

Belgium

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Tax

1 How does an individual become taxable in your jurisdiction?

Residence triggers unlimited tax liability (including for income and inheritance tax).

A taxpayer is resident in Belgium if either his residence or centre of economic interests is in Belgium. Residence and centre of economic interests have different meanings and function as alternative criteria. A deceased taxpayer is considered resident if Belgium was his effective residence at the time of his death.

Residence refers to the factual place of residence and the centre of a person's social and professional interests. It requires a certain degree of permanence or continuity. The law, however, does not set out the minimum duration. Residence is a complex concept and, in most cases, a factual matter that must be determined by weighing up different factors. For example, the centre of a person's family life is more important than the place where that person factually resides or where he works. The centre of economic interests is the location from where the person's property is administered, irrespective of the property's location.

Generally, all rules applicable to residents also apply to non-residents. However, non-residents are only taxed on income from a Belgian source.

There are four categories of income: professional income, investment income, real property income and miscellaneous income. Not all gains on property are taxed.

2 What, if any, taxes apply to an individual's income?

There are four categories of income:

Professional income

This is subject to progressive tax rates and tax is generally levied in the form of a withholding tax. The amount levied can be set off against the taxpayer's final assessment and any excess is refundable. Self-employed taxpayers can pay quarterly advance tax payments to avoid a tax increase.

Investment income (for example, dividends, interest income, royalties)

The default withholding tax rate for interest income is 21 per cent (before 2012 – 15 per cent). The default withholding tax rate for dividends is maintained at 25 per cent. For private persons, this withholding tax used to be the final tax. Liquidation proceeds remain subject to a 10 per cent withholding tax rate. Share buybacks become subject to withholding tax at the rate of 21 per cent (before 10 per cent). Savings from regulated saving deposits continue to be subject to a 15 per cent withholding tax rate for the portion in excess of the tax-exempt bracket (interest up to €1,830 per taxpayer – the amount for the 2013 tax year).

From 2012 onwards a separate 4 per cent surcharge is applicable to taxpayers with an investment income (interest and dividends) exceeding €20,020 net (for tax year 2013). The 4 per cent surcharge is not due on interest and dividends subject to withholding tax at the rate of 25 per cent. Two collection systems are put in place to collect the 4 per cent surcharge:

In the situation where the taxpayer allows the debtor of the withholding tax or the paying agency to inform the authorities of the amount of investment income perceived, the 4 per cent surcharge is not withheld at source but is due further to the establishment of the personal tax liability based on the personal income tax return;

Where a taxpayer does not allow the debtor of the withholding tax to inform the authorities of the amount of the investment income, the 4 per cent surcharge will need to be withheld at source and any excessive withholding at source (eg, because the threshold of €20,020 is not reached) can be claimed back via an income tax return. The taxpayer can also opt to pay the 4 per cent surcharge (even if not due) in exchange for not disclosing his or her investment income.

The authorities responsible for collection of the information regarding a taxpayer's investment income are a 'central contact point' within the Federal Finance Department. This 'central contact point' will automatically transmit all information to the tax inspection offices if the taxpayer's investment income exceeds €20,020 per year. If not, they will only do so upon the request of the tax offices and insofar as this is necessary for levying the surcharge. This new system introduces a general reporting obligation of investment income in the personal income tax return (from the 2013 tax year onwards). If the taxpayer opts to pay the 4 per cent surcharge (even if it is not due), the income is not disclosed to the central contact point and there will be no reporting obligation in the personal income tax return. Note that information regarding interest and dividends taxed at 25 per cent will be automatically transmitted to the 'central point'. Taxes on income reported in a personal income tax return generally increase with local taxes. Following the decision of the EU Court of Justice in the *Dijkman* case (*Gerhard Dijkman and Maria Dijkman-Lavaleije v Belgische Staat*, C-233/09), these local taxes do not apply if the dividend and interest income have its source in an EEA member state.

Real property income

This is subject to progressive tax rates.

Miscellaneous income

This is subject to a variety of tax rates, starting from 16.5 per cent.

Each form of income is aggregated to determine a person's gross global taxable income in a given tax year. After deducting certain expenses the net global taxable income is subject to progressive tax rates, ranging from 25 per cent to 50 per cent.

Generally, all rules applicable to residents also apply to non-residents. However, non-residents are only taxed on income from a

Belgian source. Some non-residents are taxed on the aggregate value of their real property and professional income. Non-residents who do not qualify for taxation by assessment are taxed at source (withholding tax).

3 What, if any, taxes apply to an individual's capital gains?

Not all gains on property are taxed. Profits or gains resulting from the 'normal administration of a private fortune' consisting of real property, portfolio securities and moveable property are tax exempt. In practice, whether gains result from the normal administration of a private fortune can be controversial.

The following are taxed:

- Gains derived from speculation are taxed at a rate of 33 per cent. Speculation refers to, for example, the purchase of assets with the intention of making a quick profit (involving an element of risk). Gains derived from purchase and sale transactions on stock exchanges are, in principle, not seen as speculative.
- Gains on land, if the taxpayer acquired the property rights for consideration and the transfer occurs less than eight years after the acquisition (special rules apply to gifted property). The gain is taxed separately at a flat rate of:
 - 16.5 per cent if the taxpayer held the property for more than five years; and
 - 33 per cent if the taxpayer held the property for five years or less.
- Gains on constructed real property (buildings), if the taxpayer acquired the property rights for consideration and the transfer occurs less than five years after the acquisition (special rules apply to gifted property). The gain is taxed separately at a flat rate of 16.5 per cent (gains on a taxpayer's private dwelling are tax exempt).
- Gains on specific investment products (that is, types of capitalisation investment funds) qualify as interest income and are taxed at the rate of 21 per cent. This is income realised on the sale or redemption of shares in undertakings for collective investment in transferable securities that have invested more than 40 per cent of their assets in debt claims.
- Gains on the transfer of a substantial shareholding (25 per cent or greater) of a Belgian company to a company resident outside the EEA are taxed at 16.5 per cent.
- Professional gains are taxed as professional income.

These rules apply to both residents and non-residents.

4 What, if any, taxes apply if an individual makes lifetime gifts?

Gift tax is a registration tax. It is levied on lifetime gifts of immovable property situated in Belgium, irrespective of the donor's and beneficiary's residence, and on lifetime gifts of moveables, voluntarily registered in Belgium.

Gift tax is only due in relation to lifetime gifts of moveable property (moveables) if the transfer document (for example, notary deed) is registered in Belgium.

The following gifts are not subject to gift tax, given their lack of registration:

- transfer of moveables by hand;
- bank transfer; and
- transfer by foreign notary deed.

However, gift tax must be paid if such a gift is registered voluntarily.

Different gift tax rules apply in the different Belgian regions (Flanders, Brussels and Wallonia).

Rates of gift tax generally increase with the value of the transferred asset and according to the relationship between the parties. Subject to certain conditions, which differ in the three regions, (legal) cohabitants benefit from the rates applicable to spouses.

Gift taxes apply on lifetime gifts of immovable property situated in Belgium. Gift tax rates applicable to transfers of immovable property to those in the direct bloodline and between spouses vary as follows:

- from 3 per cent (on amounts received up to €50,000) to 30 per cent (on amounts received over €500,000) in Flanders and Brussels;
- from 3 per cent (on amounts received up to €12,500) to 30 per cent (on amounts received over €500,000) in Wallonia.

Registered gifts of moveables benefit from flat rates of 3 per cent, 5 per cent or 7 per cent under certain conditions. Gifts of moveables (not voluntarily registered) are exempt from gift tax. From 2012 onwards, the gift tax rates in the Walloon region have increased by 10 per cent (to 3.3 per cent, 5.5 per cent or 7.7 per cent). Gifts of family businesses benefit from a flat gift tax rate of 0 per cent or 3 per cent, depending on the region.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

IHT is due on the worldwide property of a deceased person who is a Belgian resident at the time of his death. For deceased non-residents, a transfer tax is due on their immovable property situated in Belgium. Different IHT rules apply in the different Belgian regions (Flanders, Brussels and Wallonia).

Rates of IHT generally increase with the value of the transferred asset and according to the relationship between the parties. The rates of inheritance and gift tax are not related to the beneficiary's wealth.

IHT rates applicable to transfers to those in the direct bloodline and between spouses vary as follows:

- from 3 per cent (on amounts received up to €50,000) to 27 per cent (on amounts received over €250,000) in Flanders;
- from 3 per cent (on amounts received up to €50,000) to 30 per cent (on amounts received over €500,000) in Brussels;
- from 3 per cent (on amounts received up to €12,500) to 30 per cent (on amounts received over €500,000) in Wallonia.

Subject to certain conditions, which differ in the three regions, (legal) cohabitants benefit from the rates applicable to spouses. Rates can be much higher for other beneficiaries (as high as 65 per cent in Flanders and 80 per cent in Brussels and Wallonia).

In Flanders, the portion of the estate transferred to a direct ascendant (that is, those from whom a person is descended, for example a parent or grandparent), descendant or spouse is split into an immovable and moveable portion, and is taxed separately. This usually results in a significantly lower tax burden on death than in Brussels and Wallonia.

The following regional exemptions and beneficial rates exist:

- Flanders – Family dwellings are IHT exempt, if the beneficiary is the surviving spouse (or cohabitant under certain conditions).
- Brussels and Wallonia – Family dwellings benefit from reduced IHT rates.
- Flanders and Wallonia – Family businesses are exempt from IHT in Wallonia, subject to strict conditions. In Flanders the IHT exemption for family businesses has been replaced by reduced flat IHT rates of 3 per cent (direct line and between spouses) and 7 per cent (all other cases) from 2012 onwards.
- Brussels – Family businesses benefit from a reduced flat IHT rate of 3 per cent subject to strict conditions.
- IHT exemptions for special types of land (for example, forested land).
- Beneficial rates for legacies to public institutions and not-for-profit organisations or foundations.

If a donor survives for three years after making a tax-free gift of a moveable asset, the transfer is free from IHT upon the subsequent death of the donor.

For deceased non-residents, transfer tax is due on their Belgium-located immovable property.

6 What, if any, taxes apply to an individual's real property?

Purchase taxes

Transfers of immovable property are subject to registration tax, unless the property is new (buildings are considered new for value added tax (VAT) purposes until 31 December of the second year following the year of the building's first use). The normal rates are:

- 12.5 per cent of the market value in Brussels and Wallonia.
- 10 per cent of the market value in Flanders.

Every property in Belgium is listed in the land registry and an annual rental income is assigned to it (cadastral income). Reduced registration tax rates may apply to immovable property with a low cadastral income.

A sale of a new property is subject to VAT at 21 per cent. Land sold together with the new property by the same seller is also subject to VAT (and exempt from registration tax).

In relation to gift tax, see Question 4.

Annual rates

Municipalities may impose a surcharge on the individual income tax, generally from 0 per cent to 10 per cent. The maximum income tax rate can therefore amount to 55 per cent if a 10 per cent surcharge is levied.

A separate tax is levied on real estate. This is a local tax that is calculated on the cadastral income of the property (see above). The rate varies, depending on the region.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Upon the importation of assets (other than upon immigration), it is possible that customs duty, excise duty or VAT are due. There is no relevant exemption of import duties with regard to privately owned assets. Provided certain conditions are met, the transfer into the EU of inherited assets (gratuitous transfer mortis causa) can be exempted. For importation from EU countries, no customs duty is payable. When goods are exported from the EU, as a general rule, no customs duties are due. For VAT purposes, the principal rule is that no VAT is due when goods are exported from Belgium to outside the EU and the exporter can prove that the goods have actually left the European Union.

Upon the registration of a car, one must also consider circulation tax.

8 What, if any, other taxes may be particularly relevant to an individual?

Under the current legislation, no wealth tax exists in Belgium.

The standard VAT rate amounts to 21 per cent. A reduced VAT rate of 6 per cent exists for live animals, vegetable products, food and non-alcoholic drinks, water supply, medicine and medical appliances, books and certain periodicals, original works of art, collectors' pieces and antiques (on certain conditions), etc.

Teaching establishments, hospitals, certain cultural institutions, certain holding companies, etc, are exempt.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Belgium has no trust legislation. The legal and tax consequences of a foreign trust are complex and uncertain. Case law is scarce. Since 2004, foreign trusts are recognisable in Belgium (articles 122 to 125, International Private Law Code). The settlor can elect the

governing law for the trust (for example, his national law), provided the elected law contains trust provisions. If the settlor has not specified the governing law, the law of the country in which the trustee was habitually resident when the trust was constituted applies.

In 2004, the tax administration issued two decisions in which the inheritance and gift tax consequences of an irrevocable discretionary trust were addressed. Without going into details, the administration applied the fictitious legacy of section 8 of the Inheritance Tax Code. Inheritance taxes are postponed until the actual distribution. The Belgian Ruling Commission has recently ruled on the Belgian tax treatment of foreign trusts in several cases. These rulings further clarify the tax administration's perspective on trusts. Ruling No. 900.329 of 22 December 2009 and Ruling No. 2011.148 of 24 May 2011 confirm that distributions out of a genuine irrevocable discretionary trust are tax-free in Belgium from an income tax perspective. Other rulings (No. 900.189 of 7 July 2009 and No. 2011.435 of 13 December 2011) relate to the tax treatment of a Belgian private foundation that acts as a trustee of a foreign trust.

The Act of 2 May 2002 has introduced private foundations to Belgium. The Belgian foundation is an estate, to which the law grants legal personality, allocated irrevocably by one or several founders to the achievement of a particular non-profit goal. The foundation cannot provide any economic benefit to its founders and directors nor to any other person, unless if required by the realisation of its non-profit goal. The private foundation can be considered as an equivalent structure to a trust. This structure only became available in 2003, and therefore its viability as an estate planning tool is not clear. Private foundations are generally subject to an annual tax of 0.17 per cent on the value of their assets. Transfer of assets to a private foundation can be either:

- tax free – this applies to transfers of moveable property if the donor survives for three years after making a gift. The transfer can either be by hand or by foreign notary deed; or
- at a flat gift tax rate of 7 per cent, if the gift is voluntarily registered.

Private foundations are generally subject to legal entities income tax, as opposed to corporation tax. Legal entities income tax has a more limited tax base than corporation tax. The Belgian Ruling Commission recently ruled on the tax treatment of distributions out of a Belgian private foundation (Ruling No. 2011.275 of 29 November 2011). This ruling concerns income law and inheritance tax. In this particular case the ruling commission decided that distributions to the beneficiaries are not subject to inheritance tax or income tax.

10 How are charities taxed in your jurisdiction?

Charities are generally not subject to corporate tax but to the income tax on legal entities. Exclusion from corporate tax is applicable if the entity has a non-profit status (which implies a non-distribution constraint) and does not carry out profit-making operations. If this last condition is not met, the exemption is still granted if the entity performs activities that include only incidentally industrial or commercial operations or which do not involve the use of industrial or commercial methods. The tax on legal entities is not applied on global income but only on income derived from specific sources, (ie, income derived from real estate, moveable income and capital gains on specific items and other miscellaneous income). Taxes are collected by means of withholding taxes. Grants and donations received by charities are not subject to tax on legal entities but may be subject to registration or inheritance tax. A compensatory tax for inheritance tax is levied annually on the total assets which non-profit making companies own in Belgium (0.17 per cent). In all three regions of Belgium, charities benefit from a preferential rate of gift and inheritance tax compared with the general system of gift tax and IHT. In this regard, each region has set up tax regimes in their own codes, the conditions of which are different for granting a preferential regime.

Succession

11 What property constitutes an individual’s estate for succession purposes?

To determine what property is in the individual’s estate, the hereditary mass must be calculated. All inter vivos gifts by the deceased are added to the existing assets. The debts are deducted.

The existing assets are those that are found in the inheritance of the deceased at the time of his decease. These assets are valued at the time of death.

The lifetime gifts are all the gifts that were made by the deceased. Heirs are obligated to insert these goods into the hereditary estate, but the donor can expressly exempt an heir from the obligation to make a restitution.

12 To what extent do individuals have freedom of disposition over their estate during their lifetime?

When the deceased was married without a marital contract, he or she can’t dispose of the family dwelling and household effects under onerous title. In such a case, the consent of the spouse is necessary and unavoidable. Only where the spouse refuses to give consent without a valid reason can he or she ask a judge to authorise him or her to execute the transaction on his or her own.

Lifetime gifts of community property are prohibited, unless they are approved by both spouses (article 1419, BCC).

The other spouse can claim nullity of lifetime gifts by a spouse of his or her own property, if the transfer violates the family’s interest (article 224, BCC). The claim must be brought before the courts within one year of the other spouse learning about the transfer.

When a person loses capacity and is put under a special protection regime, he or she doesn’t have the freedom to dispose over his or her goods. In this case, the special authorisation of a judge is required.

13 To what extent do individuals have freedom of disposition over their estate on death?

A forced heirship regime limits a person’s freedom to dispose of his or her assets by will. Children, ascendants and the surviving spouse are entitled to a reserved portion of the deceased’s estate.

The reserved portion is calculated on the ‘fictive hereditary mass’ and depends on the number of children. Regarding the calculation of the fictive hereditary mass, see question 11.

The forced heirship shares are:

Number of children	Total reserved portion	Reserved portion for each child	Disposable share
1	50 per cent	50 per cent	50 per cent
2	66.66 per cent (two-thirds)	33.33 per cent (one-third)	33.33 per cent (one-third)
3	75 per cent	25 per cent	25 per cent
4	75 per cent	18.75 per cent	25 per cent

Different rules apply if there are no surviving children or there is a surviving spouse:

- No surviving spouse and no surviving children – ascendants have forced heirship rights. The reserved portion is 25 per cent each for the maternal and paternal line.
- A surviving spouse – the spouse is entitled to a minimum of:
 - a life interest in 50 per cent of the succession; or
 - a life interest in the family dwelling and household effects.

If there are other heirs, the spouse’s reserved portion will proportionally burden the other heir’s reserved portion and disposable portion. The remaining part of the estate is freely disposable. An heir with a

reserved portion can claim for a reduction of testamentary dispositions or gifts if these exceed the disposable portion.

Belgian forced heirship rules do not apply to immoveable property situated abroad.

Forced heirs can only waive their rights to a reserved portion during the testator’s lifetime in two cases:

- They explicitly waive their forced heirship rights under article 918 of the Belgian Civil Code (BCC). Under article 918, a forced heir can waive his or her right to make a claim for the reduction of a transaction that infringes his or her reserved portion, by explicitly agreeing with the sale or gift of such property, with the reservation of a life interest, contracted by the deceased with one of his or descendants.
- They are a spouse who agrees to waive their reserved portion where there are children from a previous relationship.

14 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If there is no will, intestacy rules apply. These divide the estate between the surviving spouse and blood relations as follows:

- the children inherit equal shares;
- if the deceased leaves children, the surviving spouse inherits a life interest in the entire estate.
- if the deceased leaves no children but leaves other heirs, the surviving spouse receives full ownership of the deceased’s share in the community property and a life interest in the deceased’s separate property.

When ascertaining the rights of the surviving spouse, the marital property regime should be taken into account, followed by succession. In the absence of a prenuptial agreement or marital contract, the regime of community property of marital gains applies. Under this regime, all property acquired by the spouses during the marriage is common, except for pre-marital, donated and inherited property. The spouses own these separately, although income from such property is shared. In their marital contract, spouses can:

- limit the community property regime;
- amend the terms of the community property regime;
- extend the regime of community property of marital gains to a total community property system; and
- introduce a limited community regime along with a separation of property regime. The separation of property regime remains the dominant regime but a community limited to specified assets (for example, the family home) is created. Between spouses, the limited community regime functions under the same rules as the ordinary community property regime.

Community property is automatically dissolved if one of the spouses dies. In these circumstances the community must be settled, liquidated and distributed before the succession can be divided. If there is a separation of property regime, this must be settled by dividing jointly held property before the succession can be divided.

Special clauses in marital contracts can be very useful for limiting IHT and gift tax.

On intestacy, legal cohabitants (of the same sex or otherwise) have very limited intestacy rights and are only entitled to a life interest in the family dwelling and furniture. This can be altered by will. There are no forced heirship rights between legal cohabitants.

If the deceased leaves no other heirs, the surviving spouse receives full ownership of the entire estate.

If there is no spouse and no heirs, the state inherits everything.

- 15** In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

There are two types of adoption:

Ordinary adoption

The adopted child receives succession rights from its adoptive parents, but not from the adopted parent's families. Furthermore, the adopted child doesn't lose succession rights from his or her own biological parents.

Full adoption

Fully adopted children are treated as equal to blood relations and they lose their succession rights from their biological parents.

A child born out of wedlock has, since the law of 31 March 1978, the same inheritance rights as a legitimate child. There still might be some differences in treatment, but Belgian courts consistently find these unconstitutional.

- 16** What law governs the distribution of an individual's estate and does this depend on the type of property within it?

If a foreign national has his or her habitual residence in Belgium at the time of death, the Belgian courts have jurisdiction over the succession and Belgian conflict of law rules (Private International Law (PIL)) apply. Under current Belgian PIL rules:

- Moveable assets worldwide are governed by the law of the nation where the deceased had his or her habitual residence at the time of death (*lex successionis*).
- Immoveable assets are governed by the law of the asset's location (*lex rei sitae*).

From 17 August 2015, the European Regulation on Succession will determine the applicable law. The principle is that the law of the last residence will govern the succession of the deceased. All relevant factual elements (such as the duration and consistency of the deceased's presence in that particular country) are taken into account.

This principle can be avoided through choice of law, but this choice is limited to the law of the country of nationality. This ensures that there remains a connection between the deceased and the chosen law.

In short, there are two scenarios: either the general principle of the regulation determines the law that will govern his estate or the deceased chooses the law of the country of his or her nationality before death.

- 17** What formalities are required for an individual to make a valid will in your jurisdiction?

Under Belgian law, there are three valid forms of a will:

- holographic will; this is handwritten, dated and signed by the testator;
- public will: this is drawn up by a civil law notary in the presence of two witnesses, or by two civil law notaries; and
- international will: if the testator's estate is international, he or she is advised to make an international will (under the Convention providing a Uniform Law on the Form of an International Will 1973)(Treaty of Washington). An international will comprises both:
 - a private document; and
 - a notary deed.

- 18** Are foreign wills recognised in your jurisdiction and how is this achieved?

A foreign will is recognised as valid in Belgium if the foreign testator has made a will in accordance with either:

- his or her national law (at the time of making the will or at the moment of death);
- the law of the country of his or her habitual residence; and
- the formal validity of the will is regulated by the law applicable under the HCCH Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention).

- 19** Who has the right to administer an estate?

The deceased's estate passes directly to the legal heirs (*saisine*). Under *saisine*, an heir may take possession of the assets in the deceased's estate, administer them, derive any benefits from them and represent the estate in any litigation.

Under Belgian law the testator can appoint, by will, one or more executors. In principle, the executor must ensure that the estate is administered in accordance with the deceased's wishes. The will may also permit the executor to take possession of moveable assets for one year and one day (*saisine*). The heirs are deprived of the administration of the moveables during that period.

The executor can sell the assets if there are insufficient funds to discharge all legacies for which he or she is responsible. The executor must render an account of the estate administration once it is complete.

- 20** How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The deceased's estate passes directly to the legal heirs (*saisine*). Transmission of the inheritance operates directly and is not administered by a separate body (such as executors or administrators).

- 21** Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Belgium has a system of forced heirship. This entails that the rights of an heir to the estate of the deceased are his or her own and individual right. The heir derives these rights from the law and not from the deceased. These rights aren't exercised automatically, the heir must bring an action to protect his or her forced heirship. If gifts to third parties exceed the disposable share (see question 13), the forced heir can claim a reduction against the beneficiaries of the gifts in order to recompose the forced heirship share (action in reduction or action in clawback).

Capacity and power of attorney

- 22** What are the rules for holding and managing the property of a minor in your jurisdiction?

Generally, minors are legally represented by their parents. Investment decisions and other legal actions concerning the minors' property usually require a judge's approval. A minor can own assets. These assets are managed by the minor's parents or guardian (for example, if both parents have deceased).

- 23** At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

Minority lasts until the age of 18.

Update and trends

A pre-draft bill has been approved on 20 July 2012 by the Council of Ministers. The bill includes the following measures:

- changes to the income tax regime of income realised at sale or redemption of fund units in collective investment funds;
- changes to the income tax regime of non-residents; and
- amendments of the notional interest deduction regime; the possibility to carry forward excess NID for seven taxable periods will be abolished as of the 2013 tax year. However, the current 'stock' of NID carry-forwards will remain available but its use will be restricted.

Within the frame of Belgium's 2013 Budget several political parties and the Finance Minister have reintroduced the idea of taxation of capital gains on privately held assets (eg, shares). The recently introduced changes to the taxation of investment income of individuals may be reconsidered, due to the complexity of the new system.

There are many proposals pending in parliament that include minor reforms of succession law.

Also, a proposal is pending to strengthen the conditions under which an individual can obtain Belgian citizenship.

24 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

When a person loses capacity, each interested party (that is, a party with an interest that is not solely pecuniary) can file a court application for a special protection regime. There are different types of special protection regime. If a judge places the person under a special protection regime, an administrator is appointed to administer the assets of that person.

Foreign powers of attorney are recognised under certain conditions.

Immigration

25 Do foreign nationals require a visa to visit your jurisdiction?

Citizens of the European Union, the EEA and Switzerland are automatically, under the principle of free movement of persons, allowed to stay in Belgium for a period of three years on proof of sufficient means of subsistence (or of the ability to obtain those means through work) and health insurance.

For citizens of other countries, access to Belgium is subject to the obtaining of a visa.

The documents that are required depend on:

- nationality;
- how long that person wants to stay in Belgium; and
- the purpose of the stay in Belgium.

If they wish to stay in Belgium for more than three months, they need a long-term visa.

26 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A foreign national can spend no longer than three months in a row or separate periods that exceed 90 days over six months with a visitors' visa.

27 Is there a visa programme targeted specifically at high net worth individuals?

One can apply for a visa in order to engage in a specific professional activity (paid or not), such as:

- self-employment;
- as an employer; or
- as an investor.

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The visa issued is valid for up to eight months and is intended to enable the applicant to prepare and launch their investment. Depending on how the business develops, before this residence permit expires they will need to apply for a change to their residency status to either 'self-employed person' (executive) or 'employer' (manager). A 'major investor' certificate is required. In addition, the following details are required to create the file:

- information about the applicant;
- details of the company and
- details of the investment file.

Other special procedures exist for researchers, journalists and managers.

You may settle in Belgium as a foreign national without being gainfully employed on condition that you have sufficient means of subsistence. When applying for a visa, you need to present the following documents in person at the embassy or consulate responsible for your place of residence:

- proof of sufficient means of subsistence that will allow you to live in Belgium without the need to engage in any sort of gainful employment and proof that your income and funds can be transferred to Belgium;
- serious character references from trustworthy persons residing in Belgium;
- proof that you have ties with Belgium; and
- additional documents may be requested.

28 If so, does this programme entitle individuals to bring their family members with them? Give details.

The visa can be applied for simultaneously for the applicant and his or her family, or a separate application can be submitted later in order to allow one or more family members to join the applicant in Belgium and reside there.

29 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Citizens of the European Union, the EEA and Switzerland can obtain an undetermined residence permit after an uninterrupted stay of three years. Citizens of other countries can obtain an undetermined residence permit after an uninterrupted stay of five years.

30 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Under current legislation, Belgian nationality can be obtained through naturalisation after three years' residence in Belgium or obtained through a declaration of nationality after seven years.