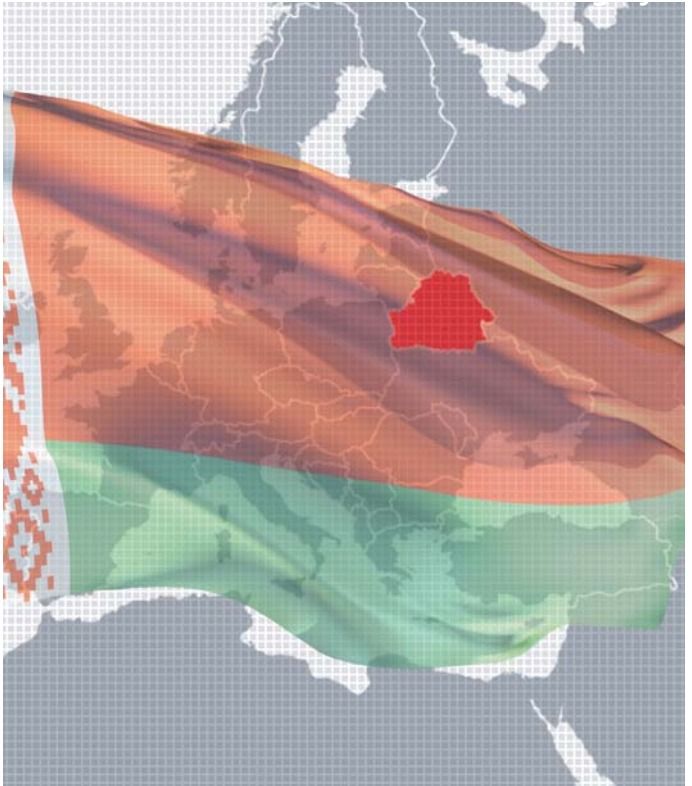


Tax and Investment Facts

A Glimpse at Taxation and Investment in Belarus



SORAINEN

Belarus

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- Pharmaceuticals & Life Sciences
- Real Estate & Construction

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1 Ways of Doing Business / Legal Forms of Companies

To enter the Belarusian market, foreign investors may choose from the following ways of doing business:

- executing long-term contracts
- operating via representative offices
- operating via companies

The companies can be incorporated in Belarus in the legal forms listed below.

Limited/additional liability company

Limited liability companies (LLC) are the most widely used legal form of company in Belarus. Since 2016 an LLC may be founded by and have only one individual/legal entity shareholder. LLC shares are referred to as "participation interests" and do not require state registration. The par value of participation interests, the number of votes and shares in LLC profit are distributed between shareholders in proportion to their contributions to the LLC's authorised capital. LLC shareholders may exit the LLC at any time and receive part of the LLC property in proportion to the amount of their participation interest.

Additional liability companies (ALC) are commercial entities operating under rules similar to LLCs, with shareholders having joint liability for the company's obligations.

Open/closed joint stock company

Joint stock company (JSC) shares are securities issued by the company. Share issues/cancellations and increases/decreases in their nominal value require registration with the Department of Securities at the Ministry of Finance of the Republic of Belarus or its relevant territorial subdivisions. Transactions with shares must in most cases be registered with professional operators in the securities market, unless performed via the Belarusian Currency Stock Exchange.

There are two types of JSC: open and closed. Shares of an open JSC may be sold freely to any person without the consent of other shareholders. In a closed JSC, shareholders have a pre-emptive right to acquire shares offered, or shares may be sold only to a limited range of people in accordance with the JSC articles of association. A closed JSC cannot offer its shares for public subscription.

Unitary enterprise

A unitary enterprise (UE) is a company established by a single owner. All assets of a UE are the property of its owner. The authorised capital of a UE is not divided into shares. A UE may be sold or otherwise assigned as a whole asset complex. The asset complex is considered to be a real property object, therefore the rights related to it and transactions must be registered with the National Cadastral Agency.

2 Corporate Taxation

According to the Tax Code, Belarusian companies are obliged to pay corporate income tax (CIT) on the income they receive.

2.1 Applicable Taxes / Tax Rates

CIT is payable on company income and its standard rate is 18%.

Reduced CIT rates are 12% (for dividends) and 5% (for members of the Science and Technology Association established by the Belarusian State University). For free economic zones the CIT rate is 50% of the standard tax rate (but no more than 12%) if certain specific requirements are met. Banks and insurance companies pay CIT at a rate of 25%.

2.2 Resident Companies

Companies are considered to be resident companies for tax purposes provided:

- they are registered in Belarus or
- their supreme management is located in Belarus or
- their permanent executive authority is located in Belarus or
- decisions on issues of creation, liquidation and reorganisation of the company are taken in Belarus or
- the basic accounting records are kept in Belarus or
- the company's director, founder or shareholder resides in Belarus

2.2.1 Computation of Taxable Income

Taxable income is calculated as a sum of gross profit plus non-operating income. Gross profit is calculated as the positive (negative) difference between revenue from goods, works, services and proprietary rights net of taxes and levies paid from the revenue and deductible expenditures on manufacturing and realising goods, works, services and proprietary rights. The revenue is calculated on the basis of transaction prices that may be corrected by the tax authorities for transfer pricing reasons.

2.2.2 Taxation of Dividends

Dividends are considered non-operating income and part of taxable income. The CIT rate for dividends paid out by Belarusian companies and received from foreign companies is 12%.

2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

There is no special capital gains tax in Belarus. General CIT rules are applicable to capital gains taxation. Foreign companies that are not registered as permanent establishments in Belarus are subject to withholding tax (WHT) on capital gains derived from the sale of shares in Belarusian companies, the sale of bonds and other securities traded in the territory of Belarus, the sale of real estate located in Belarus and other transactions. Capital losses are not taxable in Belarus.

2.2.4 Depreciation / Capital Allowances

Depreciation / capital allowances are calculated for fixed and intangible assets. The following methods of fixed asset depreciation are used: straight-line, diminishing-balance or the productive method. Each type of fixed and intangible asset has its own depreciable life established by law.

2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

Losses may be carried over for 10 years subject to the requirements of Belarusian law. This rule was introduced in 2012 and applies to losses reported for the first time in 2011.

2.2.6 Group Taxation

There are certain tax benefits for holding regimes in Belarus regarding payment of CIT, the single tax for manufacturers of agricultural products and value added tax (VAT). In particular, payments to or from the centralised fund formed by the holding management company that is tax-resident in Belarus are not subject to CIT.

2.2.7 Relief from Double Taxation (Tax Credit / Tax Exemption)

As a general rule, Belarusian law allows tax credits. Taxes on income paid abroad by Belarusian companies may be deducted from the CIT calculated in Belarus, up to the full amount of the tax. If there is a double taxation treaty (DTT) in place between Belarus and a country where the Belarusian company derives

income, the DTT provisions shall apply and prevail over national law. DTTs may provide for both tax credit and tax exemption relief methods.

2.2.8 Incentives

Belarus provides certain benefits within the framework of the following incentives, e.g.:

- High Technologies Park (HTP residents are exempt from almost all taxes)
- Free Economic Zones (currently 6 FEZs provide certain exemptions and decreased rates for certain taxes)
- China-Belarus Industrial Park "Great Stone" (provides a wide range of tax exemptions and beneficial tax regimes for residents)
- carrying out activity in rural areas and small towns (companies carrying out their business in such areas are exempt from CIT and personal income tax for individual entrepreneurs; some other tax benefits are also granted)
- employing disabled people (the revenue of companies employing disabled people is exempt from CIT, if their number exceeds 50% of the average number of employees in the reporting period,)
- simplified taxation system (if they simultaneously meet the criteria of average employee number and gross income, companies and individual entrepreneurs are entitled to pay a single tax of either 3% or 5% depending on the payment/non-payment of VAT by such company; a special 16% rate was introduced for companies and individual entrepreneurs in relation to income received free of charge)

2.3 Non Resident Companies

Non-resident companies are companies that do not meet the criteria described in the section "Resident Companies". Non-resident companies only have a tax liability in Belarus with regard to their activity in Belarus, income derived from sources in Belarus, or property located in Belarus.

2.3.1 Concept of Permanent Establishment / Doing Business

According to Belarusian law, a permanent establishment means:

- a permanent place of business through which a foreign company fully or partially carries out entrepreneurial and other activity in the territory of Belarus, in relation, for example, to carrying out services (works) on construction, assembly, commissioning of equipment, sales of goods from warehouses in Belarus, etc.
- a company or individual carrying out activity on behalf of a foreign company and/or in its interest, and/or possessing and using the authority of a foreign company to conclude contracts or negotiate their essential terms.

If there is any DTT in place between Belarus and the country of a foreign company, the DTT provisions shall apply and prevail over national law.

2.3.2 Withholding Taxes

Belarusian law states that withholding tax (WHT) applies to the taxable income of foreign companies derived from sources in Belarus. The WHT rates are the following:

- 5% for dividends, interest and royalties received from HTP residents
- 6% for cross-border transportation, forwarding and chartering services
- 10% for interest derived from debt obligations
- 12% for dividends and share disposals in companies registered in Belarus
- 15% for other types of income

WHT is payable only if the Tax Code provides that such income is taxable with WHT.

If there is any DTT in place between Belarus and a country of a foreign company, the DTT provisions shall apply and prevail over national law.

2.3.3 Capital Gains

Please see section 2.2.3 "Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)".

2.4 Tax Compliance

The tax period for CIT is a calendar year. The reporting period is a calendar quarter or a month (for dividend income). The tax returns shall be submitted by the 20th of the month following the reporting period. CIT payments shall be carried out no later than the 22nd of the month following the reporting period. Consolidated tax returns are not allowed.

3 Double Taxation Agreements

In 2016 Belarus has 67 DTTs in force with the following countries:

Armenia	Italy	Saudi Arabia
Austria	Japan	Serbia
Azerbaijan	Kazakhstan	Singapore
Bahrain	North Korea	Slovakia
Bangladesh	South Korea	Slovenia
Belgium	Kuwait	South Africa
Bulgaria	Kyrgyzstan	Spain
China	Laos	Sri Lanka
Croatia	Latvia	Sweden
Cyprus	Lebanon	Switzerland
Czech Republic	Lithuania	Syria
Denmark	Macedonia	Tadzhikistan
Egypt	Malaysia	Thailand
Estonia	Moldova	Turkey
Finland	Mongolia	Turkmenistan
France	Netherlands	Venezuela
Georgia	Oman	Vietnam
Germany	Pakistan	United Arab Emirates
Hungary	Poland	Ukraine
India	Qatar	United Kingdom
Iran	Romania	United States
Ireland	Russia	Uzbekistan
Israel		

4 Transfer Pricing

Transfer pricing rules have undergone a substantial review recently and since 1 January 2016 the following transactions are considered controlled under Belarusian law:

- **sale or purchase transactions of real estate, housing bonds** if the transaction price deviates by 20% or more from the market price. Please note that transactions by issuers using housing bonds, which they themselves issued, are not subject to transfer pricing control.
- **transactions with related parties or offshore residents and concluded in the course of foreign trade activity**, including via a chain of transactions with an intermediary/unrelated party, if the price of a transaction (or the sum of transactions with one person) on sales or purchases of goods, works, services exceeds BYR 1 billion (approximately EUR 42,462¹), net of indirect taxes.
- **transactions with Belarusian residents enjoying a special regime which grants them exemption from corporate income tax payments** (e.g. High Technologies Park, Great Stone, free economic zone residents), if the price of the transaction (or the sum of transactions with one person) on sales or purchases of goods, works, services exceeds BYR 1 billion (approximately EUR 42,462), net of indirect taxes.
- **transactions on acquisitions/sales of goods, services, works in the course of foreign trade by an entity which has acquired/sold strategic goods from the list established by the Government**, if the price of the transaction (or the sum of transactions with one person) on sales or purchases of goods, works, services exceeds BYR 10 billion (approximately EUR 424,628), net of indirect taxes.

¹ Hereinafter based on the National Bank of the Republic of Belarus rate EUR 1 = BYR 23,550 on 1 March 2016.

- **transactions by a major taxpayer under Belarusian law with one person**, if the price of the transaction (or the sum of transactions with one person) on sales or purchases of goods, works, services exceeds BYR 10 billion (approximately EUR 424,628), net of indirect taxes.

Notwithstanding the above, the following **transactions are excluded** from transfer pricing regulations:

- transactions in which the price is established by international treaties of Belarus
- banking operations defined by the Belarusian Bank Code
- transactions with securities and derivatives circulated on the organised securities market

The **transfer pricing methods** used are:

- comparable uncontrolled price method
- resale price method
- cost plus method
- comparable profits method
- profit split method (the method of last resort, introduced from 1 January 2016)

In 2016 the taxpayer must notify the tax authority of its controlled transactions. The **notification** should include submitting:

- **information on controlled transactions** (if they fall within the above-mentioned categories) in electronic form to a special portal administered by the Ministry of Taxes and Duties; and
- **confirmation of and/or documentation confirming the economic rationale of the transaction price** for taxpayers that carried out major transactions

5 Anti-avoidance Measures

Anti-avoidance measures in Belarus include transfer pricing, thin capitalisation and offshore duty.

5.1 General Anti-avoidance Rule

There is no general anti-avoidance rule provided for directly in tax regulations in Belarus.

5.2 Thin Capitalisation Rules

Controlled debt such as **loans and certain expenses** are subject to thin capitalisation rules. Controlled debt exceeding the limits of thin capitalisation rules is not deductible for CIT purposes.

Expenses which could be recognised as controlled debt include:

- contractual penalties;
- service fees for engineering, marketing, consulting, providing information, management, intermediary services, certain types of recruitment and staff hiring services;
- remuneration for intellectual property right transfers (assignments) with regard to industrial property.

Debt-to-equity ratio is 1:3 (1:1 for Belarusian companies which produce excisable goods) for debt to foreign shareholders; and 1:1 for Belarusian shareholders.

5.3 Controlled Foreign Company Provisions

There are no provisions on controlled foreign companies in Belarusian tax law.

Belarusian tax regulations have provided for a "beneficial owner" concept for tax treaty purposes since 2016.

A foreign company is **recognised as a beneficial owner** if it:

- conducts entrepreneurial activity connected to obtaining income from sources in Belarus, in respect of which it claims beneficial owner benefits,
- is a direct beneficiary of the income, and
- is free to use and/or dispose of this income on its own.

A foreign company is **not recognised as the beneficial owner** and therefore may be denied the right to apply the treaty provisions when:

- it only carries out intermediary functions in the interests of another person, and
- it does not assume risks and/or its right to use and/or dispose of income is limited to contractual or other obligations to pay (transfer) at least 60% of the income within a 12-month period in favour of a foreign tax resident which would have been subject to less favourable taxation if the income was received directly.

5.4 Others (e.g. subject-to-tax clauses)

Offshore duty is paid by Belarusian companies and individual entrepreneurs transferring money to non-residents registered in one of the offshore zones (tax havens). The list of such zones is approved by the President of the Republic of Belarus.

Transactions which are subject to offshore duty include:

- transfer of monetary funds by a resident of Belarus to a non-resident of Belarus registered in an offshore zone or to another company to which an offshore resident has obligations, or to a bank account opened in an offshore zone;
- non-cash settlement with a non-resident of Belarus registered in an offshore zone;
- transfer of property rights or obligations due to substitution in commitments where the parties are a Belarusian resident and a non-resident registered in an offshore zone.

The tax base is the amount of money transferred (when fulfilling obligations in kind – the contract value). The offshore duty rate is 15%.

Individuals are subject to individual income tax; taxable income includes all income except for specific tax-exempt amounts.

6.1 Residency rules

Individuals are deemed to be residents of Belarus if they are present in Belarus for more than 183 days in the calendar year.

6.2 Income Liable for Tax

For resident individuals, income from all sources is subject to personal income tax in Belarus, whereas non-resident individuals are liable for tax on income derived from sources in Belarus.

6.3 Allowable Deductions

Generally, deductions are allowable for business income. Other deductions include certain education expenses, voluntary insurance payments (up to a limit), and expenses to purchase a first primary residence (apartment or house).

6.4 Tax Rates

The ordinary flat rate is 13%. The rate of 9% applies to income of employees at companies resident in the High Technologies Park and to business income of individual entrepreneurs resident in the High Technologies Park. The 16% rate generally applies to business income of individual entrepreneurs; winnings from gambling are taxed at 4%.

6.5 Tax Compliance

Personal income tax is mostly withheld by the paying agent, a legal entity or an individual entrepreneur. If the tax is not withheld, the individual must submit an annual tax return by 1 March of the following year and pay the tax by 15 March of the same year. Individual entrepreneurs file tax returns and pay tax quarterly.

6.6 Social Security Contributions

Social security contributions are payable by both employers and employees in Belarus. The rates are 34% for employees and 1% for employers, withheld from the salary by employers. The maximum base for social security contributions is capped at five times the average salary in Belarus in the preceding month. Payments must be made both for local and foreign employees. Individual entrepreneurs also pay social security contributions; the rate is 35% on their income determined at their discretion; however, it must be at least the minimum subsistence wage established by the government.

According to the Tax Code, VAT and excise duty are indirect taxes applied in Belarus.

Please see section on "Value Added Tax / Goods and Services Tax" for more information on VAT.

Excise duty is payable by companies, individual entrepreneurs and individuals that import/manufacture excisable goods to/for the territory of Belarus. Excisable goods include, for example, alcohol, alcohol production, beer and beer cocktails, certain low-alcohol drinks, tobacco products, fuel, etc.

The tax period for excise duty is one calendar month. Tax returns shall be submitted by the 20th of the month following the reporting period. The excise duty shall be paid no later than the 22nd of the month following the reporting period.

7.1 Value Added Tax / Goods and Services Tax

VAT is imposed on turnover from the sale of goods, services (works), property rights and the cost of goods imported to Belarus. The VAT rates are the following:

- 20% is the default rate
- 0% applies to sales of goods subject to export customs procedures, sales of trucking, uploading and reloading services related to goods subject to export customs procedures, export of transportation services, etc.
- 10% applies to the sale of crops and farm production, fishing production, sales of children's goods and the import of goods defined by the President (e.g. meat, milk, butter, etc.)
- 9.09% and 16.67% apply when goods are sold at regulated retail prices

VAT amounts payable may be reduced by VAT amounts paid by the taxpayer to its suppliers when acquiring goods and services (works) for example. If deductible VAT amounts exceed the VAT amounts payable by the taxpayer, the taxpayer shall not pay any VAT to the budget. The difference in deductible and calculated VAT amounts may be carried over to future periods. Taxpayers may also claim a VAT refund from the budget.

The tax period for VAT is the calendar year. The reporting period can be chosen by the taxpayer independently: either a calendar month, or a calendar quarter. Tax returns for VAT shall be submitted by the 20th of the month following the reporting period. VAT amounts shall be paid no later than the 22nd of the month following the reporting period.

On 1 July 2016 the new e-invoicing rules for VAT purposes will take effect.

As a general rule, an electronic invoice will be obligatory for all VAT payers. Electronic invoices will be the basis for VAT calculations between sellers and buyers, as well as for deducting corresponding input VAT amounts. Electronic invoices will be circulated via the portal of electronic invoices managed by the Ministry of Taxes and Duties. Please note that e-invoices will not be regarded as source accounting documents.

At the same time, suppliers will not be obliged to execute electronic invoices in the following cases:

- goods, services and proprietary rights beyond the scope of VAT and their supply does not need to appear in tax returns
- bank operations
- insurance services
- sales of VAT-exempt goods or services by foreign companies not registered with the Belarusian tax authorities

- goods, services and proprietary rights supplied by advocate associations, advocate bureaus, the Belarusian Notarial Chamber and its subdivisions, plus certain state bodies
- goods imported to Belarus under commissioner (agency) agreements

An e-invoice should be issued for each transaction no earlier than the day when the VAT-eligible supply took place, and no later than the 5th of the month after the month in which the supply took place.

7.2 Transfer Tax

Belarusian law regulates transfer taxes as stamp duties. Stamp duties are imposed on the transfer of drafts and promissory notes for example, for the purpose of changing their owner or other proprietary rights in their regard, as well as making payments. The rate of stamp duties varies depending on the security type and taxpayers involved.

7.3 Others

Belarusian tax law does not provide for any other indirect taxes. At the same time, customs duties imposed on the import of goods to the customs territory of the EEU and state fees for conducting certain actions (e.g. receiving extracts from the state registry, filing claims, registering franchise agreements, receiving licences, etc.) may be referred to as indirect taxes because of their nature.

8 Inheritance and Gift Tax

There are no inheritance or gift taxes in Belarus; inheritance and gifts are subject to personal income taxation.

There is no wealth tax in Belarus.

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