case. A positive decision binds all Belgian tax authorities. The applicant is not bound by the ruling, however: he is not therefore obliged to execute the operations as presented to the RO. Of course, his not doing so renders the ruling invalid.

A ruling may not result in a tax exemption or a tax decrease. It offers legal certainty with respect to the tax consequences of an operation; hence, the ruling can be considered a powerful risk management instrument in tax planning terms.

### 6.3. How long is an advance decision valid?

A positive ruling is normally valid for 5 years unless a longer period is justified, such as a ruling with respect to a depreciation period, which will then be valid during the whole time frame.

An advance decision is binding on the tax authorities except where:

- (i) the conditions to which it is subject are not met;
- (ii) the applicant describes the situation or transactions incompletely or inaccurately, or essential elements are not carried out as the applicant has presented them;
- (iii) any treaty, EU law or domestic law or prevailing case law governing the situation or transaction changes; or

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25. Sec. 20 Act of 24 Dec. 2002.

- (iv) the advance decision does not comply with treaty or EU or domestic law provisions.

In addition, an advance decision ceases to be binding on the tax authorities if the main effects of the situation or transaction change because of one or more closely related or subsequent factors that are directly or indirectly attributable to the applicant. In such a case, the decision is withdrawn as of the date on which the factors attributable to the applicant occurred. In practice, it is advisable to discuss the changes with the RO in such cases.

Provided its terms are applied in good faith, the case will not end up before a court given the decision's binding character vis-à-vis the tax authorities.