



Investment Guide 2016

Belarus

INVESTMENT GUIDE 2016 BELARUS

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WHY BELARUS?

The Republic of Belarus is a relatively young state located in the very center of Europe on the crossing of trade routes that connect East and West, which makes it an attractive market for foreign investors.

Having several years of experience in the sphere of legal and audit consulting, we see all positive changes performed by the Government for the purpose of creation of convenient and transparent conditions of doing business. These changes are also witnessed from the outside: in 2015 Belarus took the 44th place in the World Bank's annual ranking of ease of doing business, again being in front of the major partners – Russia, Kazakhstan, and Ukraine – for several years in a row.

Belarus is not only an access to the 183-million market of the Eurasian Economic Union. Our country is interesting by itself, as it provides numerous opportunities for investments: we actively perform construction of residential and commercial real estate, develop power engineering sector, privatize agricultural enterprises and attract investors to the production sphere.

Today, Belarus needs reliable investors and is ready to offer attractive business opportunities. We have made our choice in favor of Belarus ourselves when we started our business here. Whether you should do it or not and how to do it are the questions for answering which we have prepared this publication.

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GENERAL INFORMATION

Geography

Location	Eastern Europe
Area	207.6 thousand sq. km
Border states	Latvia, Lithuania, Poland, Russia, Ukraine
Border length	2,969 km
Climate	Moderate continental (mild and wet winters and warm and humid summers)
Time zone	GMT +3

Population

Quantity	9,494.2 thousand
Confession	Russian orthodox 73%, Roman Catholics 15%, other 12%
Official languages	Belarusian and Russian

State

Name	Republic of Belarus
Form of government	Presidential republic
Capital	Minsk
Administrative districts	6 regions (Brest, Vitebsk, Gomel, Grodno, Mogilev, Minsk) divided into 118 districts
Government bodies	The President is the Head of the state. The legislative body (the Parliament) consists of two houses: the House of Representatives and the Council of the Republic. The executive power in the republic is performed by the Government – the Cabinet (Council of Ministers).

Economics

GDP per capita	\$6,950
Able-bodied population	4,459.7 thousand
Unemployment	1%
National currency (code)	Belarusian ruble (BYN)



Ways of entering

the Belarusian market

WAYS OF ENTERING THE BELARUSIAN MARKET

1. Incorporation of a Legal Entity

When making the decision to enter the Belarusian market, a foreign investor often faces the necessity to choose the form of commercial presence in Belarus.

Foreign legal entities and individuals shall be entitled to incorporate companies in the Republic of Belarus in any organizational and legal form. The most widespread forms of legal entities are the limited liability company and the unitary enterprise.

Foreign investors shall be entitled to incorporate companies in accordance with the general procedure, while participation in the capital of the formed company of a resident of the Republic of Belarus shall not be obligatory.

1.1. Limited (Additional) Liability Company

A limited liability company is an organization, the share capital of which is divided into shares of the amount determined by the shareholders.

The legislative model of a limited liability company in Belarusian law is significantly close to the European continental (German) model.

A company shall be responsible for its obligations with all its property and shall not be responsible for obligations of its shareholders. In accordance with the general regulation, shareholders of the company shall not be liable with their personal property for debts of the company. At the same time, in case of bankruptcy of the company through the fault of its shareholders (or the director or members of the board), the court may impose subsidiary liability for obligations of the company on them.

Both legal entities and individuals (not more than 50) may be shareholders of the company. It is also possible to establish a company for a sole shareholder.

Articles of association (alongside with legislative acts) shall be the document that governs the activity of a specific company. Regarding all companies, it must contain the name, details of the composition and competence of management bodies, amount of the share capital of the company, rights and obligations of company's shareholders and other obligatory details.

Belarusian law does not establish any obligatory requirements for the minimum amount of the share capital of the company and allows shareholders to independently decide which amount they are ready to contribute to the share capital. With that, founders of newly incorporated companies shall make their contributions (lump sum or in installments) within twelve months after the moment of state registration of the company. One must note that it is allowed to contribute not only monetary funds (both in Belarusian rubles and in foreign currencies) but also equipment, vehicles, buildings and other property, as well as the titles of use of the property for a definite term. However, making contributions different from monetary funds shall require performance of evaluation in accordance with the procedure established by law.

The amount of a shareholder's share in the share capital shall be determined in percentage or as a fraction. It complies with the ratio between the cost of the contribution to the share capital and the amount of the share capital of the company. At the same time, shareholders may determine another method of distribution of shares. As a general rule, the amount of share determines the number of votes that belong to the shareholder during adopting resolutions at the general meeting as well as the percentage of profits due to the shareholder in case of successful activity of the company, apart from everything else.

A shareholder of the company shall be entitled to resign from the company having received part of the value of the company's property. No consent of other shareholders shall be required for resignation from the company. If only one shareholder remains in the company, their resignation shall not be allowed. Expulsion of a shareholder from the company may also be possible in accordance with the decision of the court. The basis for expulsion may be a major violation of a shareholder's obligations or their action (failure to act) that makes activity of the company impossible or significantly hampers it.

The supreme management body of the company shall be the general meeting of its shareholders. This body shall have exclusive competence determined with the articles of association of the company in accordance with law. All shareholders of the company shall be entitled to be present at the general meeting, take part in discussion of the issues on the agenda and vote in the course of taking resolutions. Any limitations of this rule shall be declared null and void by the law. If a company has a sole shareholder, no general meeting of shareholders of the company shall be summoned or held (the powers of the general meeting of shareholders of the company shall be performed by the sole shareholder).

As a general rule, the company shall have a two-level management structure: general meeting of shareholders and executive bodies of the company. However, the articles of association of the company may provide for formation of the board of directors (supervisory committee) as well. In accordance with the articles of association, the competence of this body may include the issues of determination of major directions of the company's activities, formation and early termination of powers of executive bodies, summoning and holding of the general meeting of shareholders, and resolving of other issues stipulated with the law.

Executive bodies shall have the residual competence and perform management of the company's current activity. They shall be inferior to the general meeting of shareholders and the board of directors (if any). There may be a sole executive body (director or general director) or a joint executive body (board or directorate) in the company. In cases stipulated with the articles of association, the company shall be entitled to delegate the powers of the executive body to the management organization or the manager.

For the purpose of supervision of the company's activities, shareholders must elect the audit committee or the internal auditor. This supervision body shall be entitled to perform inspections of the financial and economic activities of the company at any time and have access to all documents that concern its activities. The internal auditor shall perform the obligatory check of annual statements and accounting balance sheets of the company prior to their submission for approval of the general meeting of shareholders. In practice, election of such person and their activities shall have a formal character for meeting the requirements of the law.

In order to perform a full-scale audit of the company's activities, a professional auditor not bound with material interests with the company may also be involved upon a resolution of the general meeting. The audit may be performed upon a request of any shareholder of the company, and the expenses for payment for the auditor's services may be reimbursed to the shareholder at the expense of the company's funds upon a resolution of the general meeting.

In conclusion, it must be noted that the popularity of limited liability companies is caused by the transparent structure of ownership and the possibility of flexible distribution of management rights and profits.

Additional liability company is a variant of a limited liability company as an organizational and legal form. The share capital of such company is also divided into shares, but the shareholders of such company bear subsidiary liability with their property for the obligations of the company in case of its bankruptcy. The limit of such liability may be determined by members independently, but may not be less than the minimum established by the law (50 basic values¹). Regarding all other aspects, additional liability company is completely similar to a limited liability company.

1.2. Joint-Stock Companies

Joint-stock companies in Belarus may be incorporated in two forms: open joint-stock companies (OJSC) and closed joint-stock companies (CJSC).

These two types differ from each other in a way that shareholders of OJSCs may alienate their shares to a wide range of persons, while shareholders of CJSCs may alienate shares only subject to the consent of other shareholders and only to a limited range of persons. Besides, CJSCs may only perform closed (among a limited range of persons) offering of additionally issued shares.

In order to perform state registration of a joint-stock company, it is necessary to form the share capital, the minimum amount of which shall comprise 100 basic values for CJSCs and 400 basic values for OJSCs.

¹ Basic value is an economic index that determines abstract value of a purchasing power of money not connected with evaluation of specific material or non-material goods. The index is defined by the Government from time to time (usually, no more than twice a year). As of the date of this publication 1 basic value equals 210,000 Belarusian rubles.

Both forms of joint-stock companies may be formed by a sole shareholder. The maximum number of shareholders of OJSCs is not limited, and the maximum number of shareholders of CJSCs is fifty.

A joint-stock company must conclude an agreement with a depository for registration of shares when they are issued by the Department of Securities of the Ministry of Finance of the Republic of Belarus.

1.3. Unitary Enterprises

The second most attractive form of doing business in Belarus is a unitary enterprise. In general, the institute of a unitary enterprise is only typical for post-soviet countries. Until recently, a principal difference between unitary enterprises and other forms of commercial legal entities has been availability of a sole owner and indivisibility of the company's property. A unitary enterprise is not granted the ownership titles for its property and is liable for all its obligations.

A doubtless benefit of formation of unitary enterprises is the simplicity of their organizational structure: there should only be the head (director or general director) as the obligatory management body of the enterprise.

The amount of the share capital shall be determined by the founder of the unitary enterprise, which is similar to a limited liability company. Actual formation of the share capital must be complete within twelve months after the moment of state registration.

Significant time and financial losses associated with the sale of a unitary enterprise must be attributed to the disadvantages of the specified form.

1.4. Company Registration in Belarus

Founders of the future company must do the following prior to submission of the documents to the registration agency:

- prepare and sign the resolution on the company's formation;
- determine the expected location of the company and agree the company's name with the registration agency;
- prepare the articles of association;
- form a package of documents (application, copies of documents on founders, etc.);
- pay the state duty in the amount of 1 basic value.

The companies in Belarus shall be registered by a registration agency responsible for the area of their future location. The exception shall be legal entities that intend to perform certain types of activities (banking, insurance, etc.). The documents that confirm formation of a legal entity shall be issued not later than on the business day following the day of registration. It should be noted that a transparent and simple procedure of registration of legal entities is positively assessed by the World Bank.

Documents for state registration may be submitted either by founders directly or by their authorized representatives.

In accordance with the results of state registration, a newly incorporated company shall receive a certificate of state registration, one copy of the articles of association with a record of the registration agency and the certificate that confirms registration in the taxation body, social security agency and the insurance company.

Taking into account the necessity to make the seal and to open the bank account, a legal entity can commence its full-scale activity within one week after the moment of state registration.

2. Opening a Representative Office by a Foreign Company

For the purpose of researching the commodity markets and possibilities of investing into the Republic of Belarus, foreign companies shall be entitled to form special commercial representative offices.

A representative office of a foreign company may be opened in Belarus for the purpose of performance of the activities of preparatory and auxiliary nature on behalf and by commitment of the represented foreign company, which shall mean assistance in implementation of international agreements of the Republic of Belarus, studying of commodity markets, studying of opportunities for investing in the territory of the Republic of Belarus, incorporation of commercial companies with participation of foreign investors, sales of tickets, reservation of seats and other socially beneficial activities.

The status of a representative office shall not provide for the possibility of performance of business activities, which differs it from limited (additional) liability companies, joint-stock companies, and unitary enterprises.

The second peculiarity is the temporary nature of activities of the representative office. The permit is issued for three years and shall be terminated in case of refusal from prolongation.

The state duty for opening of a representative office shall be paid as a lump sum prior to submission of documents and comprises 195 basic values. In case of early termination of the activities, the duty that has been already paid shall not be subject to refund.

The representative office shall be deemed incorporated and shall be entitled to perform its activities in the territory of the republic from the date of issuance of the permit by the Ministry of Foreign Affairs of the Republic of Belarus. Registration in a taxation body, social security agency and insurance company shall be performed by the representative office independently within the period defined by law.

3. Conclusion of the Investment Agreement

Investment agreements play an important role among the investment instruments provided by the Belarusian law both to domestic and foreign investors.

Since 15.05.2016 it is possible to conclude investment agreements only with regard to the cases when an investment project corresponds with the priority activities or economy sectors (stipulated by the Government).

The investment agreement shall be an agreement between an investor and the Republic of Belarus that determines major issues of implementation of a specific investment project. This is a full-scale obligation under which the investor undertakes to invest a certain amount of funds and implement a specific project, and the Republic of Belarus, in its turn, undertakes to provide some benefits and incentives to the investor and assist them in implementation of the project.

On the basis of the granted volume of benefits and incentives, the following two types of investment agreements shall be distinguished:

- investment agreements of the first level;
- investment agreements of the second level.

Investment agreements of the first level allow investors to receive only the benefits and incentives directly defined by the law, while investment agreements of the second level open access to any benefits and incentives required for the implementation of the project.

Benefits and incentives granted to investors that conclude investment agreements of the first level shall be contained directly in the law and may be conditionally divided into the following groups:

- benefits and incentives in the field of construction;
- taxation and customs benefits and incentives;
- exemption from payment of fees and duties.

One of such incentives shall be allocation of a land plot to the investor for lease in accordance with a simplified procedure (without holding an auction and the necessity to pay the corresponding duties) for the purposes of the implementation of an investment project. For this purpose, a corresponding land plot must be included into the special list.

Since 15.05.2016 investors are eligible to obtain land plots for the purpose of implementation of their investment projects not only into lease, but also into ownership or permanent use. With that, it must be taken into consideration that until the abovementioned date the law prohibits conclusion of transactions that cause transfer of titles (provide for the possibility of transfer of titles) to other persons as regards the land plot allocated for implementation of the investment project or real estate facilities to be created on it. This prohibition shall remain effective until state registration of creation of real estate facilities. In other words, it is prohibited to the investor to encumber (e.g., pledge for the purpose of attracting the external finances) the titles for the allocated land plot or facilities erected at it prior to the date of state registration of the latter.

One should also pay attention to such benefit as the possibility of construction of facilities approved with the investment project in parallel with development, expertise and approval of the required design documentation for each of the construction stages with simultaneous designing of subsequent stages of such construction.

Exemption from import customs duties and the VAT regarding technological equipment imported by the investor (components and spare parts to it) in the territory of the Republic of Belarus within the scope of implementation of the investment project also forms an attractive benefit.

Among the benefits and incentives granted in the course of conclusion of an investment agreement, one should also pay attention to the possibility of selection of the general design and contracting organization, as well as of subcontract design and construction organization without holding a contract tender both for construction of the facilities stipulated with the investment project and for their repair, reconstruction, restoration or improvement (while as a general rule holding of tenders shall be obligatory for construction of facilities).

Since 15.05.2016 contractors as well as project documentation developers are eligible to some benefits along with the investor. Such benefits touch upon time terms as well as state duties for obtaining required permits with regard to attracting foreign labor.

Conclusion of the investment agreement shall not prevent exercising of the investor's right to receive other benefits provided with legislative acts other than those that govern conclusion of investment agreements. For example, in case of implementation of an investment project in the field of agriculture, the investor can receive two full-scale sets of benefits and incentives simultaneously by conclusion of an investment agreement and performance of activities in the rural territory.

Conclusion of the investment agreement of the second level requires the approval of the President and allows the investor to get any benefits and incentives they agree. In practice, it may be expressed in the following:

- exemptions from the applicable law (e.g., the state and the investor agree that certain environmental requirements will not be applied to a specific project);
- granting special tax and customs incentives;
- obligation of the state to acquire the goods produced or the services rendered (e.g., milk products or electricity).

The process of conclusion of investment agreements is quite transparent and is regulated by law in details: the investor shall prepare the draft agreement, gather a certain set of documents and submit it to the executive committee of the region or the city of Minsk. From this moment, the process of negotiation of draft investment agreement shall be commenced, where the executive committee shall have the role of the process coordinator and bear the obligation of coordination of the project with all governmental stakeholders (profiled ministries and agencies) within the terms established. With that, the list of the documents required from the investor is also determined on the legislative level and is exhaustive, which gives the opportunity to the investor to predict the entire process in advance and avoid bureaucratic delays.

Since 15.05.2016 the following alterations should be also considered:

- it is necessary to preliminary agree with the state on the possibility of reorganization and shareholders' change, with regard both to the investor company and the company set up by the investor for implementation of the project. In case such reorganization or shareholders' change take place without approval by the state, the Republic of Belarus obtains legal ground to refuse unilaterally from fulfillment of the obligations under the investment agreement;
- the mechanism of notification of the state by the investor about creation of the company for implementation of the investment project has been regulated: such a notification shall be submitted to a state agency or an executive committee having concluded the investment agreement on behalf of the Republic of Belarus within five business days following the day of the company's creation. Thus, the specific problem has been resolved being as follows: earlier it was necessary either to create a company before the conclusion of the investment agreement or, if later, to provide amendments to the investment agreement by the additional agreement;
- the obligation has been stipulated on repayment of the amounts of benefits and incentives as well as payment of fines by the investor in case of termination of the investment agreement on the grounds other than fulfillment of the investor's obligations. It is clearly determined what shall be deemed as correspondent sums (total amounts of taxes, fees and other payments not paid in full or in part by the investor because of use of given benefits and incentives), and the opportunity of exemption from such the obligation (such decision may be adopted by the

Government in relation to specific project under the President's approval) is stipulated as well;

- it has been established that if the investment agreement is terminated on the grounds other than fulfillment of the investor's obligations, and the time term of lease agreement of the land plot has expired, but the investor is able to complete construction of the objects stipulated by the investment project, the land plot may be transferred to the investor without holding the auction, but payment for the right of conclusion of lease agreement of the land plot is to be made;
- if the investor is not able to complete the construction of the objects stipulated by the investment agreement after its termination, incomplete objects may be sold at public auction. After the sale at the auction the sum of documentarily approved charges of the investor for the construction of incomplete objects is to be compensated. However, the amount of compensation shall not exceed the amount of such objects' sale at the auction (in some cases trigger price may be set at one basic value).

4. Conclusion of the Public-Private Partnership Agreement

Since 02.07.2016 investors are able to implement projects within public-private partnership, which is, according to the law of the same name, a legally incorporated mutually beneficial cooperation between a state and a private partner which is aimed at joining resources and distribution of risks, corresponding to the aims, objects and principles stipulated by the aforementioned law. For these purposes partners conclude a public-private partnership agreement.

In other words, the state provides spheres, for which it is originally responsible, to the investors, thus inviting them to develop the following economy sectors on the partnership basis:

- roads and transport activity;
- utilities systems and communal services;
- health care;
- social service;
- education, culture;
- defense, law enforcement activity;
- physical culture, sport and tourism;
- electronic communication;
- energetics;
- recycling, transportation, storage, supply of oil;
- transportation, storage, supply of gas;
- agroindustry production;
- scientific and technological activity.

Conclusion of a public-private partnership agreement has several advantages in comparison with the conclusion of an investment agreement. In particular, it is a possibility of:

- making investments to the spheres, access to which was earlier restricted by the state;
- partial investment from the facilities of both the state budget and an investor;
- distribution of rights and obligations, risks, charges, results of the cooperation between the state and a private partner.

As a private partner may act a legal entity (registered within the territory of the Republic of Belarus or beyond it), foreign company that is not a legal entity, an individual entrepreneur. The exception is state unitary enterprises and state associations, as well as companies, in which more than 50% of shares belong to the Republic of Belarus or to its administrative unit.

The state partner is the Republic of Belarus, which is represented by the authorized state agency or other state organization.

Private partners may submit their offers for implementation of the projects of public-private partnership in any sphere. The initiator of the offer shall prepare technical and economical reasoning and draft public-private partnership agreement.

As a general rule, a private partner is selected on a tender basis for the purposes of conclusion of a public-private partnership agreement.



Employment of foreign citizens

and stateless persons

EMPLOYMENT OF FOREIGN CITIZENS AND STATELESS PERSONS

1. Special Procedure of Employment of Foreign Citizens

The general procedure of employment provided for citizens of the Republic of Belarus shall be applied to foreign citizens and stateless persons (hereinafter referred to as foreigners) having permanent residence permits.

A special employment procedure is provided for the following categories of foreigners:

- that stay in Belarus temporarily (i.e., stay in the country for not more than 90 days per year);
- that reside in Belarus temporarily (i.e., have a permit for temporary residence that grants them the right to stay in the territory of Belarus for up to one year after its issuance).

The legislation determines the circle of foreigners to which the special employment procedure shall not apply despite the fact that they are actually attributed to one of the aforementioned categories (among others, these are heads of representative offices of foreign companies, refugees, employees of diplomatic representative offices of foreign states, journalists of foreign mass media accredited in Belarus, etc.). Since 15.07.2016 special procedure of employment of foreigners is not applied to those who are in the process of getting higher education in educational institutions of Belarus and seeking for employment in the obtained specialization, as well as to the foreigners who have already obtained a higher education in Belarus and seek for employment within one year after obtaining such education.

The specifics of the special procedure of employment of foreigners in Belarus are in the possibility of their employment only on condition that the employer has:

- permit for employment of foreign labor (in case of employment of over ten foreigners);
- special permits for the right of employment (hereinafter – special permits) for each foreigner.

Due to the special procedure, performance of labor activities in Belarus is only allowed when vacancies cannot be occupied by citizens of the Republic of Belarus or foreigners that permanently reside in the country. Therefore, the first step to receive the aforementioned permits shall be request of the employer to the employment agencies at their location for the purpose of submission of the information on availability of vacancies. Absence of persons willing to hold the vacancies opened by the employer among citizens of the Republic of Belarus or foreigners that permanently reside in the country shall be the basis for receiving of the required permits. Since 15.07.2016 such request is not necessary in case of necessity of obtaining a special permit for the foreigners attracted to be the heads of companies, in the creation of which they took part (as property owners, founders, shareholders).

The law shall allow conclusion of employment contracts with foreigners only after receiving of one or (if necessary) both types of the aforementioned permits and such employment contracts in case of their conclusion in the territory of the Republic of Belarus shall:

- have the effective term of not more than the effective term of a special permit;
- be made up in two languages: Russian (Belarusian) and native (comprehensible) language for the foreigner;
- contain additional details and conditions, which shall include the following:
 - procedure, terms of termination, amendment and prolongation of the employment contract;
 - terms of moving to the Republic of Belarus, boarding, accommodation, and medical servicing of foreigners.

Availability of a concluded labor contract and a special permit with a foreigner shall be the ground for their coming to the country and receiving of the temporary residence permit in Belarus.

2. Peculiarities of Employment of Citizens of Member States of the Eurasian Economic Union

Employment of citizens of member states of the Eurasian Economic Union (the Russian Federation, the Republic of Kazakhstan, the Republic of Armenia and the Kyrgyz Republic) shall be performed in accordance with the simplified procedure in Belarus. In particular, we speak about:

- absence of necessity of receiving of special permits for citizens of member states of the Eurasian Economic Union (EAEU);
- acknowledgment of documents of education issued by educational institutions of member states of the EAEU, without performance of procedures established with the law;

- right of a citizen of a member state of the EAEU to stay in Belarus without the necessity of registration of the temporary residence permit for the entire effective term of the concluded employment contract;
- releasing of citizens of member states of the EAEU who arrived to the Republic of Belarus for employment from the obligation of registration in the Republic of Belarus within 30 days after the date of arrival;
- right of conclusion of a new employment contract without leaving the territory of the Republic of Belarus for 15 days after an early termination of the previous contract in the situation where 90 days after arrival to Belarus have passed.

There are certain peculiarities associated with receiving of a special permit for citizens of Ukraine that reside in the territory of Donetsk and Lugansk region, as a rule, for not less than one year, and that have come to the Republic of Belarus to receive permits for temporary or permanent residence. Thus, payment of state duty for issue of a special permit shall not be required for this category of citizens of Ukraine. Besides, the time period for issuance of the special permit for them has been reduced to 5 business days.

3. Permits for Employment of Foreign Labor

The permit for employment of foreign labor shall be issued by the Department of Citizenship and Migration of the Ministry of Internal Affairs of the Republic of Belarus if it is necessary for the employer to employ over ten foreigners. Since 15.07.2016 this number does not include foreigners attracted to be the heads of companies, in the creation of which they took part (as property owners, founders, shareholders), as well as high-qualified employees.

A high-qualified employee since 15.07.2016 is a foreigner meeting the following criteria:

- high level of professional knowledge and skills, which is to be proved by the education certificates;
- experience of at least 5 years in the sphere of their specialization;
- the amount of monthly salary stipulated in an employment contract is not less than 15 minimal monthly salaries (the amount of minimal monthly salary is established by the Government annually and amounts to 2,300,000 Belarusian rubles as of the date of this material).

In order to get this permit, the employer shall be obliged to submit the following documents:

- application in accordance with the form established by law;
- copies of documents that confirm state registration of the company that applied for issue of the permit for employment of foreign labor;
- draft employment contracts with foreigners certified with the signature of the head of employer and its seal;
- letter of guarantee that confirms the possibility of accommodation of foreigners;
- document of payment of the state duty in the amount of 5 basic values.

The state duty shall not be paid in case of application for permit for employment of foreign labor by the investor and (or) the company incorporated by them or with their participation in the Republic of Belarus after conclusion of the investment agreement in the course of implementation of the investment project. Detailed exemption shall also be established for joint ventures, participants of construction of facilities of the Chinese and Belarusian Industrial Park the Great Stone, as well as for investors and residents of this park for implementation of investment projects in this territory.

The permit for employment of foreign labor shall be issued within 15 days after the day of submission of the application, the effective term shall be 1 year. This document may be prolonged only once, and after expiration of the first prolongation it is necessary to apply for the new permit.

4. Special Permits for the Right of Employment

A special permit shall be issued by the unit for citizenship and migration of the Department of Internal Affairs of the Minsk Executive Committee or the Department of Internal Affairs of the regional executive committee at the location of the employer. The employer is the party that shall directly apply for issuance of the special permit.

Together with the application, the employer shall be obliged to submit the following documents:

- a copy of the foreigner's passport or another document replacing the passport for the purpose of traveling abroad (a copy should be accompanied with the translation into Belarusian or Russian certified by a notary);
- confirmation of payment of the state duty in the amount of 5 basic values.

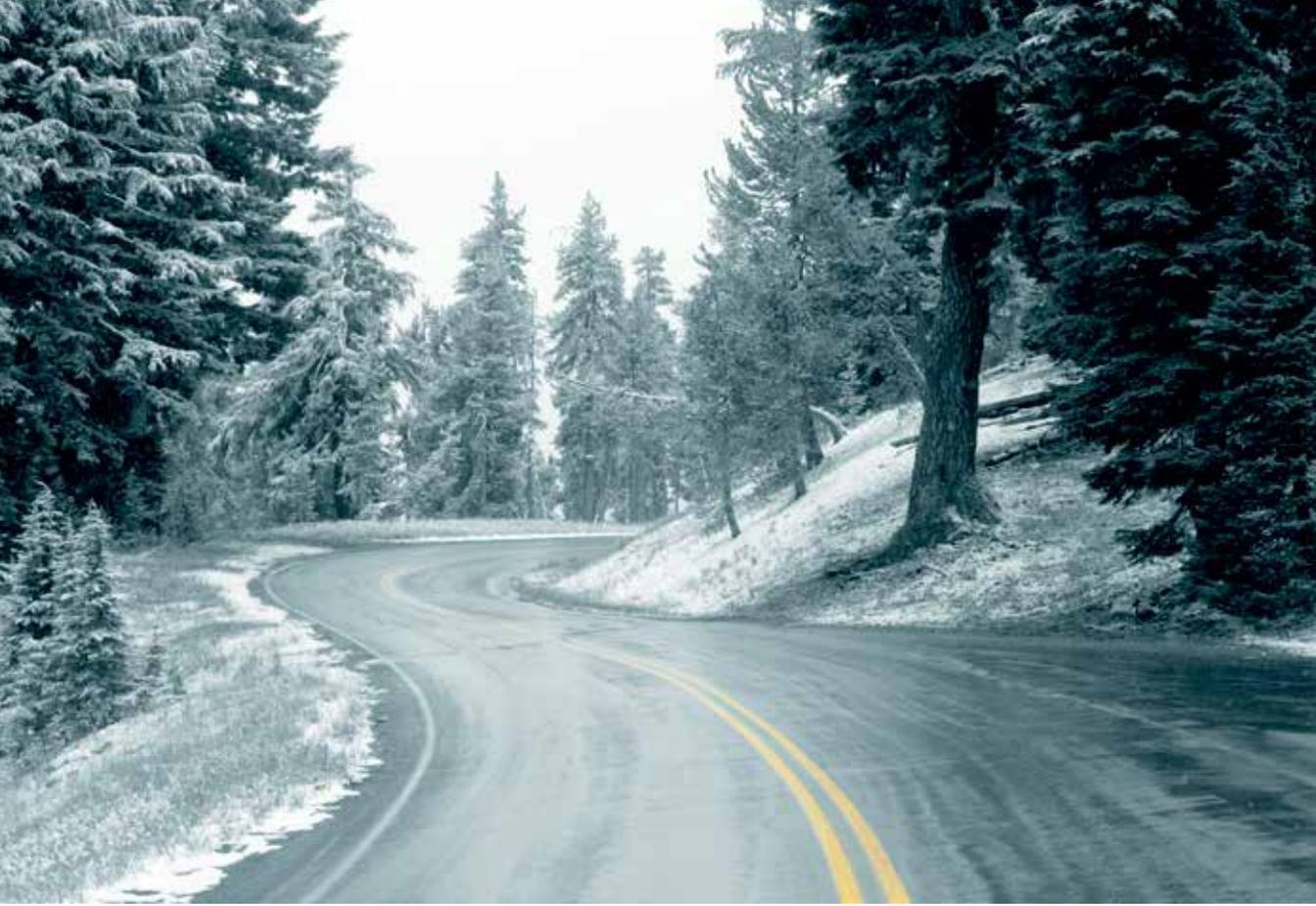
Investors that have concluded investment agreement with the Republic of Belarus shall be exempted from payment of the state duty.

A special permit shall be issued within 15 days after the date of submission of the application, and for the following persons it shall be reduced to 7 days, namely:

- the investor and (or) company incorporated by them in accordance with the established procedure or with their participation in the Republic of Belarus after conclusion of the investment agreement in the course of implementation of the investment project;
- a resident of the High Technologies Park;
- a member of the Infopark Research and Technological Association;
- for joint ventures, participants of construction of facilities of the Chinese and Belarusian Industrial Park the Great Stone, as well as for investors and residents of this park for implementation of investment projects in this territory.

The effective term of the special permit shall be 1 year. This document may be prolonged only once, and after expiration of the first prolongation it is necessary to apply for a new special permit.

Availability of a special permit shall be one of the conditions of receiving of the permit for entrance to the Republic of Belarus for employment of temporarily arriving foreigners. In order to receive a visa (type C) with the right of employment, a copy of a special permit notarized by a notary of the Republic of Belarus must be submitted apart from the documents required for applying for a visa.



Taxation of foreign companies

and their subsidiaries in Belarus

TAXATION OF FOREIGN COMPANIES AND THEIR SUBSIDIARIES IN BELARUS

1. Corporate Profits Tax

The objects subject to the corporate profits tax (CPT) are gross profit as well as dividends and similar incomes gained by Belarusian companies.

Gross profit for Belarusian companies is the sum of profit from sale of goods (works, services), proprietary interests and non-operating income, decreased by the sum of non-operating expenses.

The main rate of the CPT is 18%, while the rate on dividends is 12%. Banks and insurance companies pay CPT at the rate of 25%.

The sum of the tax shall be calculated following the financial results of the tax period on the accrual basis from the beginning of the tax period as the multiplication of taxable base (reduced by the amount of incentives and the amount of losses transferred to profits of this tax period) and the tax rate.

Tax period of CPT is a calendar year, while a calendar quarter is the reporting period (calendar month is the reporting period for the dividends accrued by the Belarusian companies).

Taxpayers should submit tax declarations following the results of expired reporting period not later than 20th day of the month following the expired period, regardless of presence or absence of objects of taxation.

A tax declaration following the results of the expired tax period is to be submitted not later than March 20th of the year following the expired tax period.

As a general rule, CPT shall be paid during the tax period following the results of the expired reporting periods no later than the 22nd day of the month following the expired relevant reporting period.

Starting from 2016, payment of CPT in the fourth quarter of the tax period is to be made not later than December 22nd of that year in amount of two-thirds of the sum of CPT calculated on the basis of the sum of CPT in the third quarter of the tax period with following recalculation for that tax period and calculation of sum of income tax to be paid additionally or reduced not later than March 22th of the year following the expired tax period.

Starting from 2012, Belarusian companies shall be entitled to reduce the taxable base for the amount of loss (sum of losses) in accordance with the result of the previous tax period (previous tax periods), i.e., perform transfer of losses to the profits of the current tax period. The losses shall be determined in accordance with the Tax Code regulations. With that, the company shall be entitled to transfer the losses starting from the losses incurred as a result of 2011.

A Belarusian company shall be entitled to transfer the losses to the profits of the current tax period for ten years that immediately follow the tax period, in which these losses were incurred. The losses not transferred to the following year may be transferred to any of the next 9 years completely or partially. If the Belarusian organization received losses in more than one tax period, transfer of such losses to the profits of the current tax period shall be performed in the sequence in which such losses were incurred.

2. Transfer Pricing

Transfer pricing is applied for the purposes of controlling estimation of the received income and the incurred expenses. Such control shall be performed by analysis of the correctness of determination of the corporate profits tax (CPT) taxable base. The price level applied by the payer is compared with the level of market prices for identical goods (works or services). If the tax authorities do not have information about market prices during the determination of the taxable base on CPT, other methods are to be used (a subsequent sale price method, an expenses method, a comparable profits method and profits distribution method).

The price level applied by the payer is analyzed for the following transactions:

- sale or purchase of real estate (its part), transfer of the object of shared-equity construction to the interest-holder or transfer of residential or non-residential premises to the holder of real estate bonds; sale or purchase of the real estate bonds in the process of their conversion (except for the operations of the issuers with the bonds of their own emission) made after the state registration of the creation of a construction object.

The criterion of control is deviation of the price of the transaction for more than 20% from the market price for identical (similar) real estate or an object of a shared-equity construction;

- sale or purchase of goods (works, services), if within the tax period the total sum of transactions with one person or entity exceeds 1 billion Belarusian rubles (without taking into consideration indirect taxes) and the price of such transaction(s) deviates for more than 20% from the market price for the goods (works, services):
 - made with an interdependent non-resident person (entity) or offshore territory resident;
 - made with an interdependent non-resident person (entity) or offshore territory resident with participation (mediation) of a third person(s) or entity(ies), that are not interdependent person(s) or entity(ies), through the complex of such transactions;
 - made with an interdependent person (entity) that is a tax resident of the Republic of Belarus (which includes complex of transactions with participation (mediation) of a third person(s) or entity(ies)), that are exempted from CPT in the tax period, when the transaction took place, as long as such person (entity) is included in certain categories of payers and (or) enjoys special taxation treatments, and (or) performs activity within certain territories determined by the legislation.
- other transactions if within the tax period the sum of transactions on sale and (or) purchase of goods (works, services) with non-residents of a company that has sold (acquired) strategic goods from the list stipulated by the Government of the Republic of Belarus, as well as of the company, incorporated in the list of major taxpayers, with one person exceeds 10 billion Belarusian rubles (without taking into consideration indirect taxes).

The criterion of control is deviation of the price of the transaction for more than 20% from the market price for goods (works, services).

A person or entity is considered as a “formal” mediator in the complex of transactions if they:

- are not interdependent in relation to the parties of the transaction;
- do not fulfill any other functions, except for the organization of sale (re-sale) of goods (works, services) by one person (entity) to another person (entity) that is deemed interdependent with the first person (entity);
- do not use any facilities for the organization of sale (re-sale) of goods (works, services) by one person (entity) to another person (entity) that is deemed interdependent with the first person (entity).

The sale (purchase) of goods (works, services) is sale (purchase) of goods (works, services), other property, including property rights, granting the property for use.

The sum of prices of transactions is determined by summing up the prices of all the transactions in the CPT tax period (calendar year).

Thus, the law of the Republic of Belarus shall allow deviation between the market and contractual price at the level of 20%.

The law shall also determine the list of cases where the taxable base shall not be subject to tax adjustment and the price of transaction is deemed market price. These are the cases when the price is:

- regulated by the legislation of the Republic of Belarus or foreign states;
- formed according to the regulations of anti-monopoly agency;
- formed pursuant to the results of trade at stock exchange;
- defined during the auction;
- defined by the appraiser in cases when the procedure of appraisal is obligatory.

3. Taxation of Foreign Companies Operating through Permanent Establishments

Tax term “permanent establishment” is not connected in any way with representative offices of foreign companies in civil law sense. The emergence of a permanent establishment (in a tax sense) does not require either the existence or a representative office or its accreditation.

The emergence of the permanent establishment within the territory of the Republic of Belarus creates an obligation to pay the corporate profits tax (CPT) in the territory of the Republic of Belarus on all the income connected with the activity of this permanent establishment of a foreign company.

The following is considered as the permanent establishment of the foreign company in the territory of the Republic of Belarus:

- a fixed place of business through which the foreign company entirely or partially does business or another activity in the territory of the Republic of Belarus, including those associated with:
 - performance of works (or services) under the agreement (agreements) concerning construction, installation, assembly, maintenance, service and operation of equipment or other property, computer programs (a construction site or a facility for installation or assembling must exist in the territory of the Republic of Belarus for the period that exceeds 180 days during any twelve-month period for its recognition as permanent establishment);
 - sale of goods from warehouses located in the territory of the Republic of Belarus;
 - performance of works (or services) in the territory of Republic of Belarus (the specified activities must be performed continuously or totally for 90 days in any twelve-month period that begins or ends in the correspondent tax period, so that the entity may be recognized as the permanent establishment);
 - performance of other activities on certain conditions.
- an entity or an individual that perform activities on behalf of the foreign company or in its interests as well as have and use authorization of the foreign company for conclusion of contracts or negotiation of their essential terms.

The following shall not be recognized as the permanent establishment:

- storage, demonstration or supply of goods of own production;
- procurement of goods for a foreign company;
- collection or distribution of information for a foreign company;
- performance of other types of activities, if such activities are of the preparatory or auxiliary nature.

CPT of the foreign company operating in the territory of the Republic of Belarus through permanent establishment is calculated directly by the taxpayer.

In case of performance of business activities by a foreign company via a permanent establishment at several locations in the territory of the Republic of Belarus, the tax declaration on CPT shall be submitted to the tax agency at each location of performance of business via a permanent establishment.

4. Corporate Profits Tax for Foreign Legal Entities not Operating in Belarus through Permanent Establishments

Foreign legal entities not operating in Belarus through the permanent establishment but getting certain kinds of profits from sources in the Republic of Belarus are recognized as taxpayers of the corporate profits tax (CPT) of foreign companies.

The object of taxation are such profits as income from any kind of debts, royalty, dividends, income in the form of penalties (fines) and other types of sanctions for breach of contracts, income from the sale of goods in the territory of the Republic of Belarus under the contracts of commission and other similar civil-law contracts, income from the rendered services (consulting, accounting, auditing, marketing, legal, engineering and so on), income from the sale of real estate located in Belarus or shares in share capitals of companies in Belarus and other similar income.

The taxable base of CPT in such situation is defined as total sum of profits. For certain types of profits the costs proved by documents are allowed to be deducted.

There are several tax rates:

- 5% for dividends, income from debt obligations, royalties, if the source of payment of such income is a resident of the High Technologies Park;
- 6% for payments for transportation, freight, demurrage and forwarding services;
- 10% for income from debt obligations;
- 12% for dividends, income from sale of shares in share capitals of companies in the territory of the Republic of Belarus;
- 15% for other types of income in accordance with the list determined in the Tax Code.

The tax period is a calendar month in which the date of obligation to this tax becomes due.

The tax declaration on CPT of foreign companies is to be submitted by a Belarusian legal entity, a foreign company or individual entrepreneur, that accrue and (or) pay income to the tax authorities not later than on the 20th day of the month following the tax period.

CPT of foreign companies is to be paid not later than on the 22nd day of the month following the tax period.

The question of application of double taxation avoidance agreements is topical in the mentioned sphere. While considering the question of the possibility of application of double taxation avoidance agreement it is necessary to check whether a foreign company has the status of factual owner of the income or not, i.e. whether it is a direct beneficiary of such income and therefore whether it has the right to independently enjoy or use such income at their own willing.

5. Personal Income Tax

The object of taxation of the personal income tax is income earned by taxpayers (individuals) from the sources both in Belarus and abroad.

Companies that hire employees on the basis of employment contracts or civil contracts fulfill obligations of tax agents and shall withhold the personal income tax on behalf of employees and transfer it to the state budget.

The most widespread source of income for individuals is remuneration for labor or other duties, including monetary remuneration and other allowances.

Belarusian legislation provides for various deductions reducing the taxable income of individuals.

General rate of personal income tax is 13%.

The income tax rate is set at 9% of the income received by:

- individuals (other than employees performing maintenance and security of buildings or land) from the residents of the High-Tech Park (HTP) on the basis of employment contracts;
- individual entrepreneurs who are residents of the HTP;
- individuals involved in implementation of the registered business projects in the field of new and high technology from non-residents of HTP on the basis of employment contracts;
- individuals in the form of wages received on the basis of employment contracts from the joint venture and (or) the residents of the Chinese and Belarusian Industrial Park the Great Stone.

The personal income tax rate is set at 16% in relation to the income received by Belarusian individual entrepreneurs (private notaries, solicitors) from business (private notary, sole advocacy) activities. Apart from that, tax rate of 16% is applied to the income calculated by tax authorities on the basis of sums of expenditures in excess of revenues while controlling the balance between the expenditures and incomes of the citizens.

The rate of income tax is established at 4% in relation to such incomes as wins (returned bets that did not win) received by individuals from the organizers of gambling games that are legal entities of the Republic of Belarus.

Tax agents (companies) are obliged to withhold the calculated sum of income tax from individuals directly from the income of the payer at the moment of their actual payment.

The tax period of the personal income tax is a calendar year. Reporting periods of the personal income tax for individual entrepreneurs (notaries, solicitors) are three, six and nine months of a calendar year and a calendar year.

6. Obligatory Insurance Payments

The amount of obligatory insurance payments (covering retirement, disability, loss of breadwinner insurances) is 29% (28% pays an employer, 1% – an employee).

The rate of obligatory insurance fees (against temporary incapacity to work, maternity leave, childbirth, care for children, etc.) is 6%. Payments are to be made by the employer as a single payment.

The objects for the calculation of obligatory insurance fees to the National Social Security Fund are all monetary and (or) natural payments calculated in favor of working citizens on the basis of all grounds, irrespectively of the sources of financing. Payments cannot exceed the five-time amount of average wages in the republic in the month preceding the month for which obligatory insurance fees are paid.

Foreign citizens and stateless persons working in the Republic of Belarus, which includes working in the representative

offices of foreign companies, that perform their activity in the territory of the Republic of Belarus or that are individual entrepreneurs, are also subject to obligatory social insurance on conditions stipulated by the legislation for the citizens of the Republic of Belarus. Prior to 2016 foreign citizens and stateless persons could choose whether to participate in the relations of state social security or not.

Insurance fees of obligatory insurance against occupational diseases and accidents at production facilities are calculated on payments to individuals under employment and civil contracts. The insurance rate is established at the amount of 0.6% for all companies with the possibility of incentives, discounts (increases) used along with the established rate. Payments are to be made by the employer.

7. Value Added Tax

The value added tax (VAT) is included into the price of products and services.

The following rates of VAT are applied in Belarus:

- 20% is the general rate;
- 0% is applied in the following cases:
 - export of goods to the member-states of the Eurasian Economic Union, as well as performance of services connected with forwarding, loading, transfer and other similar activities directly connected with sale of exported goods which are placed under the customs procedure of export;
 - export of transportation services and works on processing of raw materials under tolling agreements;
 - performance of repair works (modernization, re-equipment) of aircraft and their engines, units of trains, performed for foreign companies or individuals, bunker fuel for foreign aircrafts carrying out the international flights and (or) the international air carriage;
 - sale of goods of own production to a duty-free shop owners for the purpose of their subsequent sale in duty-free shops;
 - sale of goods in retail to individuals who do not have permanent residence in a member-state of the Eurasian Economic Union, in case when such individuals take those goods outside the customs territory of the Eurasian Economic Union within three months from the date of their purchase (foreign citizens are entitled to get the refund of the sum of VAT paid if the price of goods exceeds 800,000 Belarusian rubles and the shop where the goods are bought has concluded an agreement on refunds of VAT with special organization);
 - performance of repair works and maintenance of vehicles registered in foreign states by authorized service centers in the territory of the Republic of Belarus for foreign companies or individuals, except for citizens of the Republic of Belarus (this provision is applied to works (services) performed from 01.01.2015 to 01.01.2018);
 - performance of works (services) by the state association Belarusian Railroad to the foreign railroad operators in terms of provision of rail cars, containers, bogeys, refrigerator rail cars, as well as shifting of passenger rail cars to wheel pair of other rut and work of locomotives and locomotive brigades.
- 9.09% or 16.67% is applied to sale of goods at administered retail prices with due account for the VAT;
- 10% is applied to:
 - sale of goods of Belarusian origin coming from crop production (with the exception of floriculture, growth of ornamental plants), wild berries, nuts and other fruits, mushrooms and other wild products, bee-farming, animal husbandry (with the exception of fur farming), fishery;
 - import and (or) sale in the territory of the Republic of Belarus of groceries and goods for children that are included in the list approved by the President of the Republic of Belarus;
 - sale of goods manufactured by residents of free economic zones in the territory of the Republic of Belarus (such goods shall be import substitutes according to the special list).

The sum of VAT to be paid to the state budget is defined as the difference between general sum of tax calculated at the end of the reporting period and the sums of tax deductions. The calculated sum of VAT is determined on an accrual basis since the beginning of the tax period at the end of each reporting period.

Tax period of VAT is a calendar year. Reporting period of VAT is a calendar month or a calendar quarter.

Taxpayers shall submit tax declarations not later than 20th day of the month following the expired reporting period and VAT is to be paid not later than 22nd day of the same month.

Since 01.07.2016 the concept of digital invoice (“schet-factura”) is introduced. This document is obligatory for all the payers of VAT (there are certain cases when digital invoice is not to be issued) and is the ground for conducting calculations of VAT and applying possible deductions. Exchange of digital invoices between the seller and the buyer shall be done through the Digital Invoices Portal. The buyer fills out the digital invoice at the Portal or uploads such invoice in Xml file formed by their accounting system. The value of goods (works, services), property rights and the sum of VAT in the digital invoice must be defined in Belarusian rubles.

8. Excise Duties

Excise duties are applied to the following types of goods:

- spirit;
- alcoholic beverages;
- non-food alcohol-containing products;
- food alcohol-containing products;
- beer, beer cocktails;
- low alcoholic beverages and wines (from 1.2% to 7%);
- ciders;
- tobacco;
- gasoline;
- diesel and diesel fuel with fatty acid methyl esters;
- boat fuel;
- liquefied hydrocarbon gas and natural compressed fuel gas used as automotive fuel;
- diesel motor oil and (or) carburetor (injector) engine oil.

Excise rates for goods can be set in absolute amounts on a physical unit of measurement of the goods (fixed (specific) rate) or in percentage points from the cost of goods (added value rates).

The tax period of the excise taxes shall be a calendar month. The payers shall submit a tax return to tax bodies monthly not later than on the 20th day of the month following the tax period and payment of excise duties must be settled no later than on the 22nd day of the month following the tax period.

9. Off-Shore Duty

Belarusian companies and individual entrepreneurs may be subject to the off-shore duty in the following cases:

- in the event when a resident of the Republic of Belarus transfers monetary funds directly to a non-resident of the Republic of Belarus registered in the off-shore territory (or to a third party defined by such non-resident) or to the bank account opened in the off-shore territory;
- in the event when a resident of the Republic of Belarus fulfills non-monetary obligations to the benefit of a resident of the Republic of Belarus registered in the off-shore territory, except for when a non-resident of the Republic of Belarus fulfills monetary obligations to the benefit of the resident in return;
- when cession takes place in relations between a resident of the Republic of Belarus and a non-resident of the Republic of Belarus registered in the off-shore territory.

Offshore territories are the Principality of Andorra, Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, Belize, the Nation of Brunei, the Republic of Vanuatu, Anguilla, Bermuda, the British Virgin Islands, Montserrat, Gibraltar, the British Indian Ocean Territory (the Chagos Islands), South Georgia and the South Sandwich Islands, the Turks and Caicos Islands, the Cayman Islands, Grenada, the Republic of Djibouti, the Dominican Republic, the Macao Special Administrative Region of the People’s Republic of China, the Republic of Costa Rica, the Cook Islands (New Zealand), Niue (New Zealand), the Republic of Liberia, the Principality of Liechtenstein, the Republic of Mauritius, the Federal Territory of Labuan, the Republic of the Maldives, the Republic of the Marshall Islands, the Republic of Nauru, the Republic of Panama, Madeira (the Portuguese Republic), the Principality of Monaco, the Independent State of Samoa, the Republic

of Seychelles, the Federation of Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, the Kingdom of Tonga, the Virgin Islands (the United States of America), Puerto Rico (the United States of America), Wyoming (the United States of America), Delaware (the United States of America), Kerguelen Island, French Polynesia, the Republic of the Fiji Islands, Jamaica, the Republic of Montenegro, Aruba, Curacao, Bonaire, Saba, Sint Eustatius, Sint Maarten.

The off-shore duty rate is 15%. The tax period of off-shore duty is a calendar month. Off-shore duty is paid by residents of the Republic of Belarus prior to monetary fund transfer in the currency of that transfer or in Belarusian rubles at the official exchange rate set by the National Bank of the Republic of Belarus on the date of the transfer.

When either non-monetary obligations are performed or the cession of rights and obligations takes place, the off-shore duty is paid on the day following that performance or cession.

The tax declaration for off-shore duty is to be submitted not later than on the 20th day of the month following the tax period.

10. Simplified Tax System

Small enterprises are entitled to apply a simplified tax system in case when they simultaneously meet the following criteria:

- number of employees shall be not more than 100 persons;
- the sum of company's gross revenue for the nine months on an accrual basis makes no more than 10,300,000,000 Belarusian rubles (1,125,000,000 Belarusian rubles for individual entrepreneurs). But individual entrepreneurs whose gross revenue in first nine months of 2015 year does not exceed 10,300,000,000 Belarusian rubles keep the right to use simplified tax system in 2016 regardless of the fact that the limit was reduced to 1,125,000,000 Belarusian rubles.

The legislation of the Republic of Belarus provides a list of entities that cannot apply the simplified tax system:

- companies and individual entrepreneurs that:
 - produce goods subject to excise duty;
 - sell jewelry and other household articles made of precious metals and precious gems;
 - sell property rights to civil means of individualization (trade names, trademarks and service marks, geographical names, etc.);
 - are residents of the free economic zones, the Special Tourist and Recreation Park Avgustovsky Channel, the High Technologies Park, the Chinese and Belarusian Industrial Park the Great Stone;
 - rent out the capital structures (their parts) and parking lots that do not belong to the company (or individual entrepreneur) on ownership or other valid title;
 - are professional participants of the securities market;
 - involved in lottery activity, professional activity on securities market, activity within the ordinary partnership, activities for the organization and holding of interactive electronic games.
- companies that carry out real estate activity, insurance business and re-selling insurance business, banking, and gambling activities;
- companies that produce agricultural products in the Republic of Belarus and pay the single tax for agricultural producers;
- individual entrepreneurs in part of activities that shall be taxed with the single tax for individual entrepreneurs;
- companies that are payers of the single tax on imputed income;
- companies that are members of the holding company, microfinance organizations;
- unitary enterprises (except for unitary enterprises of the republican state and social associations), the property owners of which are a legal entity, the Republic of Belarus or its administrative unit, as well as commercial companies, in the share capital of which more than 25% of shares belong to one company or to several other companies, as well as commercial companies, in the share capital of which more than 25% of shares belong to the Republic of Belarus or its administrative unit(s).

Companies and individual entrepreneurs do not have the right to use the simplified tax system if the nature of the services they provide to trading companies is placement of information about such trading companies or goods being sold by them, including the information about (hyperlinks to) the online stores such trading companies use to sell their goods

in the Internet. Those companies and individual entrepreneurs that are involved in online retail trade are also forbidden to use the simplified tax system.

The simplified tax system is characterized with replacement of a number of payments with one single tax and the simplified procedure of its calculation. At the same time, application of the simplified tax system shall not release the payer from payment of import and export payments, tax for production (removal) of natural resources, environmental tax in certain cases, utilization duty, stamp, consular and offshore duties, patent and public duties, social security contributions, income tax on shares in economic companies and securities, as well as real estate taxes in case of exceeding of the established criteria. In particular, the land tax shall be subject to payment if the total area of lands of the payer exceeds 0.5 ha and the real estate tax shall be paid if the total area of all real estate facilities of the payer exceeds 1,500 square meters or in case the payer leases the real estate out.

Companies and individual entrepreneurs must start using the general tax system in case when gross revenue on the accrual basis within the calendar year exceeds correspondent amounts of 13,700,000,000 and 1,500,000,000 Belarusian rubles and (or) quantity of employees of more than 100.

The taxable base of the simplified tax system shall be revenue from sales of goods (works, services) or property titles.

There are two types of rates to be paid under the simplified tax system:

- 5% is paid by companies and individual entrepreneurs having not more than 50 employees in case when their gross revenue doesn't exceed 9,400,000,000 Belarusian rubles (this 5% rate allows not to pay VAT);
- 3% is paid by companies and individual entrepreneurs who decided to pay VAT;
- 16% is paid by companies and individual entrepreneurs in relation to such non-operating income as value of the goods (works or services), property rights, other assets or money received free of charge.

Tax period is a calendar year, while the reporting period is recognized as:

- a calendar month – for entities applying the simplified tax system with monthly payment of VAT;
- a calendar quarter – for entities applying the simplified tax system without payment of VAT or with quarterly payment of VAT.

Tax declarations shall be submitted not later than the 20th day of the month following the expired tax period. Tax shall be paid not later than the 22nd day of the month following the expired tax period.

11. Single Tax for Producers of Agricultural Products

The single tax for producers of agricultural products is set at the rate of 1% of gross revenue.

Category of producers of agricultural products includes companies and their branch offices that gain no less than 50% of their revenue from sale of plant products (except for flowers and ornamental plants), primary flax processing, apiculture, animal husbandry and fish breeding.

The following companies have no right to apply the single tax for producers of agricultural products:

- companies that apply the simplified tax system;
- residents of the free economic zones, the Special Tourist and Recreation Park Avgustovsky Channel, the High Technologies Park, the Chinese and Belarusian Industrial Park the Great Stone;
- companies that are payers of the single tax on imputed income.

Payment of this single tax replaces payments of all taxes, duties and other obligatory payments, including the rent of land, but excluding: excises, VAT, charges (duties) on goods imported (exported) into (out of) the territory of the Republic of Belarus, state dues, patent fees, consular fees, off-shore duty, stamp duty, fees for travel of foreign states motor vehicles on public roads of the Republic of Belarus, the income tax on dividends and similar income, obligatory insurance payments, land tax, ecological tax on waste burial on the waste burial sites in case of acquisition of the property right to production residue on the basis of the transaction on disposition of waste or other actions acknowledging appropriation of waste in a different way for the subsequent burial, disposal fee.

The tax period of the single tax is a calendar year. The reporting period of the single tax can be a calendar month or a calendar quarter depending on the VAT payment scheme.

12. Tax on Gambling Business

The activities in the gambling business are carried out exclusively by legal entities of the Republic of Belarus.

Companies are exempted from VAT (except VAT on import) and corporate profits tax in the sum of income received from gambling business. As for activities that do not relate to gambling, companies pay taxes according to the standard procedure.

The objects of tax on gambling business are: game tables, slot machines, cash sweepstakes, cash bookmakers, positive difference between the sum of the accepted bets in gambling games and the sum of the paid prizes (the returned bets that did not win).

These objects except positive difference between the sum of the accepted bets in gambling games and the sum of the paid prizes (the returned bets that did not win) are registered in the tax inspection. Such registration is approved by correspondent certificate issued by the inspection for the payer.

The tax rates on gambling are fixed depending on the object of taxation:

- 63,418,700 Belarusian rubles with regard to one game table;
- 2,415,300 Belarusian rubles with regard to one slot machine;
- 13,001,300 Belarusian rubles with regard to one cash sweepstakes;
- 6,500,700 Belarusian rubles with regard to one cash bookmaker.

The amount of tax on gambling business is calculated as the multiplication of the taxable base and the tax rate determined for corresponding object of taxation. The tax period of the tax on gambling is a calendar month. Payment of tax on gambling is to be made not later than the 22nd day of the month following the expired tax period.

The tax system of the Republic of Belarus provides other taxes, duties (fees) not described in this material, in particular, ecological tax, tax for extraction (removal) of natural resources, fees for passage of foreign states motor vehicles on public roads of the Republic of Belarus, single tax on imputed income and others.

13. Treaties that Guarantee Avoidance of Double Taxation

In order to avoid double taxation the Republic of Belarus signed a vast number of bilateral treaties with other states. Currently there are 67 such treaties with different countries:

Austria	China	Serbia
Azerbaijan	North Korea	Singapore
Armenia	South Korea	Syria
Bangladesh	Kirgizstan	Slovakia
Bahrain	Kuwait	Slovenia
Belgium	Laos	USA
Bulgaria	Latvia	Tajikistan
Great Britain	Lebanon	Thailand
Hungary	Lithuania	Turkmenistan
Venezuela	Macedonia	Turkey
Vietnam	Malaysia	Uzbekistan
Denmark	Moldova	Ukraine
Egypt	Mongolia	Finland
Israel	Netherlands	France
India	United Arab Emirates	Germany

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Iran	Oman	Croatia
Ireland	Pakistan	Czech Republic
Spain	Poland	Switzerland
Italy	Russia	Sweden
Kazakhstan	Romania	Sri Lanka
Qatar	Saudi Arabia	Estonia
Cyprus	Georgia	South African Republic and Japan

The purpose of double taxation avoidance treaties is to separate tax jurisdictions in relation to the income of their entities and persons, to introduce rules of interaction with tax agencies of each state, as well as to avoid an unlimited taxation of the same income in several countries. Thus, double taxation avoidance treaties lead to reduction of the tax burden.



Preferential clusters

PREFERENTIAL CLUSTERS

1. High Technologies Park

Legal entities and individual entrepreneurs that develop computer programs and informational systems have the right to become the residents of the High Technologies Park by the means of conclusion of the agreement with the administration of the High Technologies Park and undertaking to implement a specified business project. In return, the residents of the High Technologies Park obtain several tax and customs incentives until 2020, but can only perform limited types of activity (though, the list of possible activities is quite extensive and covers major sectors the modern IT-companies are usually involved in).

Main tax incentives granted to the High Technologies Park residents are:

- exemption from:
 - corporate profits tax (excluding corporate income tax on dividends);
 - VAT on revenue from sale of the goods (works, services, proprietary interests) in the territory of the Republic of Belarus;
 - land tax on land plots located in the High Technologies Park for the period of construction of buildings designated to business activity of the High Technologies Park residents, but no longer than for three years;
 - real estate tax on fixed assets and objects of unaccomplished construction of the High Technologies Park residents located in the territory of the High Technologies Park (excluding leased fixed assets and objects of unaccomplished construction);
 - off-shore duty in case of payment (transfer) of dividends to the shareholders.
- obligatory insurance fees are not charged for income of employees of the High Technologies Park residents, when it exceeds the amount of a one-month average wage in the Republic of Belarus;
- individual income earned during a calendar year from the residents of the High Technologies Park under employment contracts, as well as income of individual entrepreneurs being the High Technologies Park residents, is taxable at a rate of 9%;
- reduced tax of 5% for foreign organizations not operating through a permanent establishment in Belarus is applied to income from dividends, interest (coupon) income from debt, royalties, license agreements, if the source of this income is the High Technologies Park residents.

Main customs incentive for the High Technologies Park residents is the exemption from customs duties and VAT in case of import of the production equipment to the customs territory of Belarus for the purposes of investment projects. In order to use this incentive the residents have to obtain the resolution of the Park's administration.

2. Chinese and Belarusian Industrial Park the Great Stone

This special economic area was created for attraction of national and foreign investments granting tax incentives on a systematic basis for a period of 50 years and for organization and development of high-tech and competitive works in the spheres of electronics, fine chemistry, biotechnology, engineering industry and new materials.

Park residents can be legal entities set up in the territory of the Republic of Belarus and located in the Park or created investment projects which meet the following requirements simultaneously:

- an investment project shall involve operation of a legal entity in the Park's territory within the key focus areas of the Park and implementation of research, design and experimental and technological projects in such areas (R&D);
- declared investments equal not less than \$5 mln. (not less than \$1 mln. for R&D projects).

Main tax incentives of Park residents are:

- Park residents are exempted from the following taxes for a period of 10 years from the date of their registration:
 - corporate profits tax on profits from sale of goods (works, services) produced in the Park;
 - real estate tax on buildings and constructions, parking spaces situated in the Park's territory regardless of their functional designation;
 - land tax on land plots in the Park's territory.
- Park residents pay corporate profits tax, land tax and real estate tax at the rate reduced by 50% within next 10 years;

- within 5 calendar years, beginning with the first year of having a gross profit, 0% rate is applied to the corporate profits tax, the tax on income of foreign organizations not operating through a permanent establishment in Belarus, dividends and similar income accrued by Park residents to their shareholders;
- up to 01.01.2027 the rate of withholding tax on royalties accrued by Park residents to foreign legal entities not operating through a permanent establishment in Belarus, in respect to information concerning industrial, commercial or scientific experience (including know-how), license fees, patents, drawings, utility models, schemes, formulae, designs or processes, is 5%;
- up to 01.01.2027 individual income earned under employment contracts is taxable at 9%;
- Park residents are exempted from VAT and corporate profits tax arising in connection with donation of capital structures (buildings), isolated premises, facilities under construction and other fixed assets located in the Park.

Another incentives and benefits of Park residents:

- Park residents are exempted from:
 - state fees for issuance and renewal of permits for employment of foreign labor and relevant special permits for foreign citizens and stateless persons engaged in the construction and implementation of investment projects within the boundaries of this Park;
 - compensation for losses of agricultural and (or) forestry production caused by withdrawal or temporary occupation of agricultural land and forest land located within the boundaries of the Park;
 - compulsory sale of the foreign currency received from activities in the Chinese and Belarusian Industrial Park the Great Stone.
- foreign citizens and stateless persons are exempted from the fee for temporary residence permits in the Republic of Belarus;
- obligatory insurance payments are not compounded on income of employees of Park residents (except foreign employees) which exceeds the amount of a one-month average wage in the Republic of Belarus preceding the month during which compulsory insurance payments shall be made;
- Park residents and their employees who are foreign citizens temporarily residing (staying) in the Republic of Belarus and mobilized for implementation of investment projects in the Park's territory, are exempted from the mandatory insurance premiums from payments to their advantage;
- Park residents have a right to deduct the full amount of VAT paid within purchase (import to the territory of the Republic of Belarus) of goods (works, services) and property rights used for the design, construction and equipping of buildings located in the Park but not later than December 31st of the year following the year of putting into operation of such buildings;
- Park residents are exempted from customs duties and VAT on goods imported into the customs territory of the Republic of Belarus for usage in the Park's territory for implementation of investment projects if the residents have the resolution of the Park's administration.

Introduction of new taxes, fees and charges does not lead to accrual of obligation of Park residents to pay such taxes, fees and charges on activities exercised in the territory of the Park.

3. Middle and Small Towns and the Countryside

Subjects to the special tax treatment are companies registered in the territory of the Republic of Belarus in middle, small towns and in the countryside and carrying out such activities as production of goods (works, services). With that, the territory of middle, small towns, and the countryside shall mean the entire territory of Belarus, except the territory of Baranovichi, Bobruisk, Borisov, Brest, Vitebsk, Gomel, Grodno, Zhodino, Zhlobin, Lida, Minsk, Mogilev, Mozyr, Molodechno, Novopolotsk, Orsha, Pinsk, Polotsk, Rechitsa, Svetlogorsk, Slutsk, Soligorsk.

The special treatment is not applied to banks, non-bank financial institutions, investment funds, insurance companies and professional participants of stock exchange market, residents of free economic zones and the High Technologies Park, the Special Tourist and Recreation Park Avgustovsky Channel, the Chinese and Belarusian Industrial Park the Great Stone, business entities carrying out real estate activity, gambling activity, lottery activity, activity in the sphere of electronic interactive games, production and sale of excise goods, jewelry, production of securities, money, coins, stamps, etc.

Special tax treatment provides 7 years' exemption from:

- corporate profits tax (for legal entities), income tax (for individual entrepreneurs) with regard to the goods of own production;
- the state duty for getting licenses;
- other taxes and duties (except VAT, excises, stamp, off-shore and government duties, patent duties, custom duties, land tax, tax for extraction (withdrawal) of natural resources, ecological tax, taxes that are paid by tax agents);
- compulsory sale of foreign currency received under the transactions with non-residents of the Republic of Belarus from sale of the goods (works, services) of own production, including income from lease of property.

Additional advantage of the taxation in countryside is exemption from import customs duties on some goods produced five years ago or later, that were imported as non-monetary contributions to the share capital of legal entities subject to this special treatment.

4. Free Economic Zones

Currently in Belarus there are six free economic zones (FEZ): Minsk, Brest, Gomel-Raton, Mogilev, Grodnoinvest, Vitebsk.

In order to become a FEZ resident, it is necessary to comply with the following requirements:

- the territory of a free economic zone shall be the primary place of business;
- it is necessary to conclude the agreement with FEZ administration to regulate the activities within the free economic zone;
- to invest not less than €1 mln.;
- to create and (or) develop the export-oriented production and (or) import substitutes.

Tax incentives for FEZ residents are not applied to banks and insurance organizations, public catering, gambling activity, activity in electronic interactive games, stock operations; sale of goods (works, services), which are totally or partly produced with the help of fixed assets, owned by the FEZ resident and (or) by FEZ resident employees outside the FEZ territory.

Tax incentives of FEZ residents:

- rate of the corporate profits tax is reduced by 50% (and shall be not more than 12%);
- profit of FEZ residents gained from sale of the goods (works, services) of own production is exempted from taxes for 5 years starting from declaration of profit, and the profit of FEZ residents registered as such after 31.12.2011 – for 10 years from the date of declaration of gross profit;
- exemption from real estate tax for 3 years for the objects of taxation by this tax placed in the territory of correspondent FEZ, acquired (created) within the mentioned period of 3 years, regardless of the way of their use; after 3 years exemption from real estate tax is granted, if in the previous quarter FEZ resident performed sale of goods (works or services), if it was subject to peculiarities of taxation in FEZ;
- payment of VAT at the rate of 10% from sale of goods of own production, which are manufactured in the territory of Belarus and are recognized as import-substituting production;
- exemption from land tax for land within the boundaries of free economic zones the usage of which is granted to FEZ residents registered as such after 01.01.2012 for project construction - for the period of design and construction of these projects, but not more than five years from the date of this registration. FEZ residents registered as such before 01.01.2012 have the right to apply for this benefit during the design and construction of facilities that are provided for the construction of land, but not earlier than 01.01.2017 and not more than five years from that date.

With that, benefits may be granted to FEZ residents only regarding sales of the following:

- goods (works, services) of own production manufactured in the territory of the FEZ and sold beyond the borders of the Republic of Belarus to non-residents;
- import substitutes of own production manufactured in the territory of the FEZ and sold in the territory of the Republic of Belarus;
- goods (works, services) of own production manufactured in the territory of the FEZ and sold to other FEZ residents.



Real estate

and construction

REAL ESTATE AND CONSTRUCTION

1. Acquisition and Lease of Real Estate by Foreign Individuals and Entities

Foreign individuals and entities shall be entitled to acquire and lease real estate in Belarus but on special terms.

1.1. Peculiarities of Acquisition of Real Estate

Foreign individuals and entities (just as Belarusians) shall be entitled to acquire private residential and non-residential premises (apartments, rooms in apartments, detached houses in the countryside, production and office premises) on the basis of sale and purchase agreements, exchange agreements or on the basis of other transactions. For implementation of such transactions, foreign citizens have no need to receive the status of temporary or permanent residents or visitors of the Republic of Belarus.

What concerns acquisition of state-owned residential real estate property, foreign individuals and foreign legal entities shall be entitled to acquire the governmental residential real estate facilities according to sale and purchase agreements only if such opportunity is stipulated with international treaties of the Republic of Belarus. For instance, such opportunity is provided for citizens of the Russian Federation that shall be entitled to acquire state-owned residential real estate in Belarus irrespectively of their residence.

Foreign individuals and entities shall be entitled to acquire state-owned non-residential real estate only at auctions.

Alienation of the real estate facilities of the Republic of Belarus, the cost of which exceeds 10 thousand basic values, shall be performed upon resolution of the Government of Belarus.

To ensure legal safety of real estate sale and purchase transactions (minimization of invalidity risks, etc.) it is necessary to perform the following preliminary actions:

- determine availability or absence of encumbrances over the real estate (it is recommended for the buyer to receive relevant information from the registration log of titles prior to acquisition);
- determine the seller's titles regarding the real estate facility (in case if the seller owns the real estate facility on the basis of the joint ownership title, then it is necessary to distinguish the seller's share in the common property and then register the purchase of the property title prior to conclusion of the sale and purchase agreement);
- if the seller is a legal entity, it is necessary to verify if such alienation is agreed with the supreme management body of the seller (usually, sale of the real estate is considered as major transactions, which shall cause the necessity of getting approval of the supreme management body of such company) or the owner of the property (if the sale is performed by a unitary enterprise that does not have the ownership title over its property);
- verify the technical state of the real estate facility.

1.2. Peculiarities of Leasing of Real Estate

Foreign individuals and legal entities are entitled to conclude lease agreements regarding real estate property located in Belarus with no limitations.

Leasing of capital structures (buildings), separated premises, their parts in the state-owned and communal property, as well as determination of the rent regarding such real estate shall have a number of peculiarities.

Thus, state-owned real estate shall be leased through holding an auction:

- in settlements with the amount of population of over 50 thousand people;
- for production and sales of excise goods, jewelry of precious metals and gems, performance of lottery, real estate, insurance, banking activity, activity in the sphere of gambling business, actions for arrangement and performance of electronic interactive games.

The rent shall be established and paid in Belarusian rubles on the basis of the amount of the basic rent value (annually determined by the Government as of April 1st of each year). The rent shall be calculated in accordance with a special formula that considers the factor of location of the real estate facility, its technical state, commercial benefits and some other parameters.

In accordance with the lease agreement of a capital structure, possession and use titles for such real estate property are

transferred to the lessee. It is also allowed to use the part of the land plot occupied with such real estate and required for its use.

1.3. Real Estate Tax

In cases determined with the law of the Republic of Belarus, the lessee can be the payer of the real estate tax.

The objects of taxation subject to real estate tax for companies are permanent structures (buildings and facilities) and their parts including overdue buildings, facilities and transfer mechanisms, as well as parking places.

As a rule, annual tax rate of real estate tax for companies is 1%. Local authorities may raise or decrease the rate of tax. The annual tax rate of 2% is established for the objects of the above norm unaccomplished construction.

Tax period of real estate tax is 1 calendar year.

The tax return is to be submitted by the legal entity to the tax authorities not later than March 20th of the reporting year.

Real estate tax is to be paid by companies at their discretion once a year in the amount of annual sum of the tax not later than on March 22nd of the tax period or every three months not later than on the 22nd day of the third month of each quarter in the amount of one fourth of the annual sum of tax.

2. Land Titles of Foreign Individuals and Entities

Foreign individuals and entities (as well as their representative offices) are entitled to own land plots in Belarus but with certain reservations.

2.1. Land Titles of Foreign Citizens

A foreign citizen may have a land plot on the lifetime inherited ownership title or on the private property title but only in accordance with the inheritance procedure. With that, it is necessary to observe the following conditions:

- the heir and the legator must be relatives (this means close relatives of the legator as well as other persons in family connection with the legator that have common ancestors up to great-grandparents);
- the inherited land plot must be in the private property of the legator (or be based on the lifetime inherited ownership title).

With that, it is necessary to take into consideration the fact that the land plot may be owned by the legator on the basis of the common (shared or joint) ownership title, therefore a foreign individual may inherit not the entire land plot but only its part that complies with the legator's share in the common property.

2.2. Land Titles of Foreign Entities

Land plots shall be provided to foreign entities and their representative offices in accordance with the results of the auction and only on the basis of leasing titles.

Auctions for the right to conclude lease agreements must be held by local executive committees or authorized governmental organizations. Auctions shall be public and no fee must be levied for participation.

The starting price of the land shall be determined based on its cadaster value using the coefficients depending on the term of the lease (the information about the planned auctions can always be found on the official website of the State Property Committee of the Republic of Belarus).

In general, the procedure of participation in an auction shall comprise of the following stages:

- the legal entity that is willing to take part in the auction applies to the arranger of the auction, pays the advance payment in amount determined by the arranger (in case of winning, the advance payment shall be set off in the cost of the auction item);
- the auction manager appointed by the auction arranger shall perform the auction, as a result of which the protocol of its results shall be signed;

- within 10 days after approval of the protocol of results of the auction, the auction winner shall be entitled to do the following:
 - make payment for the right to conclude the lease agreement for the land plot (the executive committee is entitled to provide an installment plan);
 - reimburse the expenses for arrangement and holding of the auction, including the expenses associated with drawing up and submission of the documentation required for holding of the auction;
 - meet the conditions provided in the resolution for withdrawal of the land plot for holding the auction and its submission to the auction winner.

After implementation of the aforementioned actions, the local executive committee shall conclude the land plot lease agreement with the winner. In case of evasion of the local executive committee from conclusion of the land plot lease agreement, the auction winner shall be entitled to address to the court with the request for forced conclusion of the agreement as well as of reimbursement of the losses incurred with avoidance of signing the agreement.

The signed land plot lease agreement and arising of the lease title based on it shall be subject to state registration in the territorial organization for state registration of real estate property at the location of the land plot.

The law contains cases when it is possible to get a land plot without holding an auction. In particular, such opportunity shall be provided to foreign legal entities in case of conclusion of an investment agreement between the investor and the Republic of Belarus. In case of letting land plots for lease in such occasions, no payment for the right to conclude lease agreements shall be levied.

In the course of conclusion of lease agreements, one must remember that the following actions shall be prohibited:

- transfer of land plots to lease for the purposes of construction of capital structures;
- transfer of rights and obligations under lease agreements for land plots leased for the aforementioned purposes before their owners receive title-setting documents for the capital structures located at these plots (these limitations shall not apply to the cases of transfer of rights and obligations under land plot lease agreement with incomplete capital structures on them put to long-term storage);
- transfer of land plots for lease in zones for private property for collective gardening near Minsk and regional centers, unless otherwise is determined by the President of the Republic of Belarus, transfer of titles and obligations under lease agreements for land plots leased for the specified purpose, including the land plots formed as a result of their separation, merging, until five years pass after the day of state registration of arising of titles for such land plots.

2.3. Pledging of Land Plots

One must pay attention to the fact that pledge-holders of land plots may be the banks that have a special permit (license) for performance of banking activities regarding performance of banking transaction for placement of raised funds on their own behalf and at their own expense of conditions of repayment, serviceability and definite term, the International Finance Corporation, the Eurasian Development Bank and the European Bank for Reconstruction and Development at the conclusion of loan agreements and (or) borrowing agreements by these organizations with residents of the Republic of Belarus.

In special cases determined with acts of the President of Belarus, other organizations may act as pledgers.

2.4. Land Tax

Land tax is levied on land plots, located in the territory of Belarus:

- belonging to individuals under the ownership title, lifetime inheritable possession or temporary use titles as well as being inherited;
- belonging to organizations under the ownership title, permanent or temporary use titles;
- provided for temporary use and not returned in due time according to the legislation, occupied self-willed or used inappropriately.

Taxable amount of land tax is generally defined in the amount of cadaster value of a land plot.

As a general rule, the taxable base of the land tax shall be determined in the amount of the cadaster cost of the land plot.

Tax rate of land tax depends on the functional designation of the land plot. Local councils of deputies have the right to increase (decrease) the rate of land tax for certain categories of taxpayers but in amount of not more than two and a half times bigger.

The rates of land tax on the actual functional use, increased by a ratio 10 are applied to land plots belonging to the land settlements provided for temporary use and not returned in a timely manner in accordance with the law, illegally occupied, used not for its intended purpose. The payment of land tax does not legitimize the unauthorized occupation of land plots. The rates of land tax increased by a ratio 2 are applied to land plots occupied by excess of construction projects in progress.

Tax period of land tax is a calendar year. Tax return (calculation) on the land tax in accordance with the results of the finished accounting period shall be submitted by the payer to tax authorities not later than February 20th of the current year, and payment of the tax shall be settled with one of the following methods: annually in the amount of the calculated amount per year – not later than on February 22nd of the current year or quarterly in the amount of one fourth of the annual amount – not later than on the 22nd day of the second month of each quarter. Peculiarities of payment of the land tax for lands of agricultural purpose: annually in the amount of the calculated amount per year – not later than on April 15th of the current year or not later than April 15th, July 15th, September 15th, November 15th – in the amount of one fourth of the annual amount of the land tax.

3. Regulation of Construction Activities in Belarus

Construction activities in Belarus is a special type of activity that may not be performed without supervision and without proper legal regulation and authorization on behalf of the state.

In connection with this, the permission, not notification procedure of performance of construction is established in Belarus. One of the most important conditions of performance of construction activities shall be availability of the certificate of conformity issued by the Ministry of Architecture and Construction of Belarus.

In general, arrangement of construction may be divided into the following stages:

- receipt of permit documentation for construction (the employer of construction must address the corresponding governmental bodies for allocation of the land plot and technical terms, receiving of opinions of approving organizations and architectural and planning statement of work, resolution of permission for performance of design and survey works and construction of the facility);
- development and approval of pre-design (pre-investment) documentation (such documentation is a set of documents of results of pre-investment studies that precede making the resolution of implementation of the investment project by the investor, correction of the investment concept or refusal from further implementation of the project; the documentation shall include justification of investments and statement of work for designing);
- development of design and estimation of documentation and performance of its state expertise (since 01.04.2014, the design documentation for the construction project is produced in one or two stages by the employer, while the parallel design and construction of the facility is not permitted, except for the cases established by the President of Belarus, for example, when there is a concluded investment agreement and approved architecture project, positive opinion of the state construction expertise shall be valid for the duration of the construction period of the project increased by one year; with that, the state expertise of design documentation for repair and modernization of buildings (separate rooms) and structures of production, agriculture, residential and public purpose, engineering solutions which do not affect the carrying capacity of structures shall not be obligatory);
- receiving of the permit for production of construction and installation works (issued to the employer by the corresponding executive committee in accordance with the territorial principle and valid for the term of designed duration of construction of the facility);
- conclusion of the construction agreement, which may occur only if the customer has the following:
 - permit documentation for design and erection of the facility issued by the local executive body (except for the case where the construction contract agreement provides for turnkey construction of the facility);
 - extracts from the registration log of the titles, limitations (encumbrances) of titles for land plot, at which construction will be performed;
 - design documentation undergone the state expertise and approved by the customer;

- certificates of conformity for performance of certain types of construction activities (in the course of construction of facilities of the 1 to 4 complexity grade).
- commissioning of the facility (arrangement of commissioning of the facility shall be performed by the developer, and in case of conclusion of the construction agreement, it shall be performed by the employer. A special committee shall be formed for commissioning of the facility that shall draw up commissioning with the statement of acceptance of the facility and the date of commissioning of the facility shall be the date of approval of the facility commissioning statement).



Renewables

RENEWABLES

Following the international trends, the Republic of Belarus actively supports producers of renewable energy having established incentives on the legislative level. With that, incentives must be applied to a rather wide range of sources: solar and wind energy, geothermal energy, natural water flows, wood fuel, biogas, as well as other energy sources not related to non-renewable types.

The major incentive provided by the state shall be acquisition of renewable energy with application of increasing and stimulating coefficients. At the same time, Belarus has introduced quotas for creation of facilities for energy production from renewable sources. Quotas for creation of facilities will be determined in the entire territory of Belarus for each energy source in particular. After the quotas are determined, their distribution between the companies shall be performed. The effective term of quotas shall be 3 years. If necessary, they shall be subject to correction. Quotas may be received by any candidate on the competitive basis, on condition that they get the biggest quantity of points between all candidates. Sale of renewable energy to the state and connection of the facilities for the use of renewable sources of energy to state-owned power grids shall be performed on the basis of the power purchase agreement concluded between the producers and the governmental power supply organizations. With that, the law guarantees unhindered and non-discriminative determination of the nearest point of state-owned power grids for the purposes of connection of the facilities.

Besides, if the necessity of modernization of state-owned power supply networks arises to ensure the possibility of connection of the facility to the nearest consumption point, the losses for modernization of such state-owned networks should be covered by a state-owned power supply organization, not by the investor.

Acquisition of renewable energy by the state shall be performed in accordance with the tariffs set for industrial and equivalent consumers with the connected capacity of up to 750 kV·A. Coefficients applied to the tariffs shall be differentiated depending on the type of renewable energy sources for the following:

- the facilities commissioned until 20.05.2015, or creation of which was performed on the basis of the investment agreements concluded before the date specified:

Energy type	The coefficient for the first ten (10) years after the day of commissioning of the facility	The coefficient for the following ten (10) years after the day of commissioning of the facility	Over 20 years of operation of units
Wind energy	1.3	0.85	0.45
Energy of natural circulation of water flows	1.1	0.85	0.45
Energy of wood fuel and other types of biomass	1.3	0.85	0.6
Biogas	1.3	0.85	0.6
Solar energy	2.7	0.85	0.45
Energy of earth heat and other energy sources not attributed to renewable types	1.3	0.85	0.45

- the facilities commissioned within the period from 21.05.2015 to 20.08.2015, or created with the scope of the quotas distinguished in accordance with the procedure established for creation of facilities after 20.08.2015:

Energy type	The coefficient for the first ten (10) years after the day of commissioning of the facility		The coefficient for the following ten (10) years after the day of commissioning of the facility	Over 20 years of operation of facilities
	1.2 if the service life of the equipment is less than 5 years	1.05 if the service life of the equipment is more than 5 years		
Wind energy			0.75	0.45
Energy of natural circulation of water flows	Depending on the capacity (from 1.1 to 1.2)		0.75	0.45
Energy of wood fuel and other types of biomass	Depending on the capacity (from 1.2 to 1.3)		0.85	0.6
Biogas	Depending on the capacity (from 1.2 to 1.3)		0.85	0.6
Solar energy	Depending on the capacity (from 2.1 to 2.5)		0.75	0.45
Energy of earth heat and other energy sources not attributed to renewable types	Depending on the capacity (from 1.1 to 1.2)		0.75	0.45

The law also provides for the following tax exemptions:

- renewable energy facilities shall be exempted from the VAT when imported into the territory of the Republic of Belarus (the basis for the exemption shall be the opinion to classify the imported goods issued by the State Committee for Standardization of the Republic of Belarus);
- the land plots occupied with renewable energy facilities as well as land plots provided for the period of construction (reconstruction) of facilities shall be exempted from the land tax.

At present, alternative energy sources occupy a very small volume in the general structure of the energy market of Belarus. Therefore, Belarus has got the great potential in this sphere.



International trade

(currency regulation)

INTERNATIONAL TRADE (CURRENCY REGULATION)

In accordance with the legislation of the Republic of Belarus, all foreign currency transactions between residents and non-residents shall be subdivided into the following types:

- current foreign currency transactions (performed with no limitations, and no permit of the National Bank of the Republic of Belarus shall be required for their performance):
 - payments on transactions related to the export and (or) import of the goods (except for the monetary funds, securities, and real estate property), protected information, exclusive rights for results of intellectual activity, works, services;
 - payments on the transactions that provide for transfer and (or) receipt of the property for leasing;
 - transfer and receiving of dividends and other income on investments;
 - transactions of non-trading nature.
- foreign currency transactions associated with the flow of capital (foreign currency transactions not attributed to the current ones), that are performed depending on their type:
 - on the basis of the permit of the National Bank of the Republic of Belarus (acquisition of securities issued by non-residents from a non-resident, placement of funds in non-resident banks or transfer of funds to non-residents (except for non-resident banks) on conditions of custody, receiving of loans and (or) borrowings on certain conditions, etc.);
 - without a permit of the National Bank of the Republic of Belarus (sale of share in the authorized capital or a part in the resident's property to a non-resident, performance of transactions with securities issued by residents, formation of the share capital of a resident entity with contributions of non-residents in foreign currencies);
 - in accordance with the procedure of notification (transactions associated with circulation of capital not indicated in exhaustive lists of foreign currency transactions performed on the basis of permits or without a permit of the National Bank of the Republic of Belarus).

Legal entities and individual entrepreneurs that are residents of the Republic of Belarus shall perform obligatory sale of 30% of revenue in foreign currencies at the domestic foreign currencies market of the Republic of Belarus within 7 days after the date of receiving of such revenue. The list of the foreign currencies subject to obligatory selling shall be determined by the National Bank of the Republic of Belarus and shall include 22 types of currencies: euro, US dollar, Russian ruble, Norwegian krone, Swiss franc, zloty, Lithuanian lit, Latvian lat, Chinese yuan, etc.

The law of the Republic of Belarus shall also establish the list of objectives in accordance with which legal entities and individual entrepreneurs that are residents shall be entitled to purchase foreign currencies at the domestic foreign currency market of the Republic of Belarus. Such list shall be limited and shall include, for instance, settlement of payments on the transactions that provide for export and (or) import of goods, payment of expenses associated with trips beyond the border of the Republic of Belarus, settlement of payments to non-residents regarding payments of dividends and other income on investments, etc.

What concerns international sale agreements, special regulations are also provided, in particular, there are established terms within which the resident must ensure fulfillment of the payment obligations by the non-resident, if the resident is the first to fulfill their obligations:

- for export – not later than in 90 calendar days (not later than in 120 calendar days under commission agreements) after the date of shipment of the goods (transfer of the protected information and exclusive rights to IP objects), performance of works, rendering of services;
- for import – not later than in 60 calendar days after the date of settlement of payment.

In case of violation of the specified terms, the resident shall bear the liability in the form of a penalty in the amount of up to 2% of the transaction amount for each day of exceeding of the term. The penalty shall be paid for the benefit of the state.

Permissible methods of fulfillment of obligations under the contract shall also be established. The major method is receiving of goods, works, services, objects of intellectual property by the importer or payment from a non-resident to the exporter's account in the course of export. There are also other ways of termination of obligations (return of funds, goods, receiving of insurance indemnity).



Licenses

LICENSES

Certain types of activities shall be subject to licensing in the Republic of Belarus. In particular, the following types of activities are meant:

- advocacy;
- banking activities;
- veterinary activities;
- activities in the field of road transport (urban and suburban passenger road transport, long distance road transport of passengers and goods (vehicles that weigh more than 3.5 tons), passenger transportation by taxis);
- activities in the field of communications;
- activities in the field of gambling business;
- activities on rendering psychological assistance;
- activities associated with the impact on the environment (ozone-depleting substances, waste);
- activities associated with turnover of drugs, psychotropic substances and their precursors;
- activities associated with rehabilitation of children abroad;
- activities associated with employment beyond the territory of the Republic of Belarus, collection and distribution of the information about individuals for the purpose of their meeting;
- activities associated with production of alcohol, non-food, and alcohol-containing products, inedible ethyl alcohol and tobacco products;
- medical activities (since 01.03.2016 certain types of medicinal activities shall be performed without license);
- educational activities;
- legal services;
- wholesale and retail trade of petroleum products;
- wholesale trade and storage of alcohol, non-food, and alcohol-containing products, inedible ethyl alcohol and tobacco products;
- security activities;
- printing activities;
- retail trade with alcohol beverages and (or) tobacco products;
- insurance activities.

There is no need to get a license to perform other types of activities, including the following:

- retail trade (except for alcohol products, tobacco products, etc.);
- catering;
- construction activities (construction licensing, licensing in construction), etc.

In order to receive a license, it is necessary to pay the state duty and submit the package of documents to the licensing agency (depends on the type of activity): application, copies of constituent documents, certificates of state registration and other documents depending on the specific type of activity.

The documents must be reviewed by the licensing agency within 15 business days after the submission date. If it is necessary to perform evaluation or expertise, this term may be prolonged for the period of its performance but for not more than 10 business days. In accordance with the results of evaluation or expertise performed by the licensing body, a corresponding ground for issuance of the license or refusal from its issuance shall be drawn up.

The license shall be issued for the term of at least 5 and not more than 10 years. Subsequent prolongation shall be allowed. Since 01.03.2016 it is possible to get a perpetual license.



Enforcement of foreign court

and arbitration awards

ENFORCEMENT OF FOREIGN COURT AND ARBITRATION AWARDS

As a general rule, court (arbitration) awards shall be subject to enforcement in the country where the court that has taken such award is located. At the same time, there may arise the necessity in enforcement of the awards in other states, which, correspondingly, shall cause the necessity of addressing to the competent bodies of a foreign state.

The general scheme that allows enforcement of decisions (awards) of foreign governmental or commercial arbitration courts (hereinafter referred to as the decision of a foreign court) in the Republic of Belarus shall comprise of two consecutive steps: recognition of a decision of a foreign court and its enforcement.

Decisions of foreign courts shall be acknowledged in Belarus in the following cases:

- such procedure is provided with international treaties; or
- the principle of reciprocity is applicable.

In order to acknowledge a decision of a foreign court in the Republic of Belarus, the person (entity) in whose benefit the decision has been taken (or their authorized representative) must apply to the economic court at the location of the debtor for recognition and enforcement of the decision of a foreign court. The exact address of the debtor is always available in the unified state register of legal entities and individual entrepreneurs (USR). Review of the application by the economic court as well as receiving of information from the USR shall be subject to levying of the state duty in the amount of 10 and 1 basic values respectively.

After receiving of the corresponding application from the applicant, the economic court shall be obliged to review it within 1 month. The economic court shall arrange the trial with summoning of representatives of the parties for participation in the trial to review the application. In the course of the trial, the court shall not revise the taken decision of a foreign court but only determine availability or absence of the grounds for recognition and enforcement of such decision.

Special attention should be paid to the circumstances in the presence of which the Belarusian court will refuse to recognize the decision of a foreign court. In particular, the following circumstances shall be attributed to them:

- decision was taken in accordance with the law of the state in the territory of which it has been taken, if such law has not yet become legally effective (except for the cases stipulated with international treaties of Belarus);
- the applicant has not been properly notified of the time and place of review of the case or has not been able to submit their explanations to the court;
- the cases reviewed by the foreign court shall be attributed to the exclusive competence of the court in the Republic of Belarus;
- there is an enforced decision of the court in the Republic of Belarus regarding a similar case;
- there is a similar case reviewed by the Belarusian court;
- the period of limitation for enforcement (3 years) has expired and this term has not been recovered by the economic court;
- execution of the decision of a foreign court would be contrary to the public policy of the Republic of Belarus (in practice, economic courts of Belarus do not abuse this clause and recognize decisions of foreign courts not only on the basis of international treaties, but also on the basis of the principle of reciprocity, even in cases where other countries do not recognize and therefore do not enforce the decisions taken by courts in the Republic of Belarus).

In accordance with the results of review of the application, the economic court shall take the decision on recognition and enforcement of a decision of the foreign court and issue a special executive document (a court order) to the applicant.

International treaties signed by the Republic of Belarus with a number of countries may establish the procedure of enforcement of decisions of foreign courts without a recognition procedure. For instance, no recognition procedure for enforcement of decisions of economic (arbitration) courts shall be required in the territory of Belarus and Russia, it is only required to submit a properly registered executive document to the respective court.

The second stage on the way to enforcement of a decision of a foreign court is addressing to the bodies of forced execution in the Republic of Belarus.

In order to do this, the applicant must apply for institution of proceeding to a court enforcement officer responsible for

the district where the debtor is located. The original of executive document (court order) previously received by the applicant in the economic court of the Republic of Belarus must be enclosed to the application.

It should be noted that decisions of foreign courts may be submitted for enforcement not later than in 3 years after they have been taken (not after the day of their recognition in the Republic of Belarus).

After the moment of receiving of the application and the documents, the court enforcement officer shall institute proceedings against the debtor within three days. Documents may be returned to the applicant if there is at least one of the following grounds:

- the applicant and the debtor entered into a settlement agreement;
- the debtor has been liquidated and his liabilities have not been transferred to his successors;
- the limitation period for submission of the document for enforcement has expired;
- decision of the economic court of the Republic of Belarus on recognition of the decision of a foreign court has been canceled;
- the decision of a foreign court has been canceled;
- requirements to the form and content of the application for institution of proceeding have not been met;
- the debtor has been provided a delay or installment of execution of the court order;
- the debtor is in the bankruptcy procedure;
- the decision of liquidation has been taken regarding the debtor;
- there are other grounds determined by law.

Despite the well working mechanism of recognition and execution of decisions of foreign courts, actual execution and collection of the funds due to foreign creditors is complicated with the following number of factors: from financial standing of the debtor's company to intentional actions of the debtor and its managers aimed at evasion of enforcement of the court decision. In connection with this, we recommend to do the following prior to addressing the court for enforcement:

- check solvency of the debtor by all means available, including the request of the debtor's financial statements (but it must be kept in mind that in most cases the law does not require the debtor to provide such documents to their creditors);
- make sure the debtor has the funds that may be collected for the benefit of the creditor (unfortunately, due to existence of the bank secrecy institute, receiving of such information directly from the bank is impossible);
- request consultation from Belarusian lawyers regarding the issues of the possibility of enforcement of the decision of a foreign court;
- assess the expediency of debt collection through the court proceedings and the subsequent enforcement of the decision taken.

Qualified lawyers will always help you to assess the possibility of actual collection of the debts and take the right decision regarding your debtors.



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Arzinger & Partners

Established in 2006, Minsk office of Arzinger & Partners united a solid team of business-oriented lawyers constantly raising the bar for quality of legal services set by German attorney Dr. Rainer Arzinger back in 1990.

Building our success on efficiency and loyalty, we represent our clients in various industry sectors providing them with top-notch assistance, whether we deal with a routine solution or a complicated case that requires tailor-made legal advice based on deep experience and top legal knowledge.

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- attracting foreign labor
- HR audit

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- pre-dispute settlement
- representing interests in courts and arbitration institutions
- recognition and enforcement of foreign court rulings and arbitral awards

international trade

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