



IR GLOBAL – MEET THE MEMBERS

BENELUX

In the following pages, you will hear from our members, about the important updates and opportunities available in and outside the BENELUX region. Whether you have a client looking to do business in the region or looking outwards, this guide highlights the opportunities, and benefits of doing business across BENELUX.

Read the full publication via
www.irglobal.com/news/e-publications

IR Global – The Future of Professional Services

IR Global was founded in 2010 and has since grown to become the largest practice area exclusive network of advisors in the world. This incredible success story has seen the network awarded Band 1 status by Chamber & Partners, featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system that is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

Multi-Disciplinary

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

Niche Expertise

In today's marketplace, both local knowledge and specific practice area/sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

Vetting Process

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

Personal Contact

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

Co-Operative Leadership

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups that focus on network development, quality controls and increasing client value.

Ethical Approach

It is our responsibility to utilise our business network and influence to instigate positive social change. IR Global founded Sinchi, a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities/tribes around the world.

Strategic Partners

Strength comes via our extended network. If we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR Global or someone else.



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FOREWORD BY EDITOR, ANDREW CHILVERS

Benelux – the gateway to Europe

For international businesses looking to gain a foothold in Europe, the Benelux countries – Belgium, the Netherlands and Luxembourg – provide the perfect place to establish operations, with comprehensive infrastructure, attractive business conditions and a wealth of experienced local advisers.

The Benelux nations have a long history of working together, going back to the 16th century when the 17 Provinces were the Imperial states of the Habsburg Netherlands. These provinces roughly covered modern Belgium, the Netherlands and Luxembourg.

More recently, the countries signed up to a customs union agreement in 1948 and have since joined the European Union, giving them the benefits of EU membership as well as Benelux membership. For instance, there is automatic recognition of all diplomas and degrees within the Benelux, a Treaty on Police cooperation and common road inspections.

The Benelux countries have long been known for welcoming foreign investors. The countries have a strategic location as a gateway to Europe and all have ultra-modern transport and communications infrastructures. The education systems are the best in Europe, resulting in a highly educated workforce. In addition, academia works closely with business to develop innovative new products and solutions.

Elsewhere, the respective governments are strongly supportive of domestic and international business and provide a range of incentives from relatively low tax levels to generous subsidies and grants for certain types of businesses.

Belgium is a dynamic economy that is renowned for encouraging SMEs and foreign start-ups. According to EU statistics, there are some 620,000 active businesses in Belgium and the majority of these are SMEs generating 62% of value to the Belgian economy. Foreign owned businesses in Belgium account for around 28% of value in the private sector.

The Netherlands is ranked fourth in the world by IMD's World Competitiveness Ranking 2020. The country is home to 15,000 foreign companies and an estimated 50% of Dutch GDP is derived internationally. According to the 2019 ranking of the Competitive Index of World Economic Forum (WEF), the Netherlands has the most competitive economy in Europe and is one of the top countries for business investment in the world.

Meanwhile, Luxembourg continues to attract foreign businesses. The country is an important financial centre, where investment funds, banks, reinsurance businesses and holding companies have expanded rapidly during the past 30 years. It has made its name as an investor-friendly destination to do business, with a strong legal, tax and regulatory infrastructure, and an experienced multi-lingual and multi-cultural workforce.

Luxembourg is the second after the US in matter of net assets owned by Luxembourg investment funds totalling euro5.5 billion. More than seven major Chinese banks have established their European headquarters in the country, while Luxembourg was the first and remains the main stock exchange listing specifically qualifying "green" or ESG compliant securities,

While the economies of each of these Benelux countries is well-rounded and highly attractive for foreign investment, high-tech businesses in particular are thriving in the region – with more than 10% growth in the sector in Belgium alone in the years 2015 to 2019 – providing opportunities for investment or acquisition for overseas companies.

As the Benelux economies recover from the COVID-19 pandemic, business has quickly picked up and mergers and acquisitions, in particular, are now back on the corporate agenda. This includes many deals now reactivated since being put on hold in 2020. Likewise, businesses are looking increasingly for growth capital again as confidence grows in the future of the Benelux economies following the vaccine rollout.

Economic confidence

Any overseas business or investor looking to make a move to the Benelux countries must be aware that while the tax and corporate regimes are favourable and relatively straightforward, business legislation is strictly applied for anyone setting up in the region. These include laws on company establishment, corporate governance, taxation, employment law and accountancy and transparency and all investors would do well to hire a seasoned local professional services firm before setting up shop. The laws in Belgium alone can be mind boggling for US investors, as an example.

Local legal and accounting experts will understand the intricacies of the business culture and accounting law in their respective countries. Importantly, they will also know the local quirks of the market, have all the relevant contacts at government level and will know who the local big players are and will recommend other professional services experts to help any deal or investment.

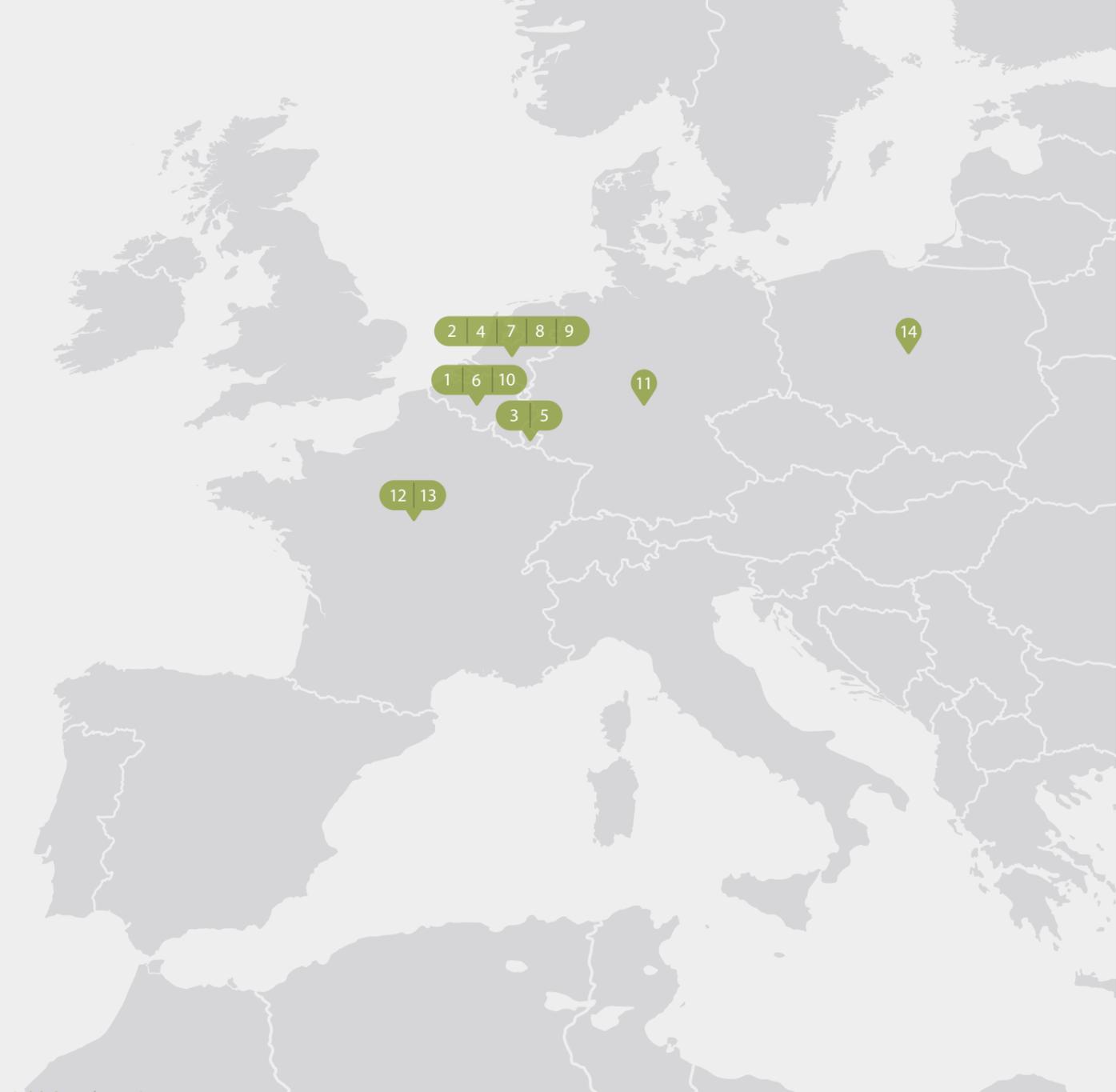
Over the next pages, we profile IRGlobal members in the Benelux countries who can provide in-depth commercially focused legal and financial advice for international clients doing business in Belgium, the Netherlands and Luxembourg.



Andrew Chilvers
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Supporting your requirements in the BENELUX region.

Member firms featured here retain a global support network across 155+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivalled results for their clients.



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IR Global members have a passion for knowledge sharing and developing professional relationships to support their clients' requirements. They not only network via our global conferences but they also take part in our virtual sessions to keep their presence up and continue creating and building on existing relationships.





BELGIUM

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Firm profile

Astrea is an independent all-round Belgian law firm providing result-oriented legal advice with 13 partners and more than 40 specialist and experienced lawyers, spread between offices in Antwerp and Brussels. The firm was established in 2006 by a handful of experienced lawyers who had gained a wealth of experience in various firms and has steadily expanded with experienced specialists and young talent. Astrea offers high-quality legal services to Belgian and international businesses, ranging from promising start-ups and growth companies to long-established corporations including more than 15 Fortune 500 companies. Astrea also undertakes regular work for government departments and public bodies in Belgium.

The firm's broad-based composition allows it to offer a comprehensive albeit specialised approach. Based on the individual client's needs and the specific issues at hand, it assigns a customised team of specialist lawyers to each case. This enables it to consider every relevant area of law and provide the most efficient solution for the client.

Biography

Steven De Schrijver is a partner specialising in corporate, M&A and technology at Astrea. He has almost 30 years of experience advising foreign strategic investors and investment funds on investments in joint ventures or complex commercial agreements with Belgian companies, mostly in the technology or life sciences sectors. His expertise includes tech M&A and technology transfers, e-commerce, software licensing, cloud computing (SaaS, PaaS, IaaS), hosted services platform development and services, privacy law (including GDPR implementation), cybersecurity, IT and BPO outsourcing, digital transformation, Industry 4.0, IoT, augmented and virtual reality, artificial intelligence, drones and robotics.

Belgium: driving innovation from within the heart of Europe

A welcoming investment climate

Belgium has a long-standing tradition of welcoming foreign investment. Its strategic location, state-of-the-art transport infrastructure, highly productive and skilled workforce and many government incentives (e.g. attractive tax regime and subsidies) are just few of its selling points and secure its reputation as a centre of knowledge and innovation.

Belgium has established itself as a hub for foreign tech companies and domestic start-ups, which benefit from a stimulating community consisting of a high density of technology businesses, research centres such as the University of Leuven, which was named the most innovative university in Europe for four consecutive years to 2019, and knowledge clusters. Belgium is also a European leader in life sciences, for example, housing the production of the Pfizer COVID-19 vaccine for Europe. These factors contribute to Belgium's 4th position in the European Innovation Scoreboard (2021) that provides a comparative analysis of innovation performance in EU countries.

The business-friendly tax environment continues to have a positive effect on the current investment climate as well. Foreign investors acquiring tech companies in Belgium may benefit from an attractive corporate income tax rate of 25% (down from 33% in recent years), while sellers of shares in Belgian companies pay no capital gains taxes.

A booming tech M&A market in Belgium

Thanks to its booming technology sector – it grew by 11.5% from 2015-2019, according to the sector's federation Agoria – which employs more than 300,000 people, the Belgian tech M&A sector is very active and growing too. For instance, more than 140 TMT transactions were recorded in 2020 despite the COVID-19 pandemic that halted a lot of investment. In the first half of 2021 there have been 77 TMT transactions in Belgium, a sharp increase compared to the first half of 2020.

Many smaller Belgian companies are active in developing novel technologies such as Internet of Things, artificial intelligence and artificial reality. Active sectors include smart living, life sciences, B2B applications, fintech, mobility, health and music tech. It is therefore expected that many of these start-ups, backed by private equity investors, will later be scooped up by large Belgian or international companies.

Key legal issues to deal with in a tech acquisition

Several specific considerations must be considered in a technology M&A process in Belgium.

A large focus will always be on the target's intellectual property rights such as patents, trade secrets, trademarks and copyrights, which usually are the main reason for the acquisition. Potential

investors should identify crucial IP rights and assess whether and how these are protected to uncover any major obstacles for the preferred deal structure. Contrary to other jurisdictions, employees in Belgium frequently own the copyright on the work they create for their employer, unless it concerns software. The target's employment agreements and work rules must therefore be carefully reviewed and, if needed, the IP rights must be transferred to the company. The same goes for self-employed consultants. If the target does not legally own such IP rights, it may be useless to the potential buyer.

Recent statistics show that about two thirds of tech deals in Belgium involve the acquisition of software companies, especially those in B2B cloud computing and SaaS solutions. Besides the review of essential software agreements such as license agreements or service agreements and accompanying documents including policies, manuals or information on user access protocols, it is important not to overlook the widespread use of open source software (OSS) in software development. This type of software is frequently subject to so-called 'copyleft' licenses, which require that the source code of the software built on OSS is made available for everyone to use, change and redistribute without any costs. In essence, the target company could be required to make its highly innovative solution available for free if it has been using OSS for its development. For a potential investor, this means a lack of license revenue and a clear deal breaker.

Other important issues must also be considered when entering tech M&A negotiations in Belgium. Labour law is very strict in the country. The risk of sham self-employment, whereby independent consultants are in fact subject to hierarchical supervision, is frequently present in tech companies. In the worst case, the consultancy agreement may be requalified into an employment agreement, leading to the company having to pay employer contributions for three years with surcharges and interest.

Technology companies further benefit from many subsidies, which are subject to specific terms and conditions. It is important to verify whether the government must approve a change of control of a subsidized company, or whether the transaction could even lead to a loss of subsidies or an obligation to reimburse them. Needless to say, privacy, data protection and cybersecurity due diligence have become crucial since the introduction of the GDPR.

Given the many challenges that investors face when entering a tech M&A transaction in Belgium, it is highly advisable to seek local legal and tax advice early in the process. A letter of intent drawn up early in the negotiations between the parties, for instance, may not be binding in some jurisdictions. By contrast, in Belgium it could be seen as a binding agreement if the price and object of the sale have been sufficiently agreed in such document. Local legal assistance will certainly help investors to avoid such risks.



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Firm profile

Maprima is an established professional service provider with a track record of more than 20 years. The practice is a BeNeLux-based firm with offices in the Netherlands, Luxembourg and Belgium. The team consists of 25 internationally focused and experienced professionals in the areas of accounting, taxation and law. In the past two decades, Maprima has further developed a large network of local advisers and specialists in BeNeLux and other European countries that is readily made available to prospective clients.

Its clients are internationally active companies, ranging from start-ups to large corporates and wealthy investors, who typically have long-standing relationships with Maprima.

Given that its clients are exclusively international, Maprima has gained a lot of experience with exactly the type of challenges foreign companies face when expanding into Europe and BeNeLux especially. This allows the team to proactively support international clients, so that they can focus on their core business goals.

For more information:

www.maprima.com/business-support/introduction

www.maprima.com/maprima-fiduciary-services/introduction

Biography

Hub van Grinsven has a background in accounting and financial controlling. He holds a degree in accounting. Before joining Maprima in 2019, Hub worked for various accounting firms in the Netherlands and as an interim financial controller with large consulting firms, working for clients of all sorts and sizes.

Hub is also an ice hockey referee in the joint Belgian and Dutch BeNeLeague, as well as on an international level, and so is used to working in an international, dynamic environment. He keeps calm under pressure and stays focused on the goals.

As Business Support Manager at Maprima, Hub acts as the main point of contact for our national and international clients and their operations in the Netherlands and Belgium. In this role, he makes sure the client's needs in key fields like accounting, tax and payroll and HR support are identified and fulfilled, while respecting and adhering to local compliance and regulations. Furthermore, he assists clients expanding into the BeNeLux countries in going through the set-up processes, assisting them in optimising their set-up with the aim of effectively fulfilling the client's needs.

First aid for your client's expansion into the Netherlands

The BeNeLux as a whole, and the Netherlands in particular, represent an attractive spearhead for multinational companies for their expansion into the European Union. A competitive business climate, top notch digital infrastructure and an internationally focused workforce are just a few of the attractive advantages this region has to offer. Companies expanding into the Netherlands find themselves right at the heart of the European Union and able to make use of Europe's largest seaport, and one of Europe's busiest airports to start business with partners everywhere on the European mainland.

Choosing your local set-up

Incorporating a company in the Netherlands is not a complicated matter and when supported by a seasoned professional organisation like Maprima, the route from expansion plan to realisation can be carried out in a matter of weeks.

While the incorporation of a Dutch company can have legal and commercial advantages, it's possible to opt for a less formal presence in the Netherlands by setting up a Dutch branch of a foreign company, or even registering for payroll purposes only.

These types of set up all come with different fiscal and legal compliance obligations, such as with tax returns and annual accounts. Depending on the set-up, registrations at the trade register may be due including the new UBO register.

Unique advantages for importing companies

When importing into the European Union, every country a company is going to import into will charge VAT at the border. This VAT needs to be paid immediately upon the goods entering the European Union.

Currently, in the European Union only three countries offer a way to postpone the payment of VAT on the import of goods from outside the European Union: the Netherlands, Belgium and Luxembourg. All three countries have a system in place allowing companies located in the respective country to apply for a license to defer the payment of VAT on goods imported from outside the European Union to their next VAT return. For companies importing large quantities of goods into the European Union this can lead to significant liquidity advantages.

Employing staff in the Netherlands

The Netherlands boasts a highly skilled, internationally oriented workforce making it an interesting pond for employers looking for qualified staff to fish in. At first glance, hiring staff and the subsequent payroll process looks fairly straightforward. However, depending on the industry a company's employees could be covered by a collective labour agreement. Furthermore, employees in the Netherlands enjoy a wide array of social security and options for pension schemes, as well as protection from termination without a well-established cause.

The Netherlands offers multiple schemes and options for companies to efficiently reward employees, such as the work-related expenses scheme, which allows for employee expenses to be refunded or benefits to be granted tax free, as well as the so-called "30% ruling", which can be used to pay up to 30% of the wages for a foreign employee moving to the Netherlands free of tax and social securities.

Differences in culture, customs and legislation can be challenging for foreign companies when dealing with Dutch HR and payroll matters. A correct and efficient set-up are key to avoid discussions with employees or with the fiscal authorities.

How can Maprima help?

At Maprima, we can assist with all local aspects the client faces in choosing the set-up of the company and carrying out the necessary formalities and registrations, as well as providing all the ongoing support needed afterwards, including our support in adhering to all the previously mentioned local fiscal and legal compliance obligations. Whether your client would like to come to the Netherlands, Belgium or Luxembourg, our seasoned local staff will help provide a soft landing, to ensure an efficient and effective start of their European business.

We have decades-long experience supporting foreign companies wanting to enter the European market through the BeNeLux. We are familiar with all the differences in culture, customs and bureaucracy foreign entrepreneurs may run into. Having an experienced local advisor who speaks your language – in the literal and figurative sense – can save a lot of time and money.

Beyond accounting, HR, legal and fiscal support Maprima acts as a so-called corporate liaison. Although companies usually have an internal officer or trusted adviser looking after their foreign affairs, these officers may not always be fully up to speed with all local regulations and procedures abroad. We advise these officers, if or when needed, on local legislation, business culture or other practical matters such as insurances, car leases or logistic matters.

For more information, please contact Hub van Grinsven at +31 (0) 43 365 3067, or hub.van.grinsven@maprima.com



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Biography: Benoît Duvieusart

Corporate Law, regulatory, M&A, general business law, and insolvency.

Benoît Duvieusart has advised major international companies on the structuring of corporate reorganisations, mergers and acquisitions, leveraged buy-outs, private equity deals and group financings.

He previously acted as Senior Associate in a Corporate Law – M&A Practice at a major law firm in Luxembourg.

Prior to joining the Luxembourg Bar, Benoît was General Secretary and member of the Executive Committee of a Luxembourg private bank.

He has previous experience in investments funds, securities custody and administration and wealth structuring in one of Luxembourg's major banks.

He is a member of ALFI, the Luxembourg Investment Funds Association, of ILA, the Luxembourg institute of Directors, and a founding member, and director until 2006 of the Luxembourg professional association of portfolio managers (ALGAFI).

He is an occasional lecturer at the IFBL, the Luxembourg banking education institute.

Benoît Duvieusart holds a Master's degree in law from the Université de Louvain-la-Neuve (UCL) and an LL.M. from the University of Cambridge.

Languages: English, French, Dutch and Spanish.

LUXEMBOURG

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Biography: Stéphane Ebel

Tax law, corporate law, general business law, liquidation and insolvency.

Stéphane Ebel advises an international clientele on the tax aspects of Luxembourg and cross-border transactions, in particular real estate, private equity and finance transactions.

He is also involved in matters relating to insolvency and liquidation of Luxembourg companies, and to general business law and dispute resolution.

He was previously a member of the tax law practice of Arendt & Medernach, a major law firm in Luxembourg.

He has been a member of the Luxembourg Bar since 2005. Prior to this, Stéphane worked for a multinational pharmaceutical company and a consultancy firm as tax advisor. He has experience in international tax planning, corporate and personal taxation, VAT, liquidation of companies as well as general business law.

He is also a lecturer in the Institut de Formation Bancaire Luxembourgeois in corporate and international taxation.

Stéphane holds a Master's degree in Business Law (Maîtrise de droit des Affaires) and a DESS – Diplôme de Juriste Conseil d'Entreprises – from the University of Strasbourg, as well as a Certificate of Corporate law from the University of Montpellier.

Languages: English, French, German and basic knowledge of Luxembourgish and Spanish.

Firm profile

duvieuart ebel, avocats Associés is an independent and dynamic Luxembourg law firm that combines experience in corporate law, M&A, investments funds, private equity and international and domestic corporate taxation.

Our practices are in permanent evolution. We are member of various technical associations such as IFA (International Fiscal Association), ALFI (Luxembourg Investment Funds' Association), IBA (International Bar Association) and ILA (Luxembourg independent directors association), and both partners are lecturers at the IFBL (Luxembourg Banks' training institute).

Our ever-demanding client base is mainly composed of investment fund managers, assets managers, family offices, private investors, entrepreneurs, banks and insurance companies, domestic and multinational companies, financial intermediaries, domestic and foreign correspondent law firms and domiciliation companies.

We advise our clients on the formation of investment vehicles or the structuring of cross-border transactions, always making a point to be responsive and proactive, and focused on delivering timely, pragmatic and commercially driven solutions.

The personal tax liability of the manager is not a fatality

The first degree administrative court of Luxembourg recently issued a judgment (number 43190) that is likely to reassure diligent managers and directors of commercial companies.

In the judgement, a member of the board of directors ('Mr. X') of a Luxembourg public limited company (société anonyme) received a tax guarantee assessment issued by the Luxembourg direct tax authorities (Administration des Contributions Directes (ACD)) on 10 October 2018, under the provisions of paragraph 118 Abgabenordnung (AO) making him joint co-debtor of unpaid withholding taxes on salaries that should have been withheld and transferred to the ACD by the company for the financial years 2014 and 2015.

Mr. X disputed the dismissal of his pre-litigation appeal to the Director of ACD, according to which "the liability of the representative is to be characterised as wrongful as long as he does not fulfil his tax obligations, which include ensuring that the taxes due are paid - even those dating from before he took up his duties - out of the administered funds, and that the claimant wrongly believes that he should not personally be liable. Therefore, charging the director with the company's arrears relating to withholding tax on salaries and wages for the years 2014 and 2015, as well as the interest for late payment relating thereto, is perfectly justified as far as he is concerned". Mr. X thereby lodged an appeal before the first degree administrative court of Luxembourg.

The personal liability of a director or a manager requires evidence of a specific fault ('Schuldhaftes Verletzung'), which refers to the lack of diligence or care in the execution of the tax obligations of the company he administers, or even simply poor administration, i.e., the fault that a normally prudent and vigilant person in the same circumstances would not have committed. Thus, the mere non-payment of a company's taxes is not necessarily a fault and therefore not sufficient to engage the liability of its director.

In this respect, it should be noted that in this case, Mr. X was a director of the company for less than four weeks, in which time he had to replace the daily management director 'administrateur délégué' of the company who had been dismissed and to organise the company's admission of bankruptcy.

Mr. X also argued that a criminal complaint had been filed by the parent company of company Y against the dismissed daily managing director for, among other things, misuse of company assets, breach of trust, fraud, forgery and use of forgeries, theft, simple and fraudulent bankruptcy and false declaration, and that numerous audits had been carried out on his initiative throughout the previous financial years. Additionally, Mr. X sent a detailed letter to the receiver of the company explaining and justifying all the failings and concealments of the dismissed daily management director.

In its judgment, the first degree administrative court considered that the behaviour of Mr. X did not result in any culpable breach of his obligations in that the concrete steps taken by him during the extreme brevity of his 26-day term of office show that he did everything possible to assume his responsibilities as director of the company without having, through any negligence on his part, contributed to the creation or even an increase in the debt of the said company to the tax authorities. On the contrary, by his rapid and effective intervention since the beginning of his mandate and following the reconstitution of the accounting and financial situation of the company after having revealed its state of suspension of payments and the admission of bankruptcy, Mr. X avoided any unnecessary increase in the debt of the company in question towards the public treasury.

In the current context of increasing implementation of the personal tax liability – whether direct or indirect taxation – of directors/managers, this judgment makes it possible to conclude that the said liability is not fatal for a diligent and proactive director/manager.



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Firm profile

HLG: your partner in all your finances. For more than 25 years, we have been the leading accounting firm in the Leusden area. Operating in the same world as your business, we provide assurance, tax advisory and corporate finance services. Key concepts are short lines of communication, fast response times and personal engagement with our clients.

Our clients cover the spectrum from sole proprietorships to medium-sized enterprises, and from building contractors to medical specialists. Although most of our clients are based in the central part of the Netherlands, we also serve multinationals operating in the Dutch market or seeking to gain a foothold here.

Our vision: processes work best when they are carried out in close partnership. We value working very closely with our clients. We do not work for you: we work with you. Where we excel most of all, and what sets us apart, is our personal approach to businesses that are owned and managed by the same person or by a small group of people. For these clients, it is particularly vital to work in close partnership.

Biography

Gerard took his first steps in the accounting business in 2000 and obtained his Master in Accountancy at NIVRA-Nyenrode in Breukelen in 2006.

During his career he has worked with medium-sized and large audit firms (PwC, AcconN-AVM) as well as an interim financial (Fortis Bank, SDU). With this he has practical experience from both sides of the 'audit-table', which benefits during audits. In 2008, he joined HLG where he is now the audit partner.

Because audits will be automatised in the near future it is important that auditors understand the impact of the IT environment. Gerard therefore started a Master in IT Auditing Advisory and Assurance at the Vrije Universiteit Amsterdam from which he graduated in 2021.

As an auditor he believes in cooperation between client and auditor. Obviously, auditors have to maintain their professional skepticism and independence, but this doesn't mean though that they can't work together in order to perform an efficient and satisfying audit!

Besides the passion for working together with his clients Gerard has a wide interest in alternative rock music and loves to visit music festivals with his friends.

Group audits and why you should love them!

Doing business in the Netherlands, the Gateway to Europe, is straightforward as it is an international-oriented country, with English adopted as a second language in business. The country has an understandable tax policy and a pleasant environment for expats to live in. In short, a solid base to establish your 'hub' for doing business in Europe. From your intermediate holding company in the Netherlands, you can set up operational entities throughout Europe.

When establishing a business in the Netherlands obviously most attention goes to corporate tax regulations and employment law. But what about the audit regulations? When is the financial group audit obligated and how will it impact my business?

What is a group audit?

When your client's holding company meets certain criteria (see below) it must have a group audit performed. This means that the group auditor will take responsibility for the audit opinion for the group. The audit will be performed on the consolidated statements from which the group auditor has to 'judge' the work done by local auditors.

When is a group audit an obligation?

In the Netherlands we categorise companies by size based on the following three variables:

Size	Balance sheet	Revenue	Employees
Micro	< EUR 350k.	< EUR 700k.	<10 fte.
Small	< EUR 6 mio.	< EUR 12 mio.	< 50 fte.
Middle	< EUR 20 mio.	< EUR 40 mio.	< 250 fte.
Large	< EUR 6 mio.	> EUR 40 mio.	> 250 fte.

The 'size' applies when you meet two of the three criteria in two consecutive years. For middle and large entities the consolidation and audit are an obligation. This could mean that, although the stand-alone figures of the holding company qualify as small, you must perform an extensive group audit based on the consolidated figures.

Impact of the group audit

Auditors must perform the group audit based on ISA 600 (International Standards on Auditing) regulations. This implies that the group auditor must take care of:

- Communication with governance at group level
- Risk analyses for the group and individual components
- Communication with the component auditors
- Evaluate audit work performed by component auditors
- Audit of the consolidation process
- Correct application of the diverse accounting principles.

The amount of work that arises from these regulations in combination with the overall audit responsibility for the group auditor explains why groups audits form a relatively high part of the overall costs for the holding company.

Exemptions

Dutch law does take into account that there are circumstances in which an exemption for the group audit is feasible.

The most important exemption is article 2:408 of the Dutch Civil Code. This article facilitates that when the following criteria are met:

- No objection by shareholders with respect to applying 408
- Intermediate group holding and subs are consolidated at higher level (Top Holding)
- Consolidated statements of Top Holding contain directors' report and auditors' report and are stated in English, German, French or Dutch
- Financial statements of the consolidated Top Holding are published in time at the Dutch Chamber of Commerce an intermediate holding company does not have to prepare consolidated statements and is not obligated to have a group audit performed.

Benefits of the group audit

Although the group audit is mostly seen as a formal obligation, when performed in the right way it can help you on diverse subjects.

Consolidation process: Especially in larger groups with multiple entities the consolidation process can be complex. As the group auditor has a lot of experience in this process, they can assist you to set up an efficient and effective process.

Coordination: The preparation of the overall consolidation requires the involvement of component auditors. As it proves to be 'difficult' to get hold of the component auditors in the diverse countries it could be useful to involve the group auditor in this process.

Preparation: Audited group financial statements are a relief for Top Holdings. Also, with an audited consolidated statement the group auditor at the Top Holding is likely to contact the auditor at your level instead of local management.

Local law: As part of the audit the auditor must make sure that the holding company has followed local law. The feedback from the auditor therefore helps you to apply local law in the correct way.

Taxation: Although an auditor cannot advise you directly, they do have extensive knowledge of the taxation process and obligated aspects, for example, transfer pricing regulations. The group auditor can assist you to prepare and hire the right local parties to take care of these obligations.

How to prepare a group audit

What remains is how to prepare for a group audit. Mainly, just make sure you work with an experienced auditor, preferably from a small- or mid-sized firm to avoid that you end up at the bottom of the priorities list.

From there on, make sure you have a periodic reconciliation in which you discuss the pre-tuned agenda and timelines.

To conclude

For me, running a smooth group audit is a successful outcome that makes me happy. For you, make sure you and your client are aware of the benefits and make use of it as much as possible. In that case all parties are winners!



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Firm profile

BSP is an independent full-service law firm based in Luxembourg. We are committed to providing the best legal services to our domestic and international clients in all aspects of Luxembourg business law.

Talented and multilingual, our teams of lawyers work side by side with our clients to help them reach their objectives and support them with tailor-made legal advice, creating in the process professional relationships based on mutual trust and respect.

Our lawyers have developed particular expertise in banking and finance, capital markets, corporate law, dispute resolution, employment law, investment funds, intellectual property, private wealth, real estate and tax. In these practice areas, as in others, our know-how, our ability to work in cross-practice teams and to swiftly adapt to new laws and regulations allow us to provide our clients with timely and integrated legal assistance vital to the success of their business.

Building on the synergy of our different professional experiences and the richness of our diverse cultural background, we stand ready to meet our clients' legal needs, no matter how challenging they are.

For more information, please browse through our website or contact us at mail@bsp.lu.

Biography: Evelyn Maher

Evelyn is Head of BSP's Investment Management department and has been active in the Luxembourg investment fund market since 2001.

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She assists fund promoters and asset managers to structure and establish a wide range of funds including private equity, venture capital, loan origination, loan participation and real estate.

She advises on compliance with all aspects of the regulatory regime applicable to investment funds and in particular the alternative investment fund managers directive (AIFMD).

Following the launch of the fund, Evelyn offers ongoing assistance in relation to closings, investments, divestments, liquidation and general issues arising throughout the life of the fund.

She has also provided assistance in relation to the listing of securities on the regulated and Euro MTF markets operated by the Luxembourg Stock Exchange. She has extensive experience in relation to Luxembourg regulatory and corporate law.

Biography: Laurie Masson

Laurie advises domestic and international clients on ongoing regulatory and organisational aspects of the structuring and marketing of investment funds. Laurie assists Luxembourg management companies and investment funds (whether regulated (SICAR, SIF) or unregulated (RAIF, SCSp, SCS)) from their set-up until their liquidation. Further areas of expertise include general corporate law, licensing, acquisitions and financing of investment funds, covering the whole chain of private equity transactions.

She has a particular focus on private equity and real estate funds and Brexit-related matters.

Prior to joining BSP, Laurie worked for another leading Luxembourg law firm.

Hot topics in Luxembourg investment funds

According to the latest statistics released by the CSSF, the total net assets for regulated funds in Luxembourg amounted to more than EUR5 trillion as at 31 January 2021, representing an increase of some 5% compared to the same period in 2020.

The recent Openlux attacks on Luxembourg show that, as a small country, Luxembourg will have to continuously justify why it is doing so well. However, the success of Luxembourg as a financial centre is more testament to the strong regulatory and operational environment that Luxembourg has created and less to any alleged tax advantages to doing business here. In recent years Luxembourg has proved itself resilient and has fully embraced transparency and exchange of information. Its willingness to adapt and change will ensure that in the coming years the industry will continue to thrive.

ESG

One thing the pandemic has done is focus attention on environmental issues. This has coincided with the EU's sustainable finance action plan, which, of course, doesn't just focus on climate related issues but also on social considerations such as inequality and inclusiveness and governance matters. The EU's push to ensure ESG considerations are taken into account in financial decision-making aligns with the increased focus of investors on sustainability and a more long-term perspective to investing.

Flows into sustainable funds have increased in recent years. That is expected to continue as the mainstream evolve and adapt to the new legislative requirements. The scale of adaptation is huge, and managers are moving at different paces. Investor demand for products that have a long-lasting positive impact on the economy and society will ultimately determine success, but ESG will remain a focus of the fund industry for years to come.

AIFMD

To seek industry views on how to achieve a more effective and efficient EU AIF market, in October 2020 the European Commission launched a consultation on the review of the Directive on Alternative Investment Fund Managers. The consultation was wide ranging and touched on many subjects including looking at how marketing to retail investors of alternative products can be improved, how to ensure a level playing field between investment firms and AIFMs, the need for a depositary passport and whether the delegation rules should be supplemented or clarified. Various industry bodies in Luxembourg have responded to the consultation and the expectation is that there will be a proposal for a directive amending the AIFMD framework during the third quarter of this year. Inevitably there will be changes and the Luxembourg industry will need to be prepared for this.

Retailisation of alternative products

As mentioned, one of the items that the European Commission is looking at is how marketing to retail investors of alternative products can be improved. Increasingly, retail investors want to benefit from higher yields offered by alternative assets and managers want to tap into that market. The industry will need to continue to find ways to meet this demand. The consultation by the European Commission on this point as well as their consultation on European Long Term Investment Funds (ELTIF) is therefore welcome. Increasingly, ELTIF are being analysed as a means of approaching the retail market but to date only a very low number have been established. Efforts to review why that is and to improve the framework to make it more attractive are encouraging.

Digitisation

The pandemic has also forced the asset management sector to consider its approach to digitisation and operating models in general. Digitisation of meetings and electronic signatures have become the norm and are here to stay. A new generation of tech savvy investors expect easily accessible and efficient solutions. This, along with continuing pressure to drive down fees for end investors, will force the industry to continue to look at ways that digitisation of certain processes can reduce costs and improve efficiency.

The use of Distributed Ledger Technology (DLT) in financial processes will become more mainstream. Recently the Luxembourg legislature passed a law enabling the issuance of dematerialised securities directly in DLT and opening the central account keeper role to record and operate DLT issuances of unlisted securities to any EU credit institutions or investment firms.

The fund industry will have to find ways to embrace and integrate this technology, which promises lots in terms of efficiency and automation of the traditional processes involved in fund distribution.

Conclusion

As a post-Brexit European Union continues in its efforts to build a strong but sustainable financial market, there will be a role for Luxembourg funds. We expect that the industry here which has shown such resilience throughout the last decades will play its role in that market.



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Firm profile

Advise you. Defend you.

Guide you in your business, in your life and in the structure or disposal of your estate. It is our business as lawyers and we do it with passion, organisation, competence and rigour.

LawTax is an association of lawyers in which all members believe in maintaining a relationship with their clients based on trust, transparency and absolute confidentiality.

Biography

A lawyer at the Brussels Bar since 2002, Sébastien advises his clients on issues relating to tax law in general, financial criminal law and business law. In disputes between his clients and the tax authorities, he intervenes at all stages from pre-litigation to administrative litigation and legal proceedings. He regularly negotiates with the tax administration or with members of the Cabinet of the Minister for Finance.

He has developed expertise in intellectual property taxation. In this regard, he advises businesses of all sizes as well as their directors on the strategy to develop in the field of valuing intellectual property and in particular copyright. He has secured several advance rulings on the tax treatment of royalties for professions such as journalists, computer experts, advertising agency creative talents, conference speakers or artists. He regularly gives conferences on the subject.

Sébastien holds a law degree from the Katholieke Universiteit van Leuven (1999), a diploma in Legal Studies from King's College London (1999), a special degree in Tax Law from the Free University of Brussels (2000) and a Master's Degree in Intellectual Rights from the Katholiek Universiteit van Leuven (2015).

Belgium: Donation of a business at a reduced rate

The energy and time that an entrepreneur dedicates to developing their company will generally result in an increase in its value. This value will constitute an asset of their estate and will generate in some countries a significant tax burden in case of death.

Belgium differs from other countries by the low taxation of donations of movable assets made by Belgian residents in direct line or between spouses, but also to non-related persons. In addition, subject to certain conditions, the rate of gift and inheritance tax is reduced to 0% (exemption in Flanders) for the transfers of company shares. The application of the 0% rate (or the exemption) to a donation or an inheritance allows the entrepreneur to prepare the transfer of their company with an easy mind.

As the matter of donations and inheritance is down to the federated entities – Flanders, Wallonia, Brussels-Capital Region – each region has adapted specific rules. All of them foresee the application of the reduced rate or the 0% rate (exemption in Flanders).

It should be emphasised that the treaty-based avoidance of double taxation in the case of gifts and inheritance is only slightly developed, so it is always necessary to ensure that, in the presence of an externality, the operation does not have a tax implication in another country.

In addition to registered donations, discussed below, manual donations of movable assets may be made. As these do not have to be registered, no gift tax will be paid. However, if the donor dies within three years of the donation, the gift will be reintegrated into the estate for the calculation of inheritance tax.

Registered donations require the intervention of a notary who will establish the deed. The notarial deed will be registered and the duties collected on the gross emolument received by each of the donees. The applicable rate will depend on the nature of the donated assets. Movable assets are, in principle, subject to a reduced rate of 3% (3.3% in the Walloon Region) in direct line and between spouses. For donations to other persons, the rate is set at 7% (5.5% in the Walloon Region). This reduced rate applies to furniture, works of art, movable rights such as copyrights, as well as securities (shares, bonds, certificates, etc.) of Belgian or foreign companies.

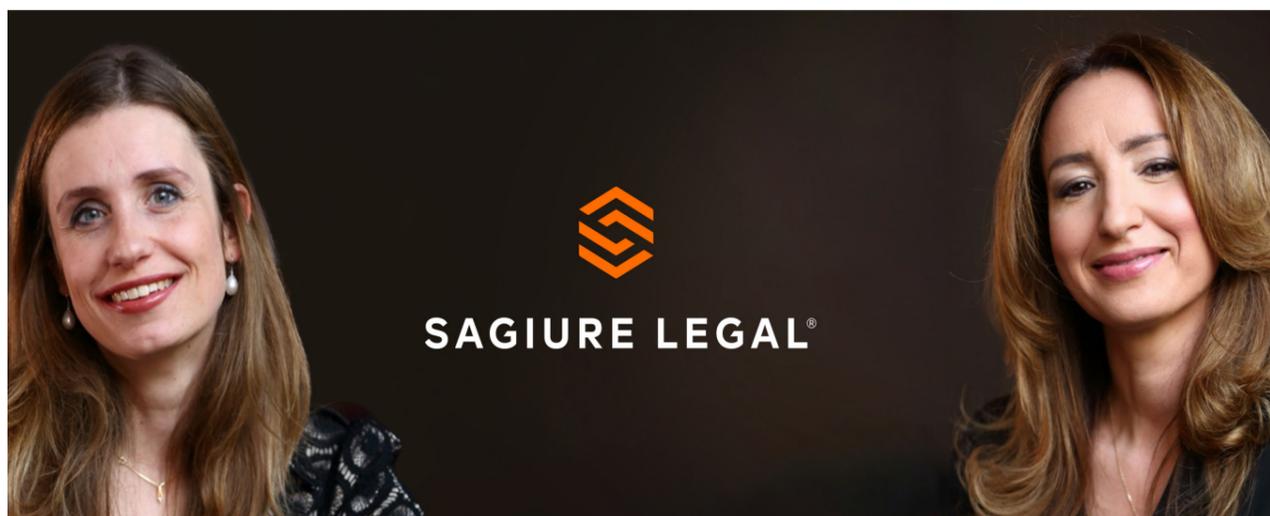
Donations of company shares that carry on an industrial, commercial, agricultural or liberal professional activity themselves or with their subsidiaries whose effective management is located in the European Economic Area can benefit of a 0% rate (exemption in Flanders) as long as the conditions set out region by region are met.

In practice, there are two sets of conditions: those that must be met at the time of the donation and those that must be met for three to five years from the date of the deed of donation.

The Brussels-Capital Region intends to encourage the transfer of 'family' companies, i.e. a company or group of companies that is at least 50% owned by the donor and his family. Holding companies can also benefit from the reduction of duties as long as they hold at least 30% in a company that carries out an industrial, commercial, agricultural or liberal profession activity. The reduction will be maintained if the company's activity continues for three years, the capital is not reduced during the same period and the registered office is not transferred to a country outside the European Economic Area. The conditions are similar for Flanders.

The Walloon Region insists on maintaining the activity and employment for five years. The donees have to demonstrate that the employment has been maintained up to 75% compared to the situation on the day of the donation. On the other hand, the donation may concern securities representing at least 10% of the voting rights. It is also interesting to note that the 0% rate can be applied to donations of debt obligation - provided it does not exceed the paid-up capital on a company eligible for the application of the said rate. As far as holding companies are concerned, they are eligible for the reduced rate if, on a consolidated basis, the main activity of the group consists of the supply of goods and/or services to third parties.

In conclusion, Belgium is a host country for companies whose corporate purpose is the holding of participations. Dividends paid by subsidiaries are generally exempted from taxation. The existence of a reduced rate (3% or 0%) for donations of company shares is undoubtedly an additional advantage.



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Firm profile

Sagiure Legal B.V. (“SAGIURE”) is an independent law firm based in Amsterdam, the Netherlands. SAGIURE stands for knowledge and determination (SAGE), two key factors to success in the legal (IURE) business. Hence, our firm’s name SAGE [seyj] + IURE [iüre]. At SAGIURE we specialize in corporate employment and contract law.

Our focus lies with (multinational) corporations and entrepreneurs with a workforce or investment in the Netherlands or an ambition to set-up or grow business in the Netherlands.

Working with large and small (including innovative start-up and scale-up) corporations, we offer clients bespoke legal service on and representation in contentious and non-contentious employment law and contract law matters. We specialize in corporate employment and related contract law in the area where employment law, corporate law and tax law coincide.

Our core work ranges from advising clients on day-to-day legal matters to guidance on employment and HR matters in M&A transactions. Given our corporate focus we have developed strong relationships and a track record in acting as strategic business advisers for clients in structuring business goals from start-ups to multinationals. Although we focus on employment law, the type of client we service generally needs a variety of legal and tax expertise with often a cross-border element.

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In that regard clients trust us to engage experts in other legal and tax areas when needed. While our forte is employment and contract law, for related areas such as tax, corporate law and data protection & privacy law, we choose to work with some of the best legal minds in the market to suit our clients and their legal needs. Experts who match our own commitment and dedication. We work with the big law firms when that makes sense, yet retain all the benefits of the personal, committed approach.

Biography

Madeleine and Rachida are the founding partners of SAGIURE Legal, a leading employment boutique law firm with a strong track record assisting with both contentious and non-contentious employment and contract law matters at the interface with corporate and tax law. The firm’s founders have a long trajectory in this arena, having worked together for many years at top-flight firms Bird & Bird and CMS.

Doing business in The Netherlands: Employment Law and Human Capital Toolkit

The Netherlands has a rich and long trading history. We look at the world as our playing field and roll out the red carpet for inbound investments, cultures, and all those who have high aspirations. The Netherlands’ geographical location offers a gateway to Europe’s 500 million consumers and high quality business customers.

The Netherlands’ world-class airport, top-ranked seaports and high-speed road, rail and broadband networks are unparalleled. A staggering 90% of the Dutch population is fluent in English, the language of worldwide business. Our judicial system is one of the best in the world, upholding the rule of law, transparency and fairness. And as to human capital, according to the World Population Review the Netherlands is one of the top six spots for the happiest countries in the world. Last but not least, competitive tax facilities are the cherry that brings the Netherlands’ full circle as one of the most attractive countries to have a business presence.

All these features have already attracted vast numbers of multinationals establishing business operations in the Netherlands, and since Brexit we are seeing a consistently increasing influx of companies that are securing their market share in Europe through presence in the Netherlands. When contemplating to set up business in the Netherlands the decision is typically commercially driven, combined with some important corporate and tax considerations. To maintain your momentum and timelines it is important to consider the key employment and human capital topics in a very early stage. This saves you time, prevents delays in getting your business operational, and cultivates confidence in a professional business that is ready to excel and expand.

1. You can employ staff under an employment agreement, through a temporary staff agency or secondment supplier. There are several types of employment contracts, for instance a fixed term or a permanent one. It is also possible to engage consultants or freelancers on the basis of a services contract. Which contractual form is the best fit depends on the needs of your anticipated business. These decisions should therefore be made taking into consideration in the company’s short, mid and longer term goals.
2. Employment law is codified in the Civil Code. Most regulations apply to both permanent and fixed term staff. Additionally, there can be collective labor agreements (CLA) in place that apply to your industry. If your company falls within the scope of a CLA, compliance is mandatory.
3. Generally a CLA is combined with an industry-wide pension fund. When setting up your payroll it is important to align with the statutory laws, the CLA and the applicable pension scheme. Note that choosing a certain corporate structure for your business activities can in certain circumstances carve out part of your staff from the scope of the CLA. This underscores the importance of involving your HR and legal teams at the design stage of your expansion ambitions.

4. There are options to opt for pre-employment screening. This is typically important for integrity sensitive positions. For each worker that you hire/engage you will need to obtain a copy of their original identity document and you must keep that in your records. The Dutch implementation of the GDPR (the “AVG”) prescribes the legal framework for processing workers’ personal data. If you will be employing staff for the first time in the Netherlands you will need to register as an employer with the Dutch Tax and Customs Administration.
5. Employing staff and engaging workers comes with a duty of care and an obligation to provide a safe and healthy work place. Private occupational health agencies (Arbodienst) offer services to help you draw up a risk inventory and evaluation (RI&E) that reflects the risks that your personnel faces while on duty and the measures that your company has in place to address and mitigate these risks. Every employer must have a contract with such an Arbodienst. They will also guide you in the reintegration process when employees fall ill. Illness processes are subject to strict legal formalities and it is important that you familiarize yourself with your employer’s rights and obligations. Part of your duty of care is to verify that your employees are insured for the standard Dutch health care insurance. The costs are borne by the employee, however if they are not properly insured the employer may face the obligation to pay the health insurance premiums to the Dutch National Health Care institute.

6. The Netherlands is a proud member of the EU. As such when hiring employees from the European Economic Area (EEA) or Switzerland you will not need to arrange for work permits or visa. Your company is obliged to recruit personnel from the EEA and/or Switzerland first and only if you can prove that suitable personnel cannot be found, are you permitted to recruit from other countries. Employing a non-EEA or Switzerland national will usually only be allowed if you apply for and obtain a permit for residence and work. There are various residence permits. Which residence permit applies depends on the employee’s job. In order to attract highly skilled persons from abroad, the Immigration Authorities (the “IND”) has a relatively quick and easy process to obtain a permit for highly skilled persons.

SAGIURE assists multinationals, SME and ambitious entrepreneurs who invest in the Netherlands. We offer legal assistance at the interface of corporate and employment law and our lawyers are praised by our clients for their commercial approach and ability to act as true business partners, overseeing the commercial importance of business decisions, helping them to overcome the legal hurdles in the most efficient way possible.



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Firm profile

KC Legal offers top-tier tax advisory services for international corporate groups, private equity funds and ultra-high-net-worth individuals with cross-border operations. Our team of international tax specialists consists of experienced tax lawyers and tax attorneys who provide a hands-on approach and are fully equipped to tackle all challenges of international tax practice. Our team has an excellent track record and has gained extensive experience working for the international big-four tax accounting firms as well as for reputable international law firms.

Through our network we can offer our clients access to all desired service lines at the level of expertise our clients are acquainted to. When in search of a law firm and providers of other professional services, we can compose the best team for the case. As a client, you enjoy the convenience of having just one contact for all your legal relations.

Biography

Friggo Kraaijeveld graduated in tax law at the University of Amsterdam. He also graduated in civil law and philosophy at the University of Amsterdam and obtained a postgraduate LLM in international tax law from the International Tax Centre of the University of Leiden.

Friggo worked in international taxation at PwC and subsequently worked with a leading Dutch law firm. Friggo specialises in tax issues with an international dimension, such as private equity structuring, cross-border investments, international trade and labour. Friggo has a strong track record in cross-border investment structures and structured finance.

Friggo is a member of the Dutch Order of Attorneys (NOvA), the Dutch Association of Tax Advisors (NOB), the International Bar Association (IBA) and the International Fiscal Association (IFA). Friggo is the Dutch contributor to the IBA's research partner's publication Getting The Deal Through – Taxation of Inbound Investments.

Substance requirements in the Netherlands. Different dimensions

Further to the OECD anti-tax avoidance Base Erosion and Profit Shifting (BEPS) initiatives, respective EU Directives and general anti-abuse narrative, the Netherlands has consistently introduced various legislative measures against flow through holding and financing companies over recent years.

In particular, substance requirements have received increased attention from the EU and the OECD, leading to restrictions on Dutch tax legislation.

For instance, since July 2019 even preliminary consultations for granting an advance tax ruling with an international dimension cannot be initiated unless a taxpayer filing the ruling request has sufficient relevant economic nexus with the Netherlands. In short, economic nexus means operational business activities. Certain additional requirements should also be met.

The substance and information disclosure requirements applied to so-called service companies – where the entity's activities predominantly consist of receiving and paying interest, royalties, rent or lease instalments from and to non-Dutch group entities – started to tighten this year. The following items were added to the existing list of substance requirements:

- The service company carries a minimum amount of €100,000 of wage expenses
- The service company has an office space at its disposal for a period of at least 24 months.

Thus, service companies should meet these additional new (and earlier introduced) minimum substance requirements to prevent spontaneous exchange of information by the Dutch tax authorities (DTA) with the foreign tax authorities of the source states. In turn respective tax authorities may take this information into account in determining whether the relevant company can apply the benefits of the relevant tax treaty or EU Directive.

It is also important to note that the Dutch Ministry of Finance conducted a study on whether the application of the Dutch participation exemption should be denied to holding companies that have no substance in the Netherlands. In September 2020, the Dutch Secretary of Finance concluded that probably the Netherlands should exchange information with respect to the holding companies without sufficient substance with the jurisdictions in which these companies claim benefits under the Parent Subsidiary Directive or tax treaties.

Another option that was considered but dismissed by the Dutch Ministry of Finance was an anti-abuse rule that would give the DTA the opportunity to deny the application of the Dutch participation

exemption in abusive situations. Such a rule would lead to uncertainty for taxpayers since the absence of substance is not necessarily an indication of tax abuse. However, as mentioned above Dutch holding companies without sufficient substance and consequently nexus with the Netherlands most likely would not be able to proceed with the advance tax ruling and address this uncertainty.

The information exchange on Dutch holding companies that do not meet all requirements for sufficient substance is expected to become effective in 2022.

No draft legislation that would implement these requirements into Dutch domestic law in this respect is available now. The probable main reason for this is the recent Communication on Business Taxation for the 21st Century, published by the European Commission in May. This Communication, among other measures that are supposed to ensure fair and effective taxation, suggests a legislative proposal setting out union rules to neutralise the misuse of shell entities lacking sufficient substance for tax purposes. The draft of this proposal should be prepared by Q4 2021, and it is not clear whether the European Commission will choose to set up the framework for information exchange between the tax administrations or deny 'the benefits linked to the existence or the use of abusive shell companies' or even both. Thus, the substance requirements for the holding companies in the EU including the Netherlands may change very soon.

Another aspect of the substance requirements in Dutch legislation is that they are also incorporated in controlled foreign company (CFC) rules that provide for exemption if a CFC carries on genuine economic activities in the foreign jurisdiction. Sufficient substance in the foreign jurisdiction is a sign such genuine activity.

Finally, actual substance is important in the context of application of tax treaties. Under the BEPS project international tax treaties have been amended under the so-called Multilateral Agreement, which introduced the principal purpose test (PPT). Not meeting the PPT will deny a taxpayer access to the benefits of a tax treaty. Substance is a reliable objective criteria of real business conducted in certain state in order to meet the PPT and to gain access to tax treaties.

Therefore, considering pressure from the OECD and the EU Commission that entails tightening anti-abuse tax legislation it is advised to give proper consideration to substance requirements in the Netherlands and keep an eye on changes in this respect.


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Firm profile

Every company and every entrepreneur is different. For that reason the services we offer to our clients are customized to their wishes. Zirkzee Group's clients consist mainly of internationally operating companies, start-up companies and entrepreneurs who are excited about working in our network. We offer services for all of our clients in the following areas: Accounting, Payroll Services, Tax and Expat Services

Located in the SBIC-building in Noordwijk, the Netherlands, Zirkzee Group is part of a community involving lots of techno starters from the ESA-BIC incubation program. In this community companies can find out how assistance, learning and enthusiasm from each other can be an inspiration and lead to better results. For this reason Zirkzee Group does not consider you or your company as customers.

Doing business with Zirkzee Group means we will become your business partner. Our entire approach is therefore focused on getting the best out of your company. Besides our passion for entrepreneurialism and sharing our knowledge, we also have a broad network we share with our business partners. Bringing people together and contributing to their success is what gives us a purpose.

Biography

"Besides preventing a too high tax burden for my clients, I think it is important to contribute to a better environment. In my work as a tax advisor I do this by -solicited and unsolicited- informing my clients about the benefits of sustainable solutions for companies."

Robin is tax manager at Zirkzee Group accountants and tax lawyers and focusses on direct taxation on (cross-border) SMEs. Also, as an ambassador at Zirkzee Group, Robin is continuously looking for new opportunities to help Zirkzee customers bring their business to a great success.

After obtaining his Bachelor in Fiscal Economics in Groningen, Robin completed the Tax Advisor programme at the Dutch Register of Tax advisors (RB). Robin has 16 years of working experience within small- and medium sized accountancy firms.

In his personal life, Robin enjoys spending time with his family and friends. Further he is passionate about making coffee and finding the best coffee in every town.

Tax considerations when working from home

At Zirkzee Group, we have thoroughly renovated our office in 2021. The physical walls have been knocked down and activity-based working should further break down the virtual walls between employees. The new office space is fully equipped for activity-based working: there are, among other things, workplaces that are suitable for small and larger teams, silence pods and various meeting places. The idea of the head office in Noordwijk as a 'Zirkzee clubhouse' has been pushed into the background due to the pandemic – because that is the most important function of the office after Covid-19: a place where people meet for ideas, innovation, collaboration and exchange of information.

But in addition to the workplace at the office, the home workplace has also become more important: this is often a very suitable workplace for work that requires a lot of concentration. Working from home, whether or not as a result of the pandemic, raises a number of interesting tax questions that I will answer below.

In which country is the frontier worker liable for tax and social security contributions if he or she works from home?

An employee who lives, for example, in Belgium and works in the Netherlands, is liable to pay income tax and social security contributions in the Netherlands for his wage income. But if the employee starts working (partially) from his home in Belgium, this can affect his tax liability and his social security liability.

- The Netherlands has made specific agreements with Germany and Belgium about the tax treatment of working days at home during the pandemic, which are applicable from March 11, 2020 until at least September 30, 2021. During this period, the home working days may be treated as days worked in the country where the employee would have worked under normal circumstances. But the employee can also treat the home working days as days worked in the country where the work was actually done.

For all other countries (and for Germany and Belgium after the Covid-19 measures have been withdrawn), the regular rules apply: based on OECD guidelines, the income is taxable in the country where the employee lives, if the employee does not stay in the other country for at least 183 days and the remuneration is not paid by an employer that is based in (or paid by a permanent establishment in) the other country.

What about a fixed travel allowance?

In the Netherlands it is permitted to pay a fixed tax-free commuting allowance to employees. The compensation is €0.19 per kilometer and is based on 214 travel days for a full-time employment. In those 214 days, incidental working from home, illness and holidays have already been taken into account. But if the employee works from home more than incidentally, a fixed travel allowance only remains possible if the employee travels to the office at least 60% of his working days.

- An exception applies during the pandemic: up to and including 30 September 2021, the employer is permitted to continue to pay the fixed commuting allowance based on the travel pattern on which the allowance was based on 12 March 2020 at the latest.

If the employee works more than 40% from home after the Covid-19 measures have been withdrawn, the only option to provide a tax-free commuting allowance for travelling by car is to pay a compensation for the actual travel days of the employee. An alternative can be found in a reimbursement for public transport costs or by providing a bicycle.

Can the employer reimburse a home workplace tax-free?

Unfortunately, it is not always possible in the Netherlands to reimburse the costs of a home workplace completely tax-free. The employer can reimburse the costs of working from home tax-free if there is an independent workspace with its own sanitary facilities and its own entrance. But most employees will not have such an independent workspace. An employer may reimburse or provide PCs, mobiles, tools and similar equipment tax-free if these items are necessary for the work.

An employer is, according to the Working Conditions Act, responsible for the workplace of his employees, even if they work from home. This means that the employer may provide or reimburse a desk, chair and lighting to his employee tax-free if he needs this in his office. The employee is not allowed to pay a personal contribution for this. If there is no independent workspace, this can only be done via the work-related expenses scheme. The allowances and reimbursements are only tax-free insofar as they fall within the so-called free space of the work-related expenses scheme.

Although working from home is becoming more and more common, tax legislation is not yet up-to-date in this area.



BELGIUM

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Firm profile

Comptafid Benelux NV is a Belgian company established in Brussels since 1978 and Antwerp since 1995. The company is mainly active in accountancy and tax advice – national and international. Additional to its own services, Comptafid Benelux guides its clients to other specialists in Belgium such as notary firms, law firms, insurance brokers, real estate and financial specialists, marketing and publicity firms, etc.

Comptafid Benelux NV services Belgian and foreign clients on their Belgian and international transactions. Located in the capital of Europe, Comptafid Benelux NV is committed to produce high quality work on a personal basis, delivering practical solutions.

With its international experience, Comptafid Benelux NV emphasises the knowledge of languages and is sensitive to different legal cultures. Languages such as English, French, Dutch and German are commonly spoken in the company.

In 1985, Comptafid Benelux NV extended its activities into Switzerland. In 1996, a new company was created named Comptafid (Schweiz) Ag together with the takeover of a book-keeping office specialising in domicile companies. A full range of accountancy, financial planning, corporate trust and legal services are also available. Its clients range from listed multinationals to sole traders. The common denominator is expertise in taxation and a wish to provide a personal service.

Biography

Yves is a certified accountant, tax advisor and general manager of Comptafid Benelux NV. The company is mainly active in accountancy and tax advice – national and international – guiding its clients to the different specialists on the Belgian market such as notary firms, law firms, insurance brokers, real estate and financial specialists, marketing and publicity firms.

How to succeed in the Belgium market and avoiding difficulties

In many articles where experts present their country and services through various topics in their comfort zone, one often finds that it is about tax benefits, social benefits, subsidies and so on, and always for prosperous companies that must be able to allocate their profits as profitably as possible after the lowest possible taxation of any kind. Companies in difficulty are often overlooked in this process. Hence this article and how Comptafid Benelux NV, a Belgian certified accountancy firm ITAA deals with this.

Indeed, the legislator has stipulated within the framework of the new Companies and Associations Act (CAA), which came into force on 1 May 2019, that a decent financial plan must be drawn up by the founders, whereby several minimum conditions must be respected, and it is not misunderstood that the assistance of a certified accountant ITAA is certainly no luxury. What do we mean?

1. A precise description of the intended activity
2. An overview of all sources of financing at incorporation, if any, with indication of the securities provided in that connection
3. An opening balance sheet drawn up according to the scheme referred to in Article 3:3, as well as projected balance sheets after 12 and 24 months
4. A projected profit and loss account after 12 and 24 months, drawn up according to the scheme referred to in Article 3
5. A budget of the expected revenues and expenses for a period of at least two years after the formation
6. A description of the assumptions used in estimating the expected turnover and profitability
7. If applicable, the name of the external expert who assisted in drawing up the financial plan.

As the reader will notice, the legislator wants to prevent the entrepreneur from getting into difficulties. But nothing could be further from the truth. Companies that invest in Belgium from abroad, but also Belgian initiators, usually overlook the fact that this Belgian market does not necessarily correspond to their home market, that there are often many differences, and these are often ignored. In addition, many expectations are often not realised or are much more expensive, or they do not find the necessary resources quickly enough at the expected cost price, so profit expectations go wrong. Usually, certain start-up losses are foreseen which then must be financed by the home market, but it happens all too often that these start-up losses are larger than planned or that disappointing results in the home market cannot finance these increasing losses. Then the company gets into difficulties.

In the Economic Law Code (ELC), in Book XX, the legislator has provided a lot of text for companies in difficulties where protection is invoked against the creditors. Unfortunately, this law is used very little or mostly in the context of bankruptcy. It overshoots its target because many professionals do not know enough about this law, let alone its scope. Usually, this law is only used when the target is already bankrupt. It is up to the certified accountant to intervene when certain loss conditions arise.

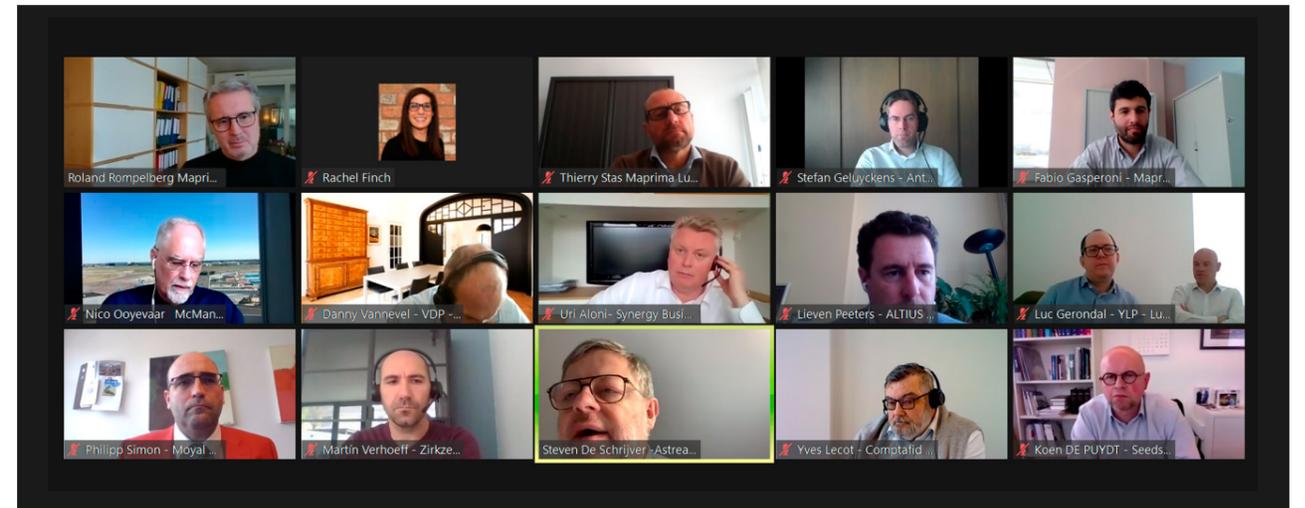
We look at the Private Limited Company (PrivatLC) and the Public Limited Company (PublicLC).

The PrivatLC: A special report must be prepared by the Board of Directors in accordance with Article 5:153, §1 and/or 5:153 §2 of the CAA. In this report the net assets of the company should be assessed, and it should be determined whether these are or will become negative. Thus, the Board of Directors should assess whether the continuity of the company is at stake and whether it recommends liquidation. If the Board of Directors advises the continuation of the company, a restructuring plan is in order and the certified accountant will monitor the realistic and professional value of this plan. If the Board of Directors states that no restructuring plan is necessary, it can propose it as such to a Special General Meeting. As you can see, the legislator places the responsibility on the Board of Directors. Then the Special General Meeting will decide on the continuity of the company. If the certified accountant evaluates the restructuring plan, he must in certain circumstances inform the Chairman of the Enterprise Court about the feasibility of this restructuring plan. Here too, the responsibility of the certified accountant is invoked. It will then be the Delegated Judge of the Enterprise Court who will assess what actions need to be taken in the context of this company.

The PublicLC is not really different from the PrivatLC, however, the Board of Directors have to issue a report on the continuity of the enterprise in accordance with article 7:228, first paragraph and/or article 7:228, fourth paragraph and/or article 5:153, §1 and/or article 5:153, §2 of the CAA. The comparison standards are somewhat different, as follows: if, because of losses incurred, the net assets of the company have fallen to less than half of the capital and thus below the limit stipulated in article 7:228, first paragraph, the Board of Directors must act and decide on whether the business can continue. Worse, if the net assets fall below the limit of one quarter of the capital according to article 7:228, fourth paragraph, any interested party can sue the company in dissolution. The legal minimum capital is currently €61,500. The PublicLC then follows the same procedure as the PrivatLC.

The certified accountant therefore plays a very important role here. He must warn and follow up his client to watch over the profitability and the owned equity of the company. But he also must inform his client if the company 'temporarily' needs protection and possibly make use of the Continuity of Enterprises Act (CEA), a regulation provided for in the new ELC book XX. As mentioned, this frightens off most enterprises. Indeed, the publicity given to it has the effect that many suppliers withdraw their credit for new deliveries or only accept deliveries against cash payment. This, of course, accelerates the deterioration process of the company in difficulty. Similarly, the 'silent' CEA scheme has been introduced whereby the procedure is identical but only the main creditors are informed so that only limited damages can occur. It is here that the certified accountant has a very important task. Unfortunately, this procedure is accepted as the precursor to bankruptcy.

As a Supervisory Judge, I often find that bankruptcy could have been avoided and a positive liquidation could have been achieved if only one had intervened much sooner. That is why the liability of the Directors in these cases is often referred to.





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Firm profile

Reef is an association of independent advisors in the field of business law and taxation. Like the real Reef, we also offer a diverse as well as sustainable living or working space for the most different types of advisors, but all of them have one thing in common: they strive for transparency, innovation and the highest quality in order to find the best individual solution for the client.

Our two ecosystems

1. Reef – Lawyers stands for legal advice to companies at home and abroad.
2. Reef – Taxes takes the helm in providing tax advice to our clients.

Your helmsman: an innovative advisor for your company

With Reef – Rechtsanwälte, Law Tax & Legal, we represent a new concept in legal practice and are committed to providing comprehensive legal advice at the highest level, so that our clients achieve their goals without worries and on a direct course. Values such as honesty, integrity and team spirit are particularly important to us.

As a client, you will always get to know our team personally. Our aim is to be an integral part of your business, an important ally and friend, not just an advisor - your business crew!

Biography

Urs Breitsprecher is the captain of Reef's colourful crew. A specialist in commercial, corporate and tax law, he was set on the legal course by his interest in economic interactions between law and business and a strong sense of justice. A Diploma in

European Law, a Bachelor of Law from University College London and certification as an M&A Advisor round off his wide-ranging international qualifications and make him the ideal advisor and guide for companies worldwide.

With some two decades of experience in handling complex M&A transactions and his dual qualification as a German lawyer and English solicitor, he specialises in cross-border business activities. He also has extensive expertise in corporate and group restructurings and the resulting tax consequences as well as insolvency matters and contract drafting. His numerous qualifications and years of experience make Urs a confident and assertive negotiator who is a pleasure to have on one's side.

His national and international clients include family businesses, private equity companies and family offices, but also foreign companies, which he profitably advises on inbound investments in Germany. The fact that he enjoys helping his clients to achieve their goals - whether in court, in negotiations or as an advisor - is immediately apparent to Urs during the exchange. For him, building a personal and trusting relationship with his clients is of utmost importance. The same applies to his team.

He has made his vision of a law firm with flat hierarchies, personal and cordial interaction and broad, concentrated expertise a reality with Reef. His passion for surfing, especially kitesurfing, also inspired the maritime flair of the law firm, which is reflected not only in the working methods and design, but also in the relaxed and personal interaction with staff, cooperation partners and clients.

Cultural differences in business between BeNeLux and Germany – the door to good business?!

The BeNeLux (Belgium, Netherlands, and Luxembourg) seems so similar to Germany that a lot of people assume there are no cultural differences. We advise companies and individuals from the BeNeLux and Germany with their business operations abroad and realised that the cultural differences are bigger than once thought. A lot of issues could arise from these differences. As soon as you figure what they are, most of the time you can solve any issues, or as a client of us said, the perfect business is a mix between the pragmatism and thinking-out-of-a-box approach of the BeNeLux and the hard working and structuredness approach.

1. The Market Potential

In recent decades, North Rhine-Westphalia and the BeNeLux states, with a combined population of more than 45 million, have developed into a large cross-border region of European dimensions. North Rhine-Westphalia, the largest federal state in Germany, has close cultural, economic, social and societal ties to Belgium and the Netherlands as well as to its indirect neighbour Luxembourg.

The Netherlands has been North Rhine-Westphalia's most important trading partner by far for years. In North Rhine-Westphalia's foreign trade statistics (after China and ahead of the USA), Belgium ranks 4th in terms of exports and 3rd in terms of imports - well ahead of much larger states such as the USA and Russia. The trade volume between Germany and the Netherlands totalled 177.3 billion Euros in 2017. The Benelux states are also significant for North Rhine-Westphalia in terms of transport policy: traditionally, the Rhine estuary ports (Rotterdam and Antwerp) are the most important partners for the global foreign trade of North Rhine-Westphalian industrial companies.

North Rhine-Westphalia maintains very intensive bilateral relations with Belgium, Luxembourg and the Netherlands. Cross-border cooperation with Belgium and the Netherlands has become a solid pillar of relations between North Rhine-Westphalia and its neighbouring countries over several decades. With the aim of qualitatively developing the already very close ties into a deeper partnership, the state government is expanding regional cooperation through ever closer cooperation within the framework of the Benelux Union.

Nevertheless, studies repeatedly find that the potential for imports and exports between the BeNeLux and Germany has not yet been fully exploited.

2. Doing Business & Cultural Differences

In order to be able to exploit these business opportunities in the BeNeLux region and Germany, it is also important to understand the differences between the mentalities. In our experience most of the time these cultural differences are neglected with enormous consequences for the deal – which are not necessary and avoidable. However, especially with younger people, with a more international background, these differences are becoming smaller. Here we see the following areas:

a) Strict and flat Hierarchies

In Germany, a strict hierarchy applies. This comes from a Patriarchal society. In contrast, the BeNeLux is based on a Matriarchal society. This has direct consequences for business dealings.

There is a formal way of dealing and titles are important. In the decision-making process, the managing director/board of directors makes the decision alone. In the BeNeLux, on the other hand, there is an informal approach. People are team-oriented and make decisions together around the table.

b) Decision-making processes

In the decision-making process, the BeNeLux are consensus-oriented, whereas in Germany the guidelines generally come from the top.

c) Negotiation

There are also major differences in negotiation styles. In the BeNeLux there is a consensus culture, whereas in Germany there is more effort to push through one's own goals. On the other hand, this does not mean that businessmen in the BeNeLux are not just as persuasive, to say the least.

d) You (Du/Je)

In Germany using the familiar "You" is very personal. It therefore generally takes a long time before you are offered the "Du", but then it also means friendship. Familiarity and trust. "Je" in the BeNeLux is more like the English "you", but has nothing to do with friendship and trust. However, at least in the Netherlands it has been common not to use "you" for your father. And it has been common not using "you" for elderly people.

e) Small talk

The typical German desire in a business meeting is to reach a concrete result quickly, so the German is often perceived as serious, direct, formal and determined. In the BeNeLux, on the other hand, a lot of emphasis is placed on getting to know the business partner first, so business people from the BeNeLux tend to be perceived as more personal and humorous.

f) Reaction time

In the BeNeLux, people are used to reacting quickly. It's not for nothing that they say "small country, short distances". This can be seen in the fact that in interim injunction proceedings an arrest (beslag) is common in the Netherlands and Belgium (partly without an enforceable title) and almost impossible in Germany. Strict hierarchies and formalism result in "longer" reaction times in Germany – "thoroughness takes precedence over speed". Proceedings usually take longer.

g) Big neighbour with a past

It should always be considered that Germany is much larger as the BeNeLux together and Germany occupied the BeNeLux. Even if this was a long time ago and the relation between BeNeLux and Germany are very good, one has to be careful how to behave. It can open doors if a German speaks Dutch/Flemish/Luxembourgish and not expecting the Belgians, Luxembourg and Dutch to speak German. It shows respect, which will be paid back.

Considering these differences and accepting that makes business easier and prevents misunderstandings.



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Firm profile

Galahad is a newly created niche firm dedicated to compensation & benefits and international assignments. The team managed by the company's founders, Stéphanie Le Men-Tenailleau and Nicolas Pregliasco, manages all types of issues related to compensation & benefits in France and abroad, with respect to global compensation strategies and assists its clients for all their needs in terms of management of mobile employees. The firm's clients are French and international groups that have been in France for some time or are willing to develop their activities in France. We deal with tax, social security, employment and company law, to cover any matter relating to compensation.

Galahad is the French member of the CELIA Alliance (www.celiaalliance.com), an international alliance of independent law firms specialised in tax and law for HR. We also have friends in all other countries not yet covered by the Alliance.

Biography: Stéphanie Le Men-Tenailleau

Stephanie has been a member of the Paris Bar since 1998. As a tax lawyer, she developed specific expertise in the optimisation, from a tax and social security standpoint, of high-level executive compensation.

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Before co-founding Galahad, Stéphanie created the compensation & benefits and international assignment department of Lexcom, of which she was a partner for seven years. She also worked with Capstan, Baker & McKenzie and Slaughter & May.

Stéphanie advises companies on their global compensation strategy and the implementation of share-based and profit-sharing schemes, and high-level executives in relation to the optimisation of their global compensation, and in the structuring of their management packages. She also deals with international assignments, particularly on tax and social security aspects.

Biography: Nicolas Pregliasco

Nicolas has been a member of the Paris bar since 2005. His expertise covers French and international taxation of individuals and international mobility.

Before co-founding Galahad, he worked with French and international law firms Capstan, Landwell & Associés and Lexcom and participated in two international alliances (Ius Laboris from 2006 to 2008, CELIA Alliance since 2011).

He advises companies on all aspects of their compensation policies and assists mobile employees and high-level executives with respect to their global tax liabilities in either French or international contexts.

Moving employees to France: how to reduce mobility costs?

France has been suffering for many years from a bad reputation when it comes to the level of taxation of French residents, unlike Belgium or Luxembourg. Looking a bit further, one may realize that the French personal income tax system results in a lower taxation on professional income than the ones of most of European countries, including countries of the Benelux, due more particularly to our family ratio mechanism and to the special regimes implemented to attract taxpayers to France. Extensive business relationships between France and the countries of the Benelux allow many employees or managing directors transferring their tax residence to France to benefit from the inbound expatriate regime, which is, with regards to its conditions and the benefits it offers, one of the most favourable regimes in the Benelux area.

Employees and corporate officers benefiting from the tax regime

The exemptions provided by the tax regime can apply to 'in-patriates' – employees or corporate officers who:

- Have a fixed-term or permanent employment contract in a company based in France either through a company based abroad, or recruited directly by the company based in France
- Have not been tax domiciled in France within the meaning of French law, or been resident in France within the meaning of the international tax agreements during the five calendar years prior to the year of start of their activity in France
- Transfer their tax domicile and tax residence to France from the time of their appointment in France.

It is important to note that individuals fulfilling these conditions are eligible for this tax system regardless of their nationality.

Tax exemptions on income provided for by the regime

Employees and corporate officers who meet the conditions above qualify for the following exemptions:

- Exemption for supplementary compensation items directly linked to in-patriation (so-called 'in-patriation bonus'), provided for in their employment contract or corporate appointment (or in an addendum to such contracts) and determined prior to the start of their activity in France. However, employees/corporate officers may also opt for a lump sum valuation of the exempt 'in-patriation bonus' of up to 30% of their annual compensation
- Exemption of the portion of their salary, exclusive of the in-patriation bonus, corresponding to days worked abroad during the tax year
- A 50% exemption for 'passive' earnings paid by an entity based in a State that has a tax agreement with France containing an administrative assistance clause with a view to measures against fraud or tax evasion. This partial exemption is aimed at certain intellectual or industrial property

products, earnings from capital assets, particularly dividends and interest, and capital gains from sales of securities and ownership interests abroad.

These exemptions only relate to personal income tax and have no effect on social security contributions or social charges on investment income from assets or investment products to which they are subject.

Caps on the exemptions

Exemptions are capped in two ways:

- Firstly, the 'in-patriation bonus' exemption is limited by reference to employees who have equivalent pay but do not benefit from this status: the in-patriate's pay, after deducting the in-patriation bonus (actual amount or flat valuation of 30%), should thus be at least equal to that received in respect of equivalent positions in the same company, or failing that in similar companies based in France, by employees who are not in-patriates
- After applying this first cap, beneficiaries must opt for one of the following two limiting mechanisms:
 - an overall ceiling of 50% of their taxable compensation (including in-patriation bonuses) or
 - a ceiling calculated according to the portion of their pay that relates to days worked outside France: this ceiling is equal to 20% of their taxable pay minus the amount of the in-patriation bonus.

Maximum period of application of the tax regime

This tax system can be applied up to 31 December of the eighth year following the year of the start of the employee's activity in France (except for employees who started to work in France before 6 July 2016).

This tax regime will cease to apply if any of its conditions are not met. However, the French tax code expressly provides that a change of post within the same company or within the same group of companies during the eight-year period does not call into question the application of the regime.

Options for regularisation within the regime

Finally, it is important to remember that individuals who qualify for this tax regime but who have not opted for it (or who have only partially benefited, for example, by omitting to request exemption for passive income) may, within a limitation period, require their previous declarations of income to be corrected to obtain reimbursement of tax on income that was incorrectly paid. The tax authority generally looks kindly upon such requests, as long as the taxpayer can prove they have met all the necessary conditions.



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Firm profile

Founded in 2014 by Frédéric Meunier, and based in Paris, Lyon and Marseille, Squareness is a French firm with 40 consultants specialising in financial consulting services.

Squareness aims to offer value added financial advisory services to its customers, both corporate and institutional, thanks to a multi-skilled team determined to work with humility and dedication.

The company has four services:

- Our Financial Valuation dedicated team, managed by Jérôme Fortin, benefits from expertise enhanced by multiple and diversified contexts – valuation dedicated to financial and accounting reporting, tax issues transactional environments, etc.
- Our Transaction Advisory Services team, co-managed by Antoine Sudérie and Antoine Fléchais, is here to secure your acquisitions or disposals. Whether it is sell-side, easing the disposal process with a vendor due diligence report, or buy-side, helping you negotiate the acquisition terms based on our financial due diligence work, we stand at your side to clear all key issues.
- Our Restructuring department, managed by Maxime Mazuy, assists companies in financial difficulties with independent business reviews, distressed M&A, etc.
- Our Operational Performance team, managed by Emmanuel Rosec, offers post-deal services that aim to optimise the finance function such as reporting, cash-flow forecast, etc.

Biography

A chartered accountant and statutory auditor with 20 years of experience in financial consulting, Frederic began his career at Scacchi & Associés and then Primexis, where he oversaw the Transaction Advisory Services department and also created the Management Control practice.

Guided by a strong entrepreneurial mindset, as well as the willingness to bring high value-added services to his clients, Frederic finally decided to set up his own business and created Squareness in 2014 with the support of three managers.

Committed to offering clients a relationship defined by proximity and long-term view, Frederic looks to pass on his know-how as well as transmit the strong will to keep moving forward.

The need for high reactivity in even more competitive environments

In a post COVID-19 economy, slowly recovering from a sudden stop, investors face a significant trend of strengthened competition initiated by an abundance of funds and a contraction of targets' profiles. This is undoubtedly has consequences on M&A projects.

Investors looking for assurance tend to favour the same kind of business models, such as those built on recurring revenues. In such a context, digital services companies and those offering software as a service (SaaS) have become central targets for private equity firms and corporate competitors. Young firms specialising in cybersecurity services, software integration, cloud computing and others linked to remote work etc. are very much in demand. For the same reasons, companies in the education and training markets have also become very attractive.

This fierce appetite for rising stars has led to increasingly complex M&A processes, where bidders must get a clear view on key opportunities and risks to be able to formulate the best price offer in a very short time. Delays are often shortened, access to basic financial information is sometimes complicated and the sky seems to be the limit with today's EBITDA multiples.

In terms of valuation, those competitive issues have also led to new trends in terms of pricing definition. For instance, the financial net debt is today more and more often apprehended through locked-box mechanisms, supposedly more efficient for M&A actors, by offering a good way to reduce the negotiation perimeter.

From a financial consulting firm perspective this may call for a redefining of the organisation's strategy. Indeed, it seems now more essential than ever to mobilise grey-hair forces at the beginning of the project to be able to reach top conclusions in the shortest time. This need for high experience, reactivity and

efficiency in even more competitive environments has turned advisors into real partners; committed to providing the best possible assistance to ensure their clients win.

In that context where intuitu personae may become the first decision parameter, Big-four companies may no longer be in a monopolistic position. Indeed, 'Challengers' appear to be an alternative more than ever before. Most often born as spin-offs from Big-four teams, those young and independent advisory firms are nonetheless very attractive as they can offer high value-added services with more flexibility and adaptability as well as the guarantee of strong involvement of partners in their assignments.

Consequently, due diligence assignments tend to be tailor-made in terms of scope of work or rhythm. For example, it is now common to begin with a red flag report that will then turn into a full report only if the client enters the exclusivity period. Sometimes, the scope of work is limited to specific analysis considered as key business drivers to keep the audit work as fast as possible.

In more demanding processes, with fierce competition enhanced by the globalisation of investing activities – cross-border deals are nowadays more common – agility is key for all parties involved. Investors and their advisors are more than ever teammates, seeking a high degree of mutual confidence.

We help clients from the Benelux region who wish to acquire business in France. With a huge track record of M&A due diligences in France for foreigners especially coming from Benelux region and linked to our Partnership with a Belgian well-known independent accounting Firm, we are able to provide Benelux SME's with comprehensive and personally tailored advice.



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Firm profile

DLP Dr. Lewandowski & Partners (DLP) is a well-known, established legal firm in the heart of Warsaw, offering a comprehensive range of services and legal advice fully tailored to our Polish and international clients' demands and expectations. We specialise in assisting foreign clients to enter the Polish business sector and offer our expertise regarding the setting up of entities, acquisition of enterprises along with providing market evaluations and representing clients in commercial litigation cases before the Polish state and arbitration courts and enforcing cross-border judgments. Our multilingual staff provide services particularly in Polish, English, German and Russian.

The most important projects we were involved encompassed the advice for the City of Warsaw within the UEFA EURO 2012 competition and advice within the construction of the National Stadium PGE in Warsaw and Deepwater Container Terminal in Gdańsk.

DLP is a member of IR Global (www.irglobal.com), which has its headquarters in London, a network of the world's leading legal, accountancy and financial advisers. It is also a member of ISFIN with its seat in Brussels (www.isfin.net), a platform of emerging markets advisors, which allow DLP to provide its services on a worldwide level. DLP is also a member of the Hamburg-based DIRO network (www.diro.eu).

Biography

Dr Robert Lewandowski, who heads up the law firm DLP Dr Lewandowski & Partners, studied mathematics and German philology at the University of Warsaw (Master of Art) and law at the University of Mainz, Germany, and later joined the list of German lawyers at the Frankfurt am Main Bar Association in Germany and the list of Polish legal advisers at the District Chamber of Legal Advisers in Warsaw. He holds a PhD degree in law from the University in Mainz.

For more than 20 years Robert has specialised in corporate law, with a focus on private mergers and acquisitions, cross-border work, general corporate advice and litigation collecting experience in legal firms in Germany and the United Kingdom. His expertise also encompasses personal data protection and cybersecurity law, and he works for companies as their data protection officer advising them how personal data should be processed in a transparent and lawful way.

Robert is also the author of more than 100 articles and 15 books and commentaries on Polish and international law published in Poland and abroad. He wrote the book Polish Commercial Law: An Introduction in 2007 in English and the second edition was published 2019. Robert is currently working on his postdoctoral thesis on partnership law with respect to acquisition of own ownership interests.

Ransomware attacks – some thoughts and considerations

Ransomware is nowadays the most prolific form of cyberattack. In recent years attacks have not only grown in numbers but also in scale causing disruption to business and periods of downtime. We have also learned that ransomware capitalised on the COVID-19 crisis. There are many reports worldwide revealing high numbers of cyberattack incidents including ransomware attacks resulting in hacker's demands for payment of money in return of decryption of stolen data.

Ransomware demands are a complex matter and may be considered from different legal points of view: (1) from the perspective of criminal law, (2) from the perspective of civil law and (3) from the perspective of different public and contractual duties and obligations.

(1) Under criminal law in most jurisdictions the actions of hackers including phishing, stealing and decrypting data and finally deploying a ransomware demand are felonies such as computer fraud and money extortion punished mostly by jail sentences.

The payment of a ransom is itself mostly not prohibited by criminal law. So a company paying a ransom to the hackers makes in general itself nor their directors liable in terms of criminal law. However, if for instance the directors of a company hit by a ransomware attack know that the funds subject to ransom may be, for instance, used for terrorist financing, then the ransom payment may be an offence in accordance with other legal acts and in this event the directors must seek consent to the ransom payment from the authorities. It is also important to consider that the payment of the ransom itself may trigger sanctions in other jurisdictions, which may be imposed on the victim of ransomware attack if the ransom payment is provided from one state to the state in which the hackers operate.

(2) In view of civil law, a ransomware demand can be deemed an 'arrangement' between the hackers and the victim. 'Ransomware demand' is an offer (being more or less not a negotiable ultimatum) made by the hackers and this may be accepted or rejected by the victim.

In civil law, the 'ransomware arrangement' is void as it is contrary to the law (criminal law and different acts on combating cyberattacks). According to this kind of 'arrangement', the victim must provide the ransom payment as a pre-payment and having done this the hackers are obliged to restore access to the data and send them back to the victim. If the victim finally settles the ransom and the hackers do restore access, the victim is still entitled to demand the return of the money paid as ransom from the hackers. The same applies if the hackers do not meet their promise to encrypt the data, take the money and run away. A difficulty occurs when it comes to the recovery of a ransom payment as in most cases the hackers are unknown to

the victim and often operate from different jurisdictions. If a victim succeeds in obtaining a final ruling in its own country, the enforcement of this judgement against the hackers appears to be impossible, unless the victim is able to identify the hackers and claim a freeze and seizure on their assets, if available.

(3) Ransomware attacks usually trigger various notification requirements. In Poland, notification under General Data Protection Regulation should generally be made to the data protection authority. In addition, data subjects need to be informed without undue delay if it is likely that the data breach results in a high risk to the rights and freedoms of natural persons. Further notification requirements may stem from contracts between the victim company and its customers or under capital markets law. Involvement of law enforcement authorities is usually not mandatory. Law enforcement assistance may be beneficial in connection with potential negotiations with the attackers. Moreover, some cyber insurance companies may require that the police is informed in the event of ransomware attacks.

There are also some obligations to notify resulting from other legal acts, especially from acts implementing a European Union Directive from July 2016 (2016/1148) concerning measures for a high common level of security of network and information systems across the European Union. According to these latter acts certain kinds of companies operating in public sphere that provide essential services subject to data collection and data processing – for instance, cloud service providers – are obliged to monitor and report incidents of data breaches including of course ransomware attacks to cyber securities authorities.

Ransomware is a crime of a cross-border nature in the cybersphere and can have severe consequences for the economy globally, impacting not only on the victim but also its branches or subsidiaries and any affiliated entities located in different jurisdictions. A successful response to a ransomware attack will require a joint effort of lawyers, governmental agencies, courts and forensic experts to identify the attackers and help the victims to recover the ransom payments.

DLP are increasingly representing clients from the Benelux region who wish to carry out business in Poland and we are able to fall back on our vast knowledge of cross boarder cases in order to provide our new clients with comprehensive and personally tailored advice. Our law firm has decided to join Netherlands – Polish Chamber of Commerce this year to further co-operate with Dutch clients and we also anticipate joining the Belgian Chamber of Commerce. We consider ourselves as a leading authority against the treat of cybersecurity breaches and we look forward to representing your company's interest should you find yourself a victim of a similar attack.

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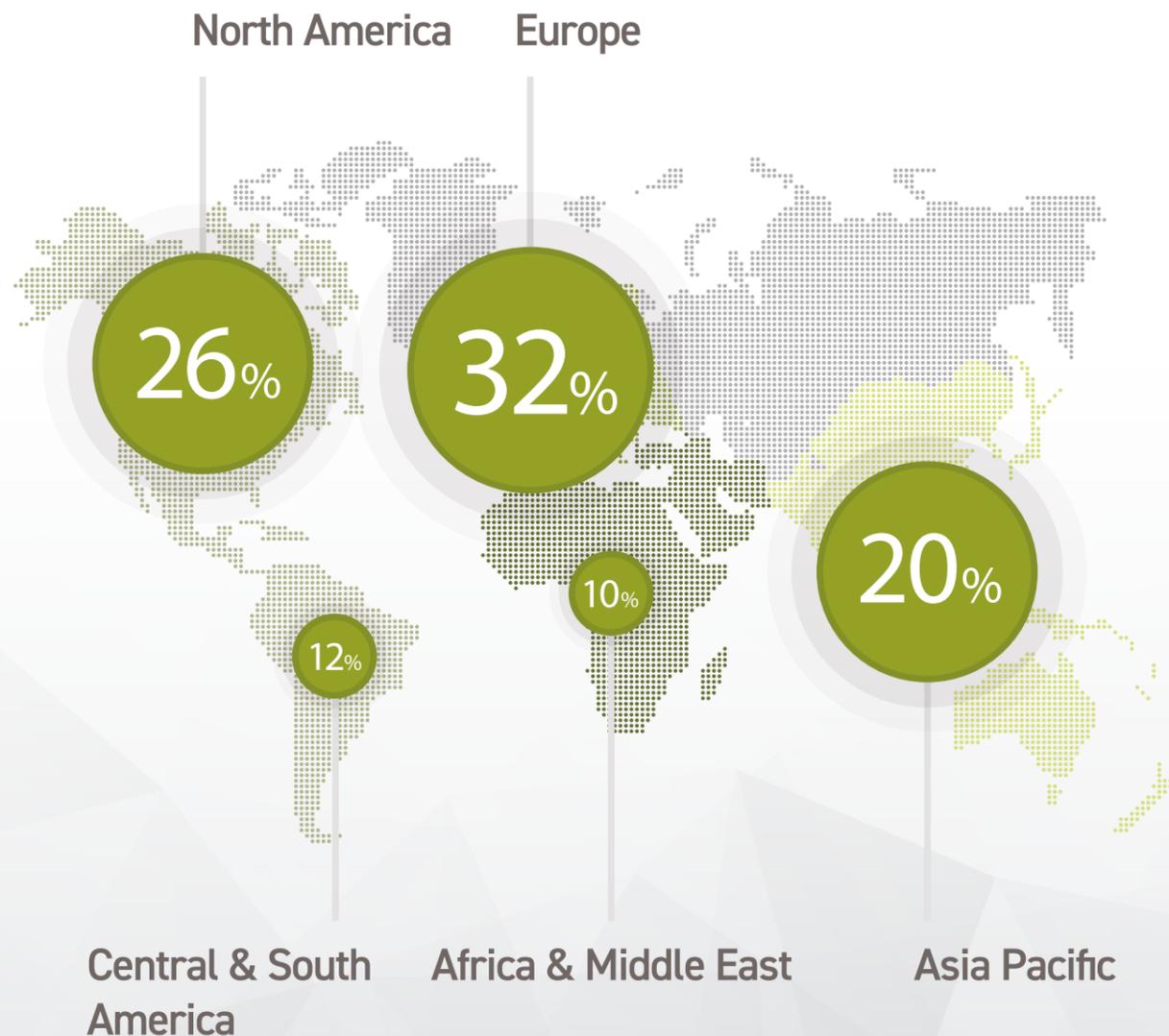
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