

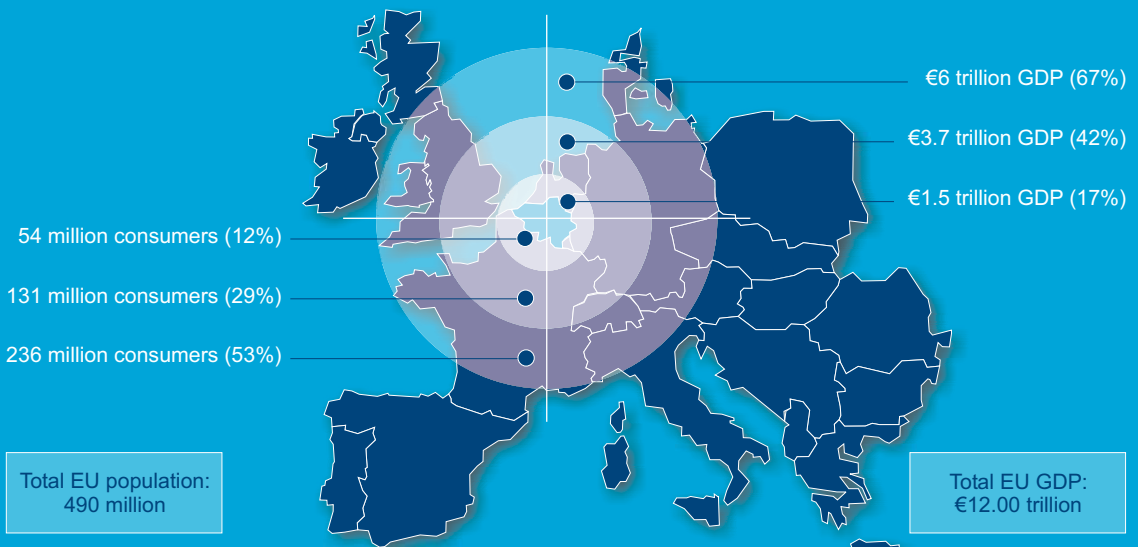
# Start doing business in Europe\*

## Belgium as a gateway

A start-up guide to business scenarios showing how to structure your activities.



## Belgium at the heart of Western Europe



Source: Flanders Investment & Trade

# Starting a business in Europe?

## Choose Belgium as your gateway

### Why Belgium?

Belgium has intrinsic competitive advantages that make it an intelligent choice as an entry point to the rest of Europe. Known as the 'cradle of logistics', Belgium has always played a central role in logistics, which is the key benefit Belgium offers for wider penetration into Europe.

1. **Its location** – in the heart of Europe
2. **Its infrastructure** – road, rail, inland waterways and sea connecting you to the rest of Europe
3. **Its friendly business environment** – multilingual and internationally minded, transcending cultures

If you are considering starting operations in Europe, you will have many challenging questions and issues.

- What do I do first?
- How should my company penetrate the new market?
- What resources am I willing to commit?
- What scenario is most tax-friendly to my business?
- What other barriers do I need to overcome?

The "Start-up Guide" helps answer many of your concerns. To do so, we have selected a number of different business scenarios ranging from a simple representative office to a fully fledged international distribution centre to demonstrate the various ways in which you might structure your business. The precise scenario you choose will depend on your needs, the scale of your company and the type of industry you're in.

**We're here to help you make the right decisions.**

## Facts about Belgium: what you need to know

### Foreign Investment and Trade Opportunities

Belgium is an open economy offering a solid environment for foreign direct investments. There is no discrimination between domestic and Indian companies or between branches and subsidiaries. The friendly investment climate is further supported by subsidies and tax incentives available from government.

#### Corporate tax measures

- **Tax rulings:** this is a powerful risk management instrument in the field of tax planning. Belgium has an established tradition of both informal and formal rulings dating back to 1993.
- **Excess Profit Ruling:** Belgian-based entities can get an 'excess profit' ruling under which the tax office exempts tax profits the entity couldn't realise in a stand-alone situation.
- **Notional Interest Deduction (NID):** an attractive tax measure treating equity and debt financing equally. Subsidiaries and branches can claim tax relief (FY 2009: 4.473%) for their cost of capital by deducting a notional interest charge on their net equity.
- **Other incentives,** for instance, Patent Income Deduction (80% exemption for patent income).

#### Human Resource Management – tax issues

- **Expatriate Taxation:** Belgium has an attractive special tax regime for foreign nationals working in Belgium, offering significant benefits and mitigating the cost of employment in Belgium.
- **Social Security Totalisation:** under an Indo-Belgian social security treaty, employees can be seconded and remain under their home social security system for up to 5 years.

# Belgian Customs & Excise

Three major factors determine the customs treatment of imports into Belgium: the commodity code, origin and the customs valuation. They need careful consideration in order to ensure proper import clearance into the EU.

- **Commodity code:** goods are identified by (i) a description and (ii) a commodity code taken from the Combined Nomenclature based on the Harmonised System. It is possible to obtain a “binding tariff information” (BTI) from customs regarding a product’s commodity code. The decision is valid in all EU Member States for a period of six years.
- **Origin:** products imported into the EU will have a certain ‘origin’ (economic or fiscal). Import restrictions and licences are dependent on economic origin. Fiscal origin determines whether a product qualifies for preferential import duty rates.
- **Customs valuation:** import duties and VAT are calculated on the basis of the customs value, which is normally based on the transactional value between the seller and the buyer (as stated in the invoice). If there is thorough documentation and customs are satisfied that the case qualifies, an alternative basis may be agreed for paying the import duties (e.g. the first sale, cost plus or resale minus methods).

Goods from non-EU countries attract customs duties at the common EU tariff if no particular origin agreement has been signed with the EU. **Since Indian products are covered by the General System of Preferences (GSP), reduced import duty rates apply for Indian products (excluding textiles).**

- **Authorised Economic Operators (AEO):** the AEO programme is designed to secure the global supply chain. Companies can be certified on process integrity, logistics, organisation and staff employed. The level of certification will determine how companies are checked by the customs service.
- **Secure Trade Lane:** qualifying companies can be granted preferential, urgent treatment by the customs service, which limits physical checks and controls. Based on the Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters between the EU and India, **Belgium and India are establishing a Secure Trade Lane between Nava Sheva and the Flanders Port Area.**
- **Excise duties** are levied on some goods produced or released for consumption in Belgium. Certain customs and excise duties are refundable if the goods are exported after the duty is paid. Agricultural products imported from non-EU countries are also subject to **agricultural levies** and additional duties. **VAT** is payable on goods imported into Belgium from outside the EU.

*Planning opportunities: we can provide assistance to reduce the customs duties payable either through the first sale principle (using an earlier transaction in a chain of sales as the basis for the customs value) or via unbundling, an analysis of the customs value, excluding non-dutiable elements.*

*We can also assist with tariff and duty planning, which can be accomplished through sourcing, re-classification, or applying for duty suspensions. And, we can help you to either defer, or completely avoid, unnecessary import duties via customs/excise warehousing.*

# Customs Warehousing

- A customs warehouse is a facility where imported goods are stored without being subject to import duties, VAT or other import taxes. **Private bonded warehouses** are operated by companies for their own purposes and are located around the country. **Public bonded warehouses** are operated by public bodies or storage companies and situated in transport zones and at airports and ports.
- **Bonded warehouses:** allow importers to postpone payment of import duties and import VAT until the final destination of the goods is known. In addition, the warehouse can do customs-approved 'usual forms of handling' to add value, such as re-packaging, conservation, testing and marking. Firms with bonded warehouses in different EU countries can get a single EU authorisation, which Belgium actively promotes because all imports are customs-cleared centrally. Tax is paid in Belgium and goods can be moved flexibly between bond locations.

## Use of local representatives

### • For customs purposes

Import formalities can be taken care of by the importer itself or a customs agent.

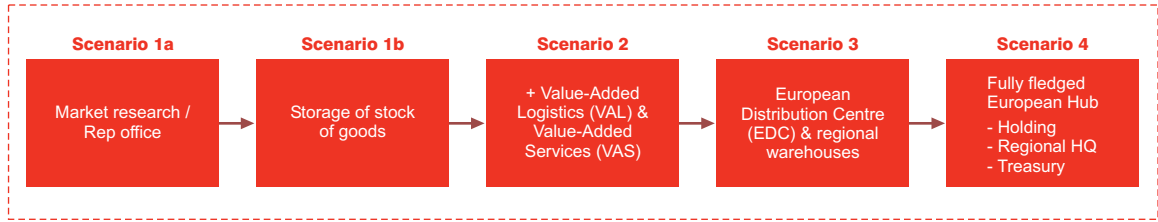
### • For VAT purposes

Indian companies importing goods into Belgium have to register for VAT by appointing a fiscal representative.

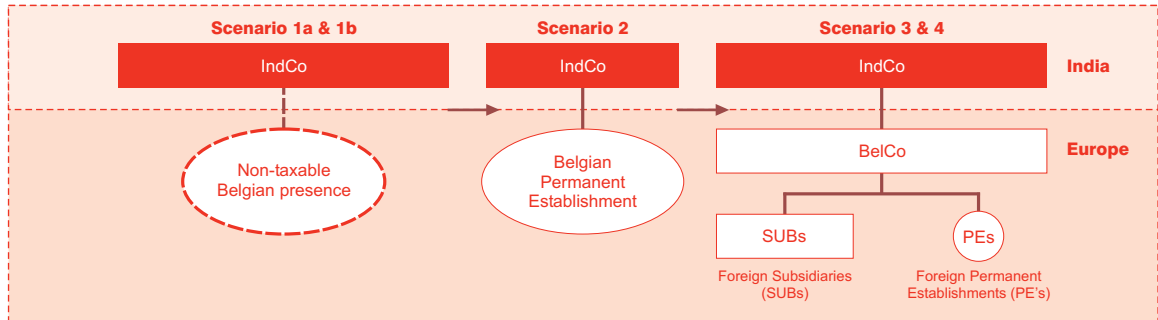
EU companies can register for VAT in Belgium either directly or by appointing a fiscal representative, who is jointly liable for complying with reporting requirements and paying Belgian VAT.

# Operating in Belgium

## Viable growth trajectory



## Legal framework



## Scenario 1a

### Only market intelligence & representation office

Facts	Tax aspects	Legal aspects
<ul style="list-style-type: none"><li>• No legal entity in Belgium.</li><li>• Indian company has a presence in Belgium.</li><li>• No other activity besides market research and representation activities.</li></ul>	<ul style="list-style-type: none"><li>• No Permanent Establishment (PE), therefore no tax liability.</li><li>• No VAT Permanent Establishment.</li><li>• No VAT registration.</li></ul>	<ul style="list-style-type: none"><li>• A representative office needs to be set up.</li></ul>

# Scenario 1b

## Only holding a stock of goods in Belgium

### Facts

- No legal entity in Belgium.
- Indian Company (IndCo) owns stock (finished goods) stored in Belgium with 3rd-party logistics provider.
- IndCo has no other activity in Belgium.

### Direct-tax aspects

- Under Belgian tax law, IndCo has a Belgian establishment.
- **But**, a pure stock is not a taxable permanent establishment by virtue of the Indo-Belgium double tax treaty.

### Indirect-tax aspects

- Treatment depends on whether transactions are within the EU (VAT) or not (VAT & customs).
- Storage of goods is not a Permanent Establishment (PE) for VAT purposes.
- **VAT-registration** is needed if the goods are put into free circulation in the EU by the Indian company, importer of record (a VAT representative – global or individual – has to be appointed).
- However, supply of goods for consideration to Belgian/EU/non-EU customers is subject to VAT: (i) zero-rated for intra-EU and export supplies to non-EU; (ii) standard rate if goods remain in Belgium.
- **Bonded warehouse** benefits apply.
- **Customs & excise duty implications.**

# Scenario 2

## Storage of goods in Belgium + Value-Added Logistics (VAL) + Value-Added Services (VAS)

### Facts

- No legal entity in Belgium.
- Deemed Belgian Permanent Establishment (PE).
- Indian Company (IndCo) owns stock, stored & managed in warehouse of Belgian PE.
- IndCo also takes care of VAL & VAS in Belgium including after-sales service.

### Direct-tax aspects

- Profits attributed to Belgian PE taxable in Belgium.
- Taxable profits of Belgian PE can be determined on a cost-plus basis.
- Upfront ruling can be obtained on low mark-up.
- Belgian PE can claim Notional Interest Deduction (FY2009: 4.473%) for equity invested in the Belgian PE.

### Indirect-tax aspects

- For VAT on stock, see scenario 1b.
- If Permanent Establishment for VAT purposes, input VAT can be deducted.
- No VAT on VAS/VAL services by Belgian PE to Indian head office.

# Scenario 3

## European Distribution Centre (EDC) in Belgium + regional warehouses in other EU countries

### Facts

- EDC set up as a Belgian entity.
- EDC owns goods, stored in regional warehouses.
- EDC delivers VAS to regional warehouses and employs staff locally.
- Possibility to set up PE's (regional warehouses) of Belgian entity in other EU countries.



### Direct-tax aspects

- Belgian entity is taxable in Belgium.
- Taxable profits of EDC can be determined on a cost-plus basis. Upfront ruling can be obtained on low mark-up.
- Belgian entity can claim Notional Interest Deduction (FY 2009: 4.473%) for equity invested in Belgian entity.
- Belgian EDC has no foreign Permanent Establishment (PE) if only storage activities done in foreign countries (dependent on tax treaty). All profits are taxable in Belgium.
- If deemed foreign PE, arm's length profit allocation required. Profit of foreign PE exempted in Belgium.

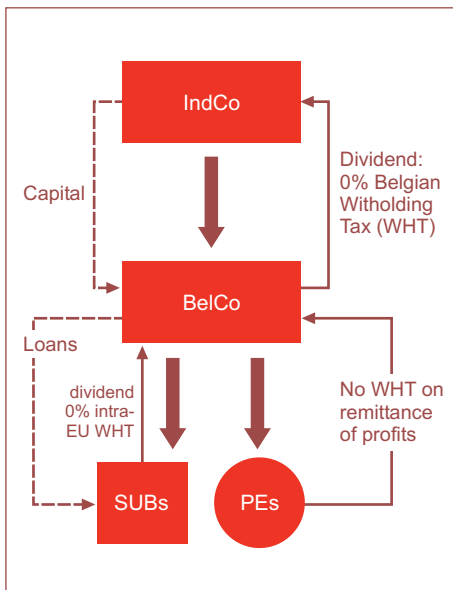
### Indirect-tax aspects

- If goods are stored in regional warehouse in other EU countries, Belgian EDC may need to VAT-register in those countries (exceptions apply).
- VAT treatment of cross-border supplies depends on terms of supply.



# Scenario 4

## Fully fledged European hub



### Facts

- Belgian legal entity.
- Acting as European holding and regional headquarter company (holding EU subsidiaries and branches).
- It can also perform treasury and operational activities.

### Direct-tax treatments

- Belgium offers attractive holding regime.
- Taxable profit for regional headquarter activities and group services can be determined on a cost plus basis.
- Excess profit ruling possible if profits of BelCo result from group synergies.
- Interest income on loans and other taxable income can be (partly) offset by Notional Interest Deduction (FY2009: 4.473%) on equity invested in BelCo.
- 95% exemption for qualifying dividends of SUBs.
- 100% exemption of capital gains on qualifying shares.
- Exemption of profits of PEs in Belgium.
- No WHT on repatriation of dividends.

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