

# Rödl & Partner

## OFFERING GUIDANCE

DOING BUSINESS IN BELARUS

Riga, September 2019

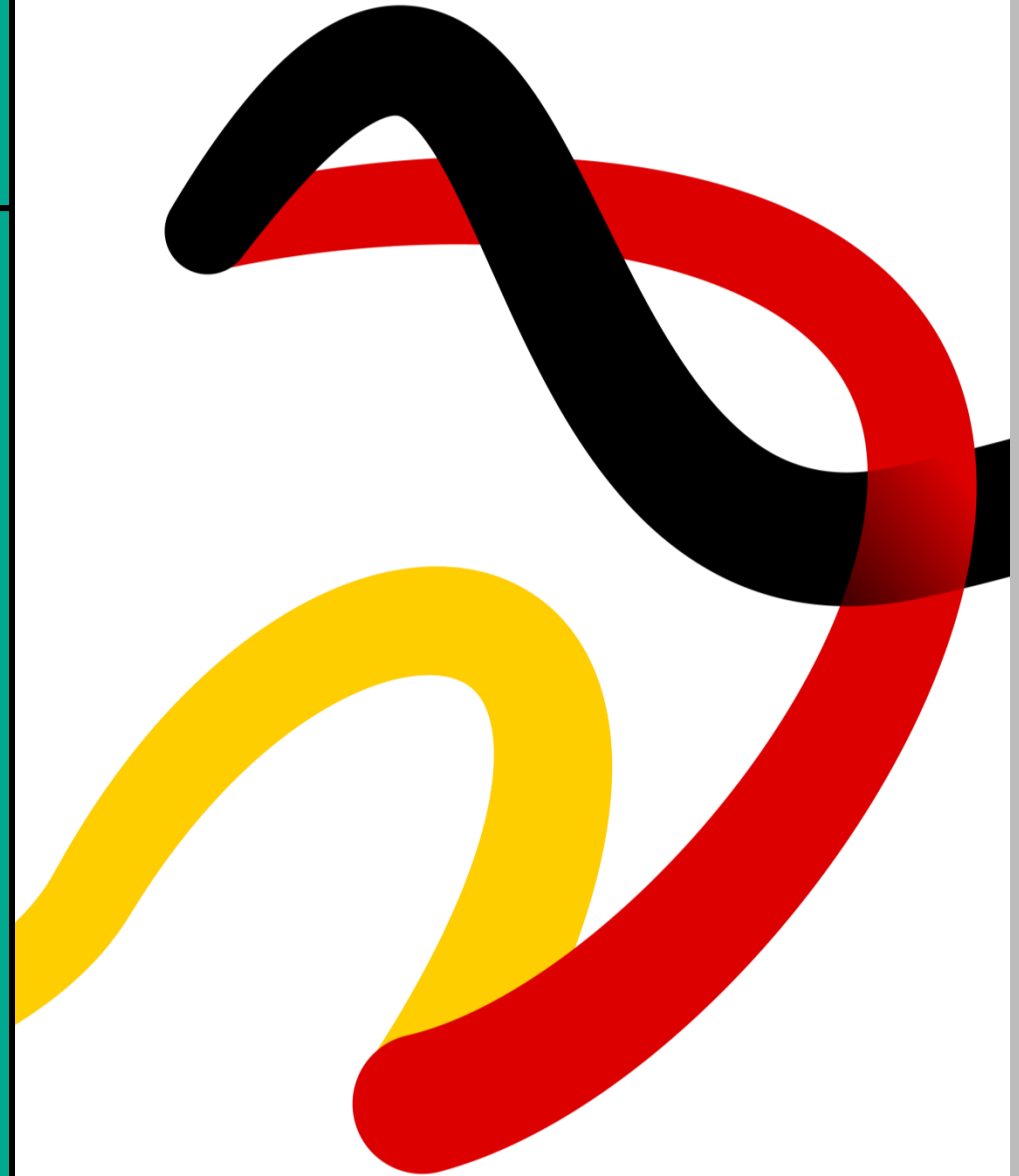




# WE ARE ONE-OF-A-KIND

## A SUCCESS STORY FROM GERMANY

- Founded in 1977 as a single practice in Nuremberg
- Worldwide 4,900 colleagues in 50 countries with 111 wholly-owned offices
- ONE firm, no network or franchise-system
- Your one-stop shop: legal, tax, tax declaration and BPO, management and IT-consulting, audit



# AN OVERVIEW OF OUR SERVICES

## ● Tax

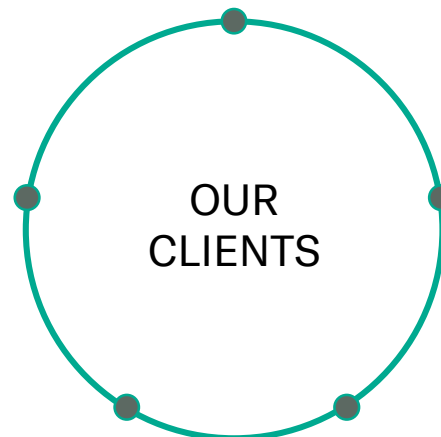
- Value added tax (VAT)
- Assertion of rights and defence
- Entrepreneurial family advisory
- High-net-worth individuals, top athletes
- International tax planning
- Transfer pricing
- Transactions
- Ongoing tax consulting

## ● Legal

- "Full-service" commercial law
- Corporate law
- Employment law
- Transactions
- Company succession
- Shareholder conflicts
- Assertion of rights
- Compliance, prevention and defence
- Public law

## ● Management and IT consulting

- Business process consulting
- Corporate finance
- ERP solutions SAP and Microsoft Dynamics AX
- IT outsourcing and cloud computing
- CRM solution Targenio



## ● Tax declaration and Business Process Outsourcing

- Financial accounting
- Payroll accounting
- Financial statements and declaration
- Ongoing consulting services
- Tax accounting

## ● Audit

- Audits of annual and consolidated financial statements, quarterly reviews
- Expert opinions, special audits and assurance services
- Financial and performance audits
- International accounting, reporting
- IT audits

Austria • Azerbaijan • Belarus • Brazil • Bulgaria • China • Croatia • Cyprus  
Czech Republic • Denmark • Estonia • Ethiopia • Finland • France • Georgia • Germany  
Hong Kong • Hungary • India • Indonesia • Italy • Kazakhstan • Kenya • Latvia  
Lithuania • Malaysia • Mexico • Moldova • Myanmar • Philippines • Poland • Portugal  
Romania • Russian Federation • Serbia • Singapore • Slovakia • Slovenia • South Africa  
Spain • Sweden • Switzerland • Thailand • Turkey • Ukraine • United Arab Emirates  
United Kingdom • USA • Uzbekistan • Vietnam



# RÖDL & PARTNER IN EUROPE (EXCLUDING GERMANY)

<u>Almaty</u>	<u>Copenhagen</u>	<u>Malmö</u>	<u>Sofia</u>	<u>Tampere</u>	<u>Vilnius</u>
<u>Baku</u>	<u>Cracow</u>	<u>Milan</u>	<u>St. Petersburg</u>	<u>Tashkent</u>	<u>Warsaw</u>
<u>Barcelona</u>	<u>Gdansk</u>	<u>Minsk</u>	<u>Stockholm</u>	<u>Tiflis</u>	<u>Wroclaw</u>
<u>Belgrade</u>	<u>Gliwice</u>	<u>Moscow</u>	<u>Strasbourg</u>	<u>Timișoara</u>	<u>Zagreb</u>
<u>Birmingham</u>	<u>Helsinki</u>	<u>Padua</u>	<u>Tallinn</u>	<u>Vienna</u>	<u>Zurich</u>
<u>Bolzano</u>	<u>Istanbul</u>	<u>Paris</u>			
<u>Bratislava</u>	<u>Izmir</u>	<u>Plovdiv</u>			
<u>Brno</u>	<u>Kiev</u>	<u>Poznań</u>			
<u>Bucharest</u>	<u>Limassol</u>	<u>Porto</u>			
<u>Budapest</u>	<u>Lisbon</u>	<u>Prague</u>			
<u>Charkiw</u>	<u>Linz</u>	<u>Riga</u>			
<u>Chișinău</u>	<u>Ljubljana</u>	<u>Rome</u>			
<u>Cluj</u>	<u>Madrid</u>	<u>Sibiu</u>			

# RÖDL & PARTNER IN BELARUS

Rödl & Partner has become the first German consulting firm to obtain the license for legal consulting and audit services in Belarus in 2007.

Since then, Rödl & Partner has been providing the full range of advisory services in Belarus as “One-Stop-Shop” for more than 10 years.

Our spheres of expertise include legal advice (particularly, as related to foreign direct investment, cross-border construction and installation works), tax compliance and optimised tax planning, audit and accounting services.

Our clientele includes the largest international corporations, listed companies, as well as owner-managed small and medium-sized enterprises.

In addition to native Russian and Belarusian, 30 specialists currently employed are also fluent in German and/or English and have many-years’ experience in assisting and advising international businesses.





# OUR SUCCESS

---

## INTERDISCIPLINARITY

We guarantee efficiency through a project team.

---

## CARETAKER PRINCIPLE

You have ONE responsible contact person.

---

## INTERNATIONAL APPROACH

Worldwide, we are at home with wholly-owned offices.

---

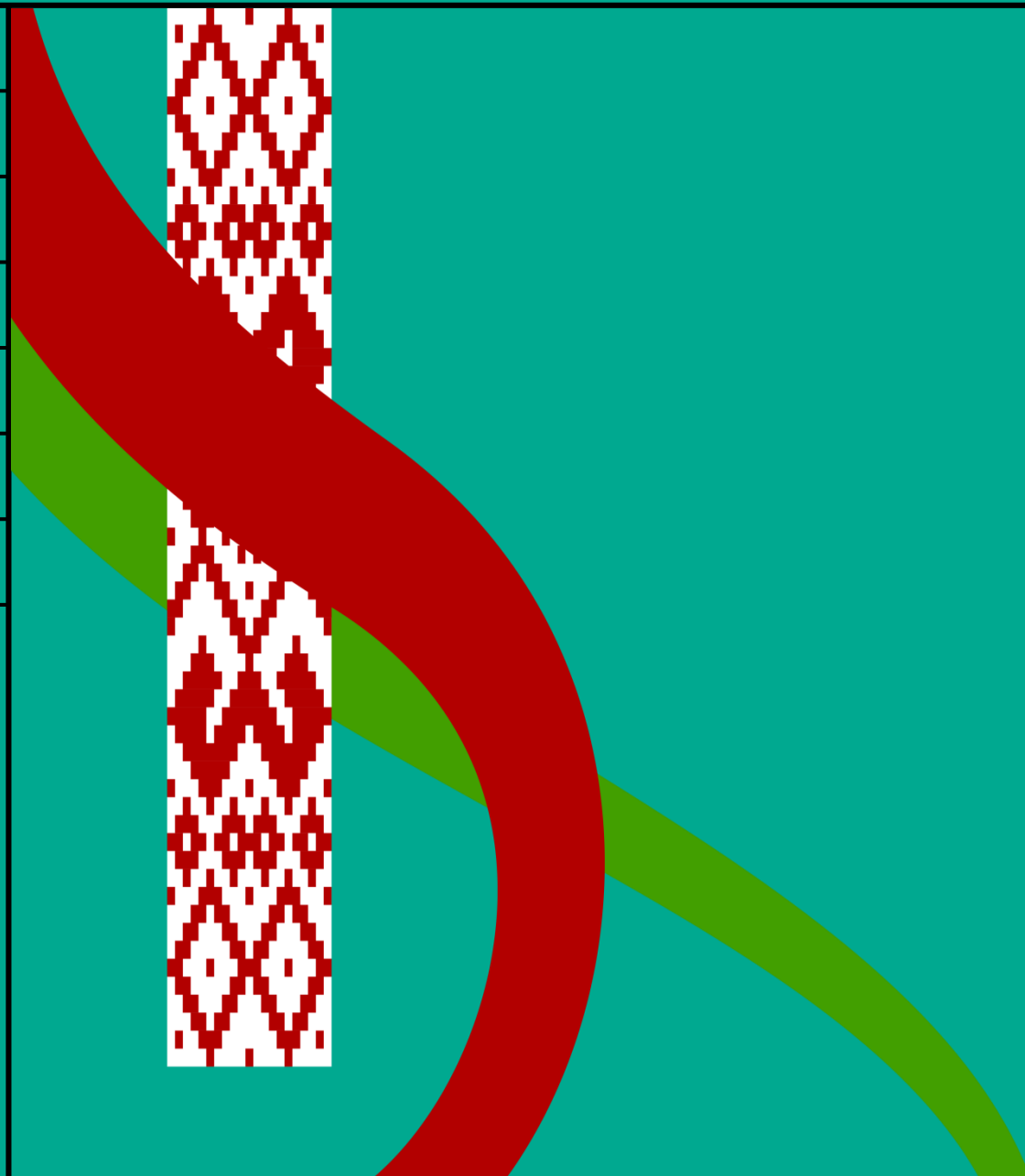
## CLIENT ORIENTATION

Practice- and demand-oriented advisory.



# AGENDA

- 1 Belarus: key facts
- 2 Business structuring
- 3 Legal issues
- 4 Incentive regimes
- 5 Taxation hot topics
- 6 Rödl & Partner Belarus
- 7 Contacts



# BELARUS: KEY FACTS

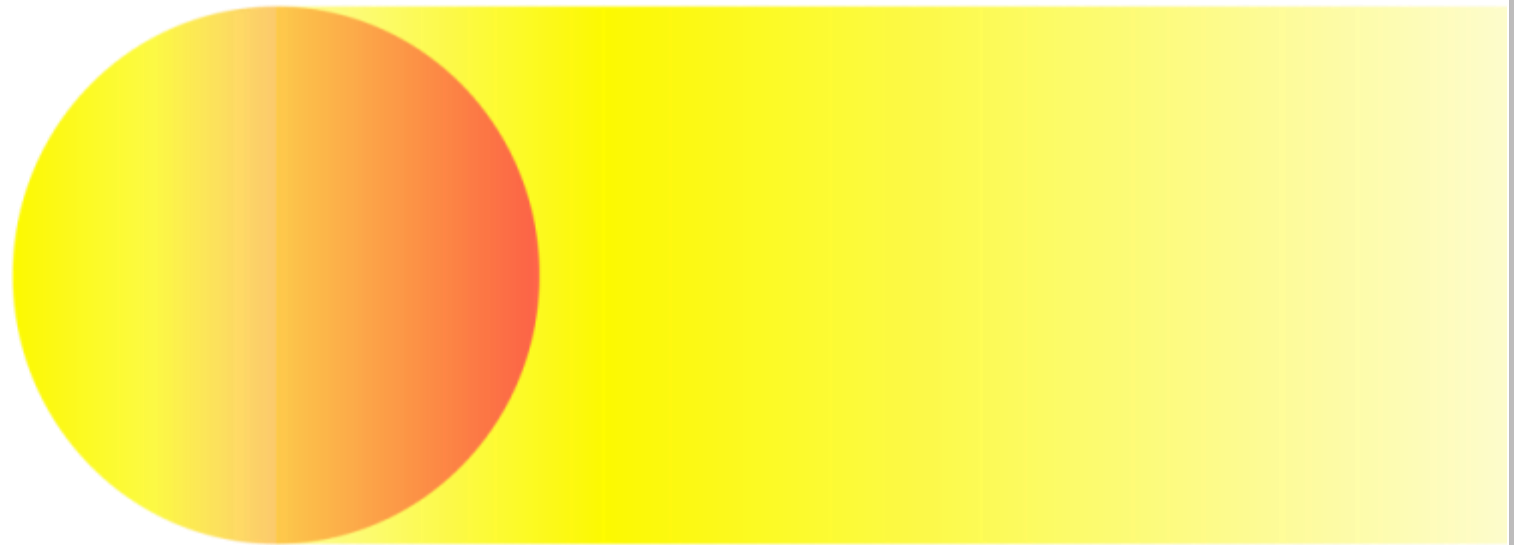
1.1 More chances than risks

1.2 Belarus in the EAEU

1.3 Investment protection: national level

1.4 Investments: special legal protection

1.5 Examination and planning before market entry



# 1.1 BELARUS: MORE CHANCES THAN RISKS

## COMPETITIVE EDGE

- Excellent opportunities for EU companies / products / services
- An export-led economy
- A bridge between West and East, North and South
- Member state of the Eurasian Economic Union (“EAEU”) – Common economic area / Customs Union
- Multiple incentives for investors, unique opportunities for doing business
- 37th in Ease of Doing Business Rank (*World Bank Doing Business*)
- Dominant market positions are easy to be reached
- Comparatively low real estate prices and wages
- Statutory legal guarantees for investors
- Generally no sanctions / embargoes



## 1.2 BELARUS IN THE EAEU



### ACCESS TO THE 186-MILLION MARKET OF 5 COUNTRIES

#### THE EURASIAN ECONOMIC UNION:

- Unified customs territory (no customs fees are levied in the mutual trade within the EAEU)
- Common employment market (no work permit is required for hiring of the EAEU citizens in the Republic of Belarus)

#### EAEU – member-states

- Armenia
- Belarus
- Kazakhstan
- Kyrgyzstan
- Russian Federation

In the vast majority of cases only a resident of the EAEU may act as the customs applicant (i.e. perform customs clearance)!

## 1.3 INVESTMENT PROTECTION: NATIONAL LEVEL

### DOMESTIC LAWS

The Law of the Republic of Belarus  
„On Investments“ dated 12.07.2013 No 53-Z:

- Vast range of investments (establishment of companies, purchase of shares) (Article 4)
- Prohibition of expropriation (Article 12)
- Protection of investment:
  - State of law guaranty: **rule of law**
  - Principle of **prevalence of international law**
  - **Principle of equality**: foreign and local investor
  - Free movement of capital: payment of dividends, transfer of profits
  - Guaranty of **legal protection** and access to the courts for foreign investors
  - **Prohibition of intervention**: in general it is forbidden for the state to intervene in private business



## 1.4 INVESTMENTS: SPECIAL LEGAL PROTECTION

- Over 60 bilateral treaties on the avoidance of double taxation (DTT)
- Over 60 bilateral investment treaties (BIT)
- Option to enter into individual investment agreement with the state, which provides for additional incentives
- Unique legal regimes for investors in different spheres of the economy
- Large-scale investors are especially welcomed
- Investment protection at the EAEU level





# 1.5 EXAMINATION AND PLANNING BEFORE MARKET ENTRY

## VAT:

- What is the VAT treatment?
  - Invoicing
  - VAT refund

## STRUCTURE:

- Relevant form of activity/company form
- Links to existing group of companies

## CIT/PIT:

- Which tax implications are triggered?
  - for the company
  - for the employees

## CONTROL:

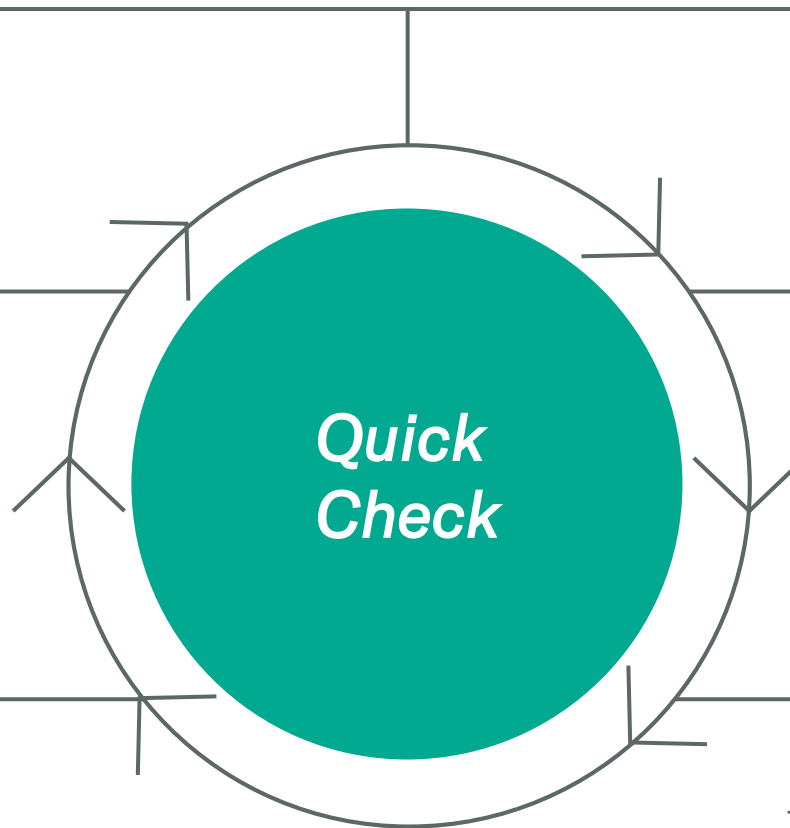
- How to ensure control  
(Director / Manager / Managing company)
- Accounting  
(Chief accountant / Accounting firm)

## FINANCING:

- What are the ways for financing of business?
- What conditions and restrictions should be observed?
- Currency regulations

## LICENSES / PERMITS:

- What are the prerequisites for commencement of the planned activity?



## Chances for incentives?

- Special incentive regimes
- Other incentive options

# BUSINESS STRUCTURING

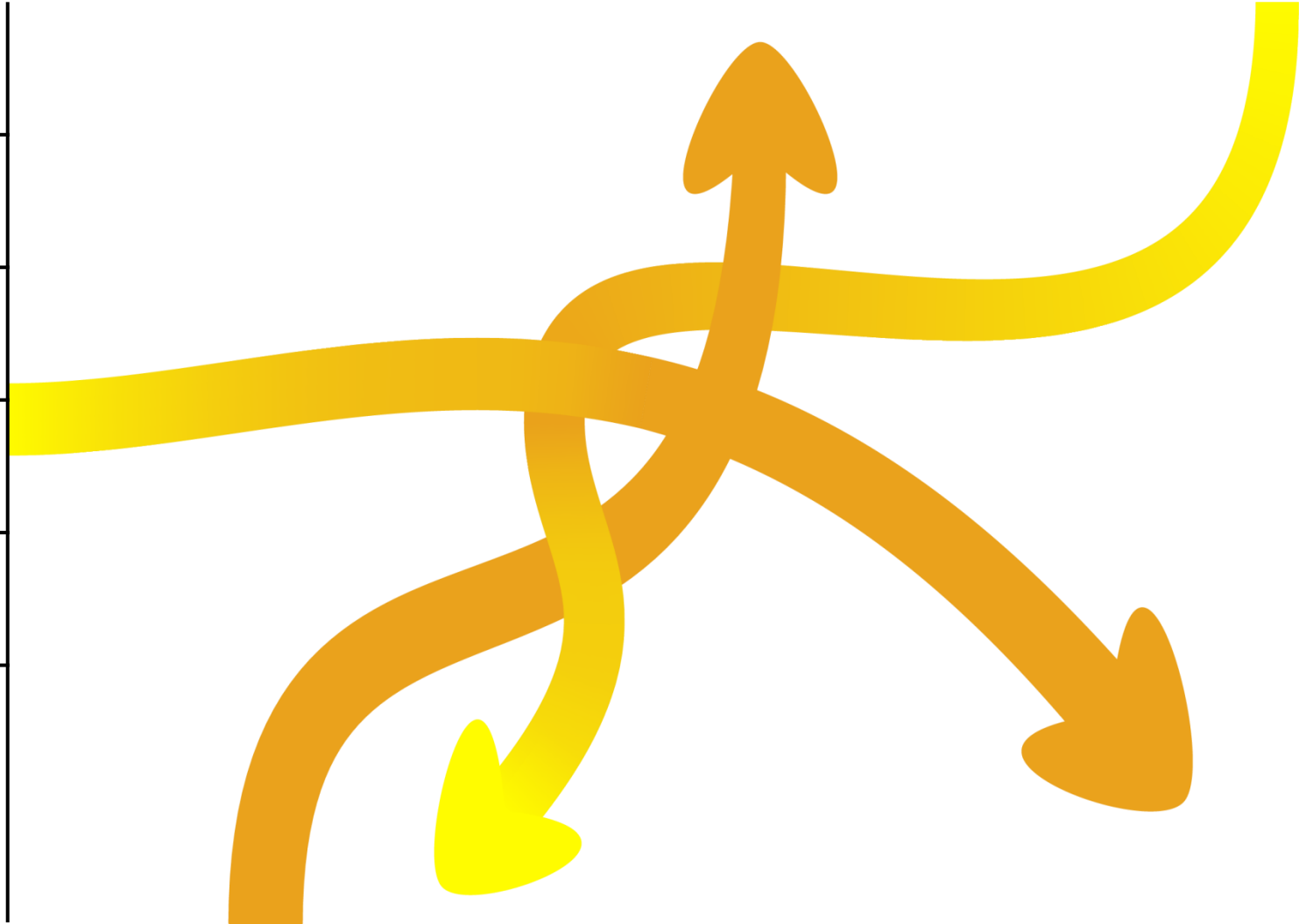
2.1 How can (should) I act?

2.2 Representative office

2.3 Direct activity (Permanent establishment)

2.4 Subsidiary

2.5 Subsidiary vs. Direct activity



## 2.1 HOW CAN (SHOULD) I ACT

### Direct activity

- Do the planned activities trigger a binding tax registration and/or necessity to register a permanent establishment?

### Subsidiary

- A limited liability company (OOO) is the most popular and practicable form of company in Belarus.

### Representative office

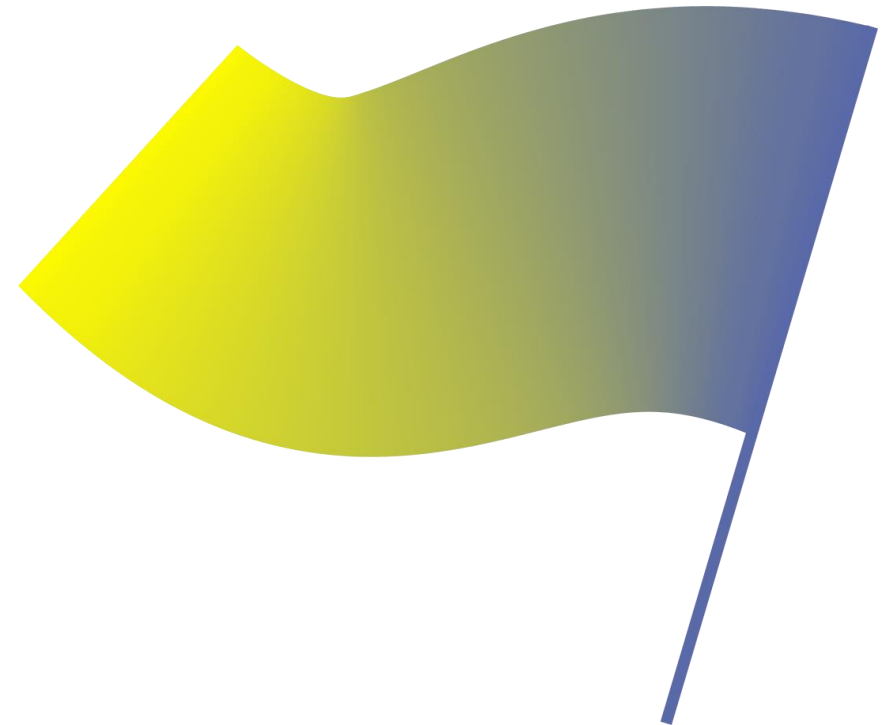
- May not be engaged in direct business activities, i.e. activities aimed at profit. Required for a foreign entity to obtain a license.



## 2.2 REPRESENTATIVE OFFICE

### A representative office

- Does not constitute a separate legal entity
- Is treated as the structural unit of a foreign business entity
- May perform customs clearance in regard to the goods, used for its own activities in Belarus
- May not be engaged in profit-oriented business activities
- Minimum registration period: 3 years
- State duty for registration – ca. EUR 2,000
- Mandatory tax audit at liquidation
- May act as a local employer



## 2.3 DIRECT ACTIVITY

- Rendering of services / performance of works is possible without founding a subsidiary
- Registration with tax office is required prior to launching a project or some regular and continuous business activity in case contractual timeline for provision of services/execution of construction works exceeds 180 days
- Tax registration is required by default for foreign companies – owners of Belarusian real estate
- In case a foreign business entity renders services in electronic form to natural persons in Belarus, the tax registration is required in virtue of the so-called Google-Law (simplified procedure applies)
- There may be required several tax registrations, in case the business activities are carried out in several regions



## 2.3 DIRECT ACTIVITY: PERMANENT ESTABLISHMENTS

- A permanent establishment is a tax status of a foreign entity in Belarus – not a structural unit, however, payment of taxes generally requires keeping books in accordance with the local GAAP, which entails the need for the documenting of the business transactions in accordance with the local requirements.

### WHAT MAY TRIGGER A PERMANENT ESTABLISHMENT RISK?

- Agency principle (dependent agent of a foreign company)
- The company's business activities are wholly or partially performed via a fixed place of business

### CAN THERE BE A TAX REGISTRATION WITHOUT A PERMANENT ESTABLISHMENT?

- Yes, due to a DTT (a VAT-payer, but not a CIT-payer)
- Yes, in special cases (Real estate tax; VAT, paid under the Google-Law)



### IMPORTANT

- No legal definition of the “fixed place of business” under the national law.
- No OECD interpretations are applied.
- In practice, the legal norm is used, according to which, if a foreign company authorises its agents/dealers to agree upon the key terms and conditions of the company's commercial arrangements in Belarus, the business activities carried out by the company in virtue of such commercial arrangements are treated as falling under a permanent establishment for tax purposes.

## 2.3 DIRECT ACTIVITY: PERMANENT ESTABLISHMENTS

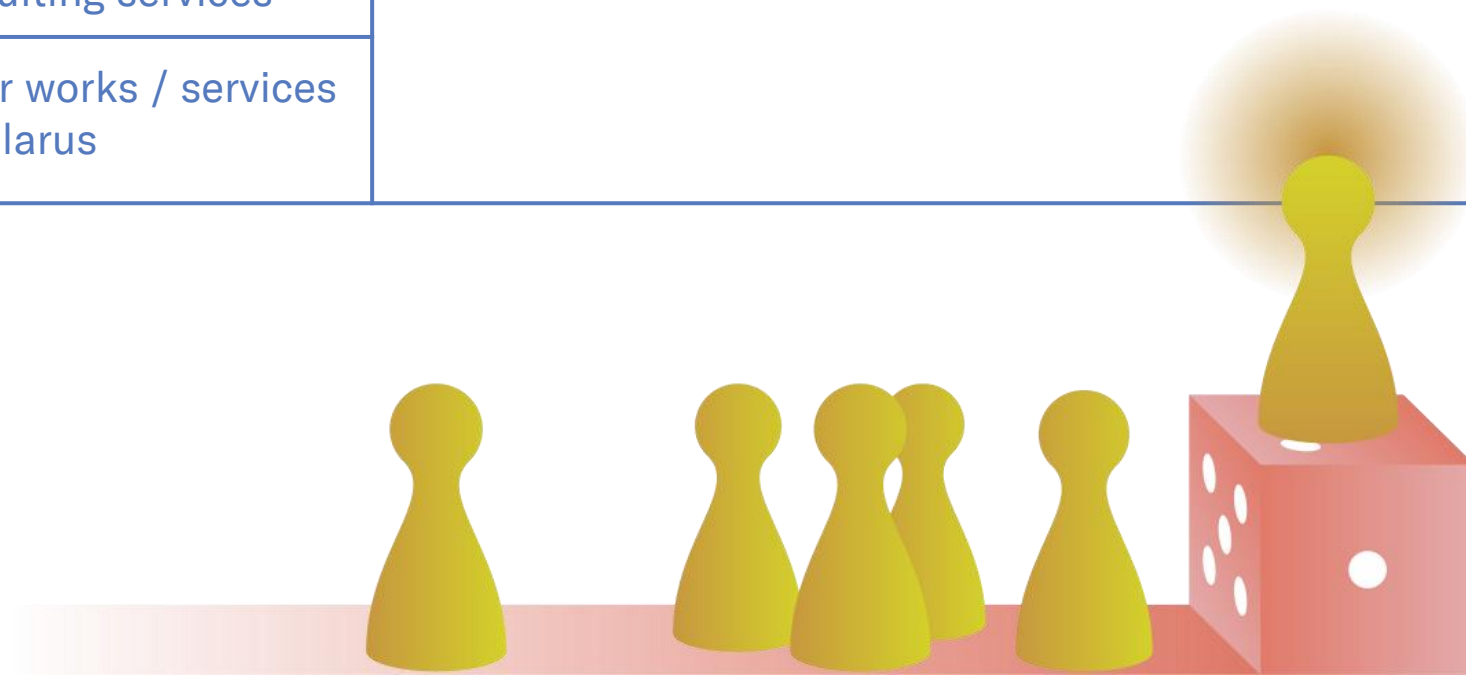
### DO-NOTs

- (a) An employee of a foreign company, who has his / her permanent place of work in Belarus,
  - (b) an employee of its Belarusian representative office,
  - (c) an employee of its Belarusian subsidiary,
  - (d) an employee of its dealer or business partner
- is authorised to agree the key terms and conditions of the company's commercial arrangements in Belarus and uses this authority.
- The expenses of the foreign company suggest, that its activities in Belarus fall under the definition of a permanent establishment (e.g. purchase of spare parts or construction materials).
  - The foreign company falls short of the proper defining of the moment of time the business activities are deemed started for the purpose of definition of the permanent establishment.



## 2.3 DIRECT ACTIVITY: PERMANENT ESTABLISHMENTS

Activities are performed for less than 180 days on aggregate in any 12-month period		
Activity	Corporate income tax in form of a direct tax (CIT) and in form of a withholding tax (WHT)	VAT
Construction activity and related supervisory or consulting services	CIT shall not be paid. In order to relief a Belarusian counterpart from the duty to withhold WHT, a certificate of residence should be provided in advance	Shall be paid by Belarusian counterpart in Reverse-charge
Other works / services in Belarus		





## 2.3 DIRECT ACTIVITY: PERMANENT ESTABLISHMENTS

Activities are performed for more than 180 days		
Activity	Corporate income tax in form of a direct tax (CIT) and in form of a withholding tax (WHT)	VAT
Construction activity and related supervisory or consulting services	The permanent establishment of a foreign company in Belarus is deemed occurred (in case construction site exists for more than 6 months); the company shall calculate and pay CIT starting from the day of commencement of its works. The foreign company acts as tax agent in regard to the WHT.	Shall be paid directly by foreign company (Reverse-charge for the foreign sub-contractors in case they have no tax registration in Belarus)
Other works / services in Belarus	As a general rule, CIT shall be paid as from the day of commencement of works/services *	

\* DTT between Latvia and Belarus does not define the period, which triggers creation of the permanent establishment in Belarus throughout rendering of works/services other than the constructions ones. In this case the criteria for creation of a permanent establishment of Latvian company shall be defined subject to the Tax code of the Republic of Belarus (i.e. performance of works/services in Belarus more than 180 days in a 12-month period).

## 2.4 SUBSIDIARY: TYPES OF COMPANIES

Company form	Number of shareholders	Min. share capital
OOO/ODO (LLC / additional liability company)	1-50	ca. EUR 0,005
ZAO (closed joint-stock company)	1-50	ca. EUR 1 050
OAO (open joint-stock company)	Min. 1. Max – no restrictions	ca. EUR 4 200
Unitary enterprise	1	ca. EUR 0,005

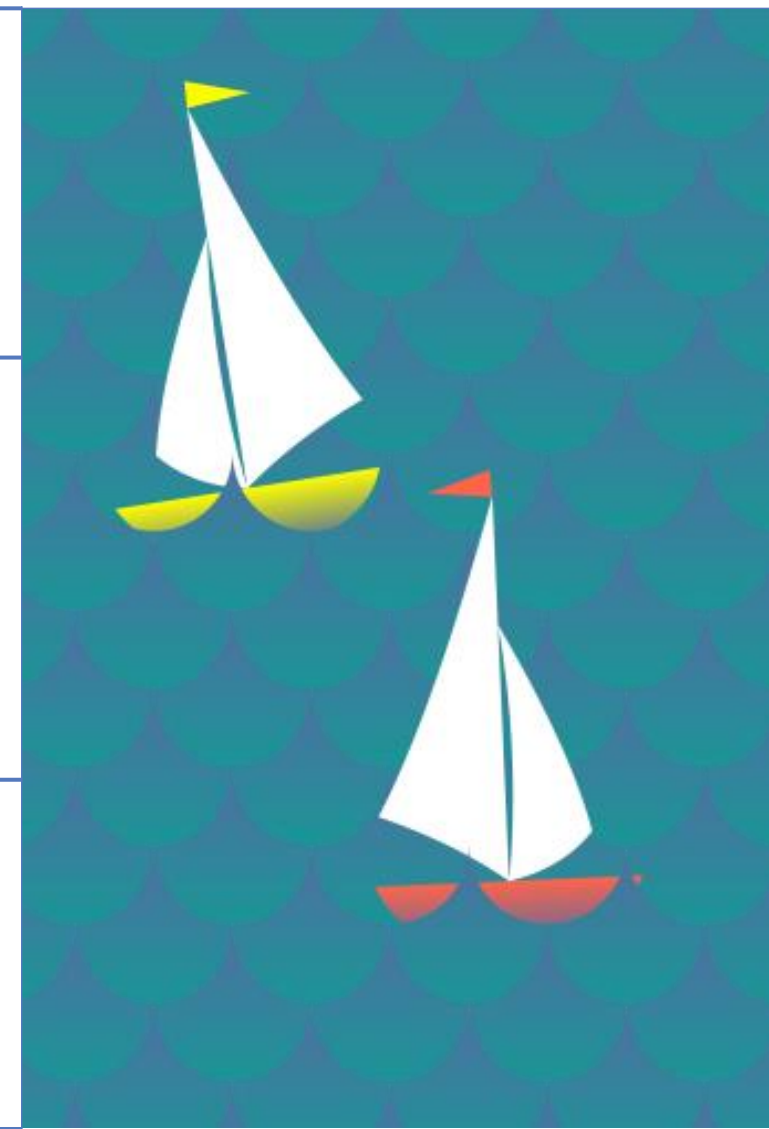
OOO (LLC) is the most popular entity among foreign investors to do business in Belarus.  
It takes about 7 business days to complete the founding of LLC provided that all the pre-registration activities are settled.

- The contributions into a share capital are allowed in a monetary and in-kind form as well as through contribution of property rights.
- A contribution in a form of property rights may not exceed 50% out of overall amount of the share capital.
- The share capital may be paid up in full within 1 year following the state registration.

## 2.4 SUBSIDIARY

### WHAT SHOULD I KNOW?

- It is not allowed for a limited liability company to be established by the sole shareholder in case the shares of the latter are also fully owned by a single shareholder
- Belarusian law allows having a corporate director (managing company) fulfilling the role of a managing director of a limited liability company on the basis of a service agreement
- A limited liability company must hire an accountant or an outsourced accounting company prior to setting up of bank accounts



## 2.4 SUBSIDIARY: SETTING OF LLC

### Step 1

- Execution of Powers of Attorney for representatives, obtaining legalised excerpts from commercial register/copies of passport with respect to founders
- Drafting founding documents

### Step 2

- Approval of the corporate name by a state registrar
- Choice of the company's premises (registered address)

### Step 3

- Execution of the founding documents.
- Appointment of the company's executive body and engagement of accountant

### Step 4

- State registration of the company

### Step 5

- Making the company seal (a seal is not mandatory, but indeed used on a common basis)
- Setting a bank account
- Obtaining the company e-signature

## 2.4 SUBSIDIARY: SETTING OF LLC

### CORPORATE GOVERNANCE

Supreme body	Supervisory board	Executive body	Controlling body
<ul style="list-style-type: none"> <li>– General shareholders' meeting (GSM)</li> <li>– In case a company consists of the sole shareholder, such shareholder shall exercise the functions of GSM</li> </ul>	<ul style="list-style-type: none"> <li>– Managing body of the LLC, which is elected by the GSM.</li> <li>– Acts within the powers vested thereto in virtue of the founding documents</li> <li>– <b>Not compulsory</b> in LLC</li> </ul>	<ul style="list-style-type: none"> <li>– Accountable before the GSM and exercises overall management of the LLC.</li> <li>– A Belarusian LLC may have <b>the only executive body</b></li> </ul>	<ul style="list-style-type: none"> <li>– Internal auditor/auditors</li> <li>– Primary duty – annual internal inspection of the company activity</li> <li>– From the practical prospective is appointed formally</li> </ul>

Managing bodies

Controlling body

## 2.4 SUBSIDIARY: DAY-TO-DAY MANAGEMENT



### Executive body (CEO)

- The company's director is simultaneously treated as the employee, work permit is required for non-Belarusian residents (except for the citizens of the EAEU member states).
- A local manager (sole entrepreneur) or managing company can be engaged under a civil-law service agreement instead of director.



### Representation powers

- A person other than chief executive may act on behalf of a company exclusively pursuant to a Power of Attorney.



### Accounting

- The company's accounting can be managed:
- By a chief accountant, being the company's employee; or
  - Outsourcing accounting firm/entrepreneur.

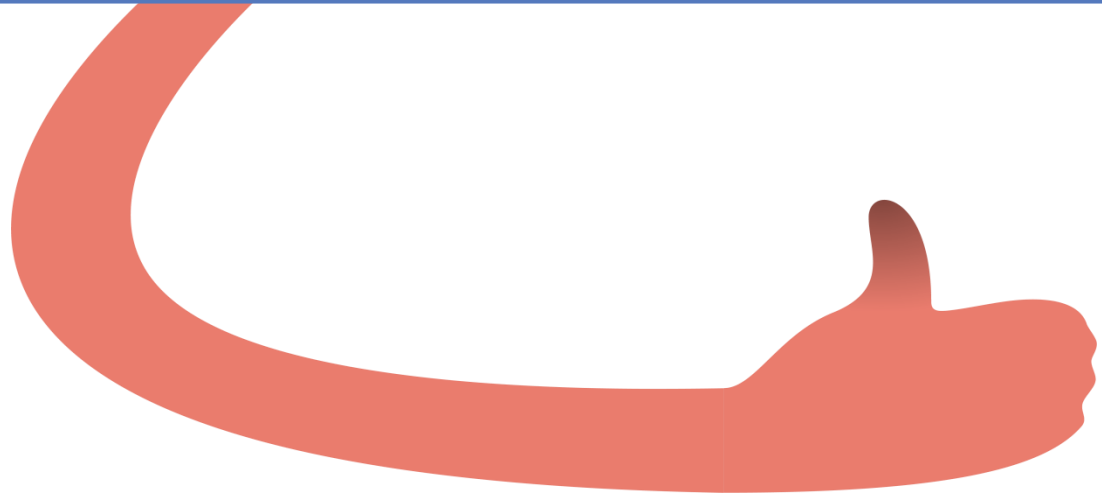
## 2.4 SUBSIDIARY: TAX RATES

Corporate income tax (CIT)	Standard rate: 18% (Banks, micro-financial organisations and insurance companies: 25%) Special rates apply for the CIT on dividends, paid to the taxpayer (company) by Belarusian companies (0-12%)
Personal income tax (PIT)	Employees: 13% (flat) Self-employed: 16%
Value added tax (VAT)	Standard rate: 20% Preferential rate for a limited list of goods: 10% Export: 0%
Real Estate tax (RET)	Standard rate: 1% out of the residual value as on January 1 <sup>st</sup> Can be reduced or doubled by local councils of deputies 0; 0,2; 0,4; 0,6; 0,8% - 1 <sup>st</sup> 5 years of operation for newly commissioned buildings
Land tax (LT)	Depends on cadastral value and function of a land plot (open information: <a href="http://map.nca.by">http://map.nca.by</a> )
Mandatory social security contributions (MSSC)	35% – 1% (employee) – 34% (employer) Upper limit for the basis for calculation: 5x the average salary in Belarus in the previous month

## 2.4 SUBSIDIARY: LV-BY DTT

Tax rates to be applied in Belarus as set forth in the double taxation treaty between Latvia and Belarus

Dividends	
Royalties	10%
Interests	





## 2.5 SUBSIDIARY VS. DIRECT ACTIVITY

### Pro Subsidiary

- Possibility for Joint-Venture
- Low permanent establishment risks
- Fast, easy and inexpensive to establish
- Asset security from unscrupulous business partners
- In the case of OOO / ODO and if at least one other shareholder exists: exit from the company is possible at any time
- Possibility to use Belarus as an entrance point to the market of EAEU (customs clearance possible)
- Loss carry-forward for 10 years
- Engagement of local employees possible



- A time-consuming liquidation procedure
- Expenses of the company operation are generally higher, than for a direct activity (more complicated accounting, mandatory legal address etc.)
- No direct transfer of costs of the mother company to Belarus possible
- Thin capitalisation rules apply

### Contra Subsidiary

# LEGAL ISSUES

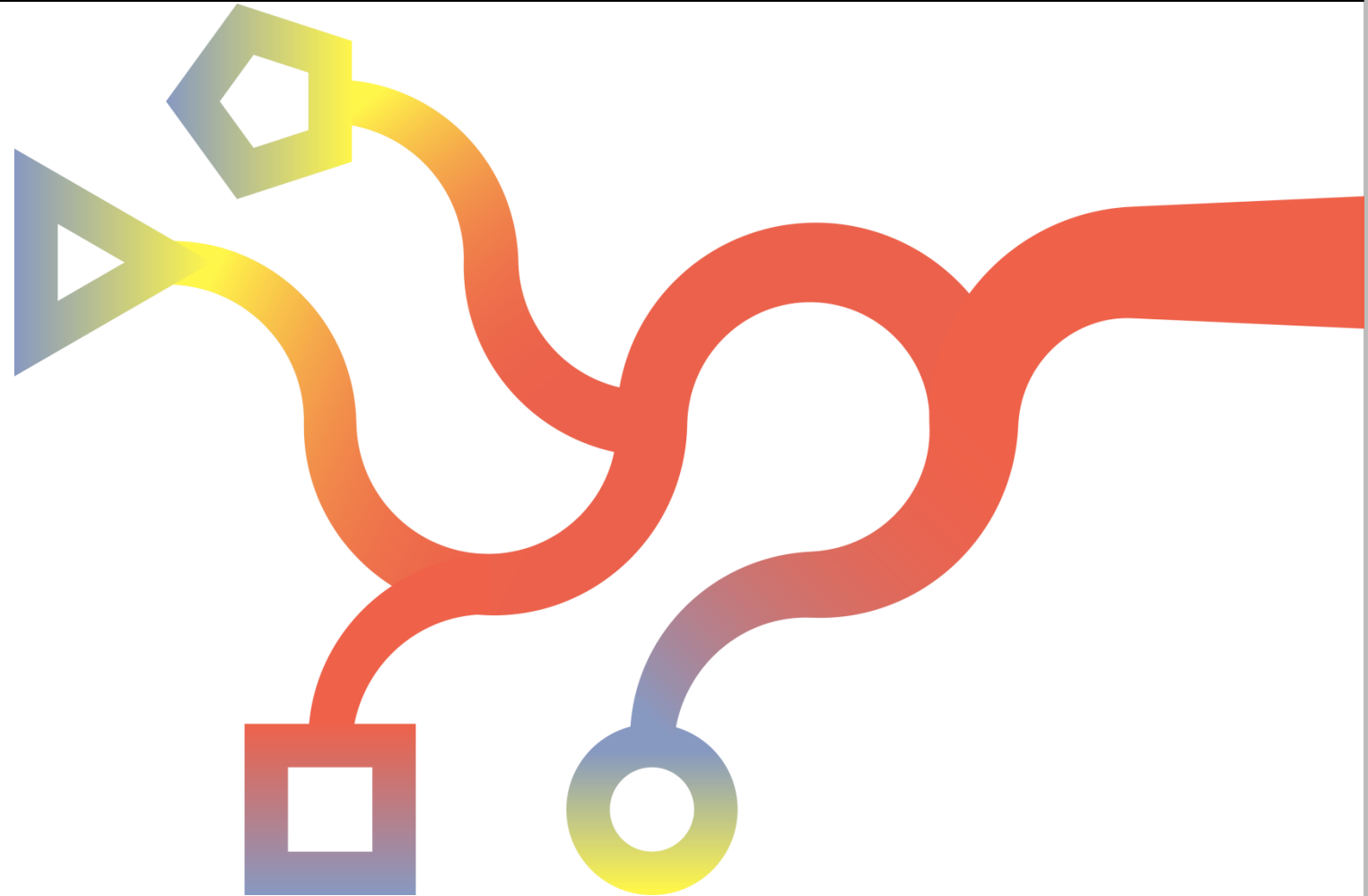
3.1 Employment

3.2 Currency regulations

3.3 Foreign trade transactions

3.4 Customs issues

3.5 Drafting contract



## 3.1 EMPLOYMENT: OVERVIEW

- Relatively cheap employment power (average monthly gross salary is ca. EUR 430)
- Formalised and employee-friendly regulations
- Termination of employment is only allowed subject to basis provided for by law
- Probation period – max 3 months
- Special rules for employment of foreign citizens
- Minimum annual paid leave – 24 days
- Minimum salary (gross) – ca. EUR 137

Please note:

Visa-free regime for the EU citizens does not apply to the ones arriving in Belarus for employment purposes; such citizens are required to obtain a consular visa in Belarussian embassy/consulate abroad

## 3.1 EMPLOYMENT: FOREIGN CITIZENS

### SUBSIDIARY

- A foreign citizen (except for the one of the EAEU member-states) may be employed by **Belarusian company** under the respective employment contract only subject to the work permit.
- Normally a work permit is issued for the term up to 1 year with the option of extension for a subsequent year.
- The employment contract with a foreign employee must comply with mandatory provisions of Belarusian employment and migration law and subject to registration with the Department of Citizenship and Migration.
- A foreign employee shall additionally receive:
  - Multiple entries visa;
  - Temporary residence permit (in case the planned duration of stay in Belarus exceeds 90 days in a year).

### DIRECT ACTIVITY

- As a general rule, it is prohibited to a **foreign company** assigning foreign citizens for the purposes of employment in Belarus **unless otherwise provided for in the special Presidential Edicts.**
- Unless employed, a foreign citizen is allowed to be assigned in Belarus up to 90 days in a year.
- A short-term visa for the purposes of business trips can be applied for.

## 3.2 CURRENCY REGULATIONS

### INTRA-RESIDENTS PAYMENTS

- Payments between residents shall be made in Belarusian roubles
- Representative offices of foreign companies and foreign companies which operate in Belarus directly, may use foreign currency
- The payments between residents may be effected in foreign currency in exceptional cases


### REFERENCE PRICE

- Residents can agree the price rates in foreign currency in a contract
- However, in this case, they shall always make payments in a corresponding amount in Belarusian roubles
- All transactions in foreign currency or in Belarusian roubles between nationals and foreigners are considered as currency transactions



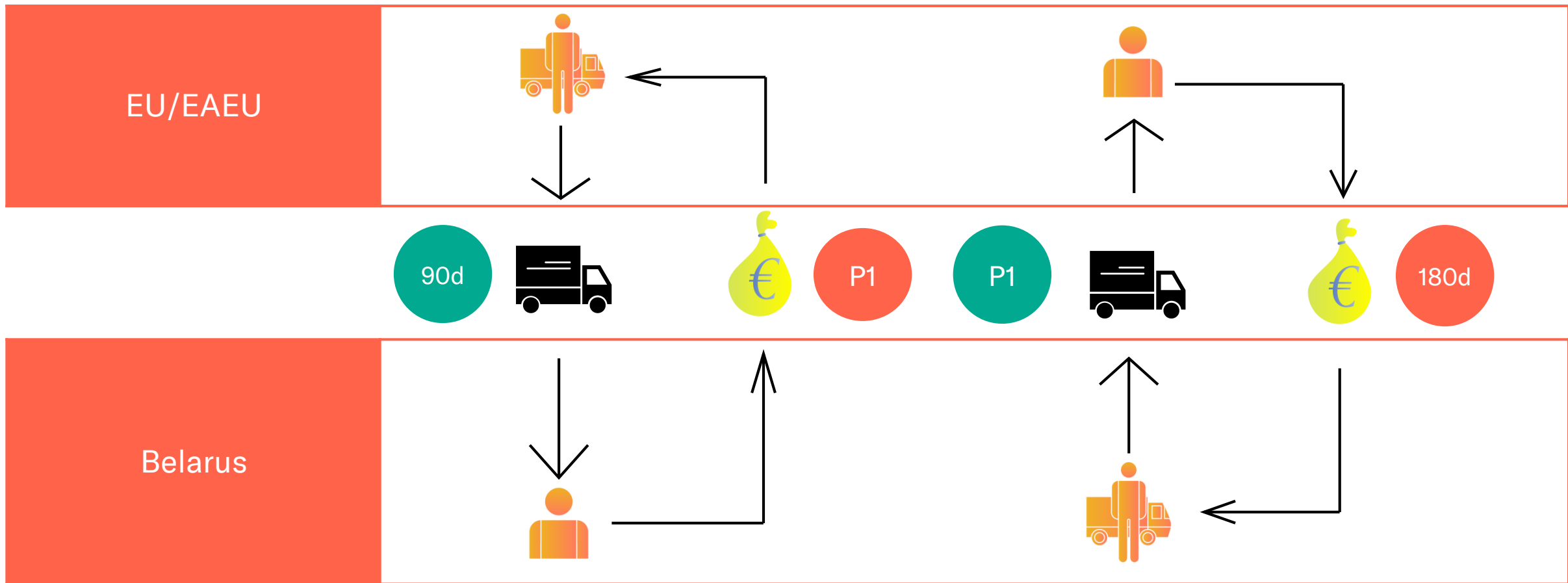
## 3.2 CURRENCY REGULATIONS

### CURRENCY TRANSACTIONS



ONGOING TRANSACTIONS	CAPITAL TRANSACTIONS (NATURAL PERSONS)	CAPITAL TRANSACTIONS (ENTREPRENEURS)
<p>As a general rule are performed with no restrictions and comprise, inter alia:</p> <ul style="list-style-type: none"><li>– Payments upon sale and purchase agreements/service agreements</li><li>– Remittance of dividends</li><li>– Payment of duties</li></ul>	<p>Certain operations require the clearance of the National Bank, inter alia:</p> <ul style="list-style-type: none"><li>– acquisition of stocks/shares in foreign company;</li><li>– acquisition of immovable assets abroad</li></ul> <p>Other capital transactions except for the ones directly defined by law are performed without restrictions</p>	<p>Without permit of the National Bank, but subject to registration of transaction with a commercial bank – with respect to particular operations, inter alia:</p> <ul style="list-style-type: none"><li>– receipt of loan from foreigners;</li><li>– provision of loan to foreigners;</li><li>– acquisition of stocks/shares in foreign company;</li><li>– acquisition of immovable assets abroad.</li></ul> <p>Without notification or permit of the National bank of the Republic of Belarus (e.g. disposal of shares in Belarusian company to a foreign resident)</p> <p>Subject to notice of the Republic of Belarus – the other capital transactions</p>

### 3.3 FOREIGN-TRADE TRANSACTIONS



Import in Belarus: goods must be shipped (works performed) within 90 days upon payment

Export from Belarus: remuneration must be received within 180 days following dispatch of goods (performance of works)

## 3.4 CUSTOMS ISSUES

- Electronic customs declaration of the goods to be imported
- Clearance of goods shall be performed within **4 hours** following registration of the customs declaration
- In the vast majority of cases a EU company may not act as the customs declarant and therefore:
  - involvement of local partner is required for delivery of goods in Belarus;
  - DDP Incoterms clauses in the contract on delivery of goods into Belarus from the EU are initially unenforceable





## 3.5 DRAFTING CONTRACT

### AUTHORISATIONS

- Verify credentials and corporate authorisations in advance

### KYC

- Do always procure careful examination of your local counterparty prior to engagement

### PRICE

- Indicate whether the price is listed net or gross

### PERMANENT ESTABLISHMENT & TAX REGISTRATION

- The risks must be carefully assessed in advance

### PREPAYMENT

- Goods & services should be supplied/rendered against decent prepayment.
- A deferred payment can be agreed upon subject to credible assurance (e.g. letter of credit, bank guarantee etc.)

### WHT

- In order to rely upon the provisions of DTT, a certificate of residence should be obtained

## 3.5 DRAFTING CONTRACT

### AUTHORISATIONS

- Verify credentials and corporate authorisations in advance

### KYC

- Do always procure careful examination of your local counterparty prior to engagement

### PRICE

- Indicate whether the price is listed net or gross

### PERMANENT ESTABLISHMENT & TAX REGISTRATION

- The risks must be carefully assessed in advance

### PREPAYMENT

- Goods & services should be supplied/rendered against decent prepayment.
- A deferred payment can be agreed upon subject to credible assurance (e.g. letter of credit, bank guarantee etc.)

### WHT

- In order to rely upon the provisions of DTT, a certificate of residence should be obtained

## 3.5 DRAFTING CONTRACT

### LANGUAGE

- Do always specify which language shall have prevailing force
- Keep in mind the possible arbitration venue

### VAT

- Contract splitting for
  - delivery of goods
  - services subject to Belarusian VAT
  - services not subject to Belarusian VAT

### WORDING AND ATTACHMENTS

- Use careful and detailed wording, Boilerplate clauses (e.g. force majeure, confidentiality, legal succession, change of control)
- In case a draft of acceptance certificate is attached, it **must** be in line with the local legal provisions

### COMPLIANCE

- A contract must comply with mandatory provisions of Belarus law regardless the chosen applicable law
- Currency control regulations should be observed



### ARBITRATION

- Special attention should be paid to the enforceability of court decisions
- In many cases an arbitration court is a viable solution

# TAX INCENTIVES

4.1 Investment contracts

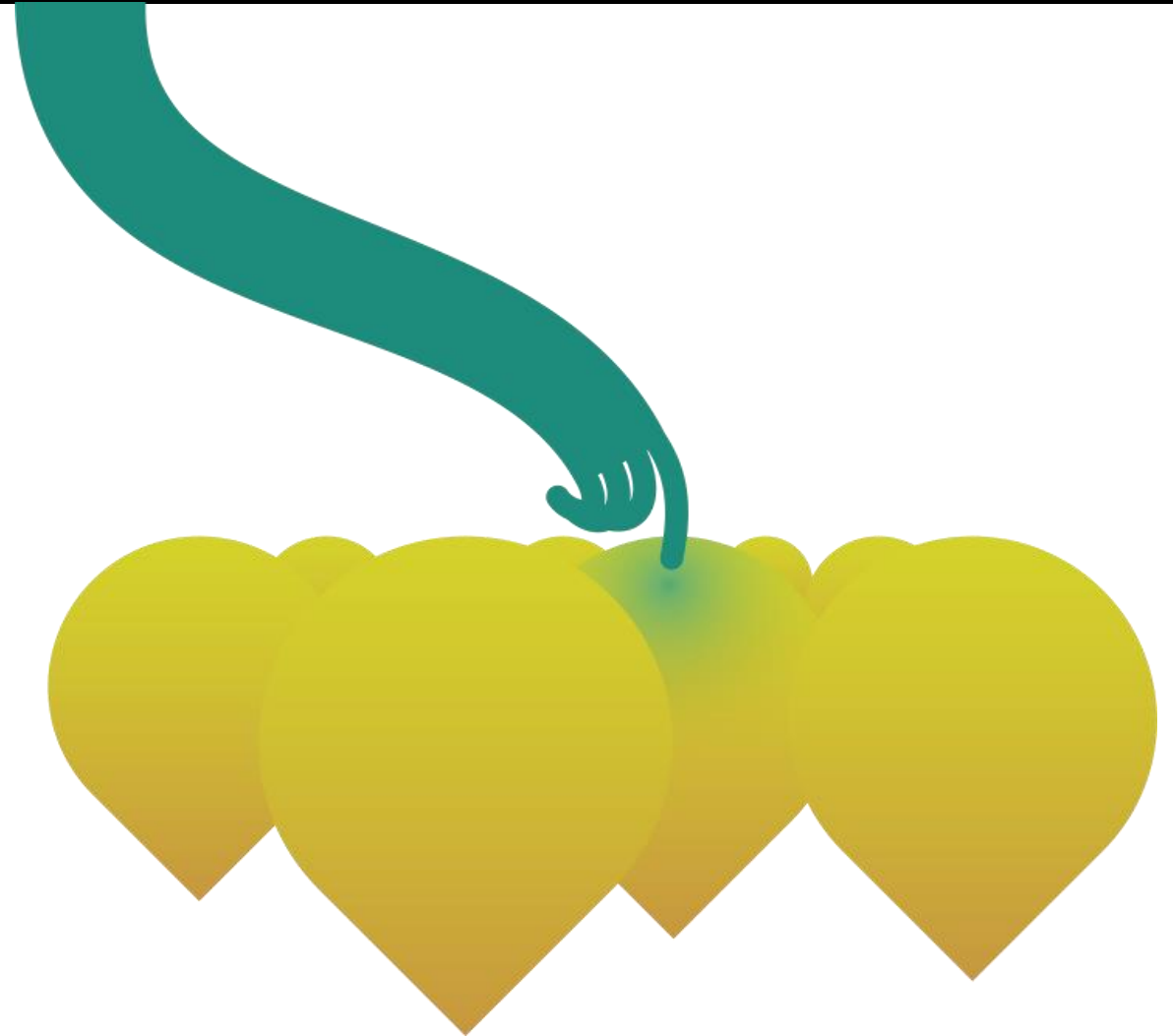
4.2 Industrial park “Great Stone”

4.3 Free Economic Zones

4.4 Hi-Tech Park

4.5 Business in rural areas and small towns

4.6 Specific Investment regime:  
Orshansky region



## 4.1 INVESTMENT CONTRACT

### BILATERAL INVESTOR-STATE COOPERATION

Investment contract may be concluded for implementation of the project in **priority business areas**, inter alia, as follows:

- IT and communication;
- Logistics;
- Railway and air transportation;
- Metallurgy;
- Mechanic engineering;
- Production of electronic equipment;
- Consumer services

The territory for doing business can be chosen upon discretion of the investor.



## 4.1 INVESTMENT CONTRACT

### STANDARDISED INVESTMENT CONTRACT

- Provides exclusively for incentives defined by law
- To be concluded on behalf of the Republic of Belarus by local state executive committee

### TAILOR-MADE INVESTMENT CONTRACT

- May provide for extra incentives other than the ones provided for by law
- To be concluded on behalf of the Republic of Belarus by the Government (Council of Ministers of the Republic of Belarus) subject to the consent of the President of the Republic of Belarus
- Business-plan for implementation of investment project is required



## 4.1 INVESTMENT CONTRACT

Provision of land plots for construction of objects stipulated in the investment contract **without public auction**



**Exemption from import customs duties and VAT** for the technological equipment and spare parts thereto to be used for implementation of the investment project. In order to apply such incentives an official confirmation on the targeted purpose of such equipment shall be sought in advance

## 4.2 GREAT STONE

### UNIQUE INCENTIVE REGIME

- Established as a result of mutual cooperation of China and Belarus
- Economic zone with widest range of incentives in Belarus
- Incentive regime lasts up to the year 2062
- Most Favoured Nation treatment (MFN) as compared to the rest regimes of doing business in Belarus
- One-of-the-kind in the entire territory of the EAEU





## 4.2 GREAT STONE

Tax incentives

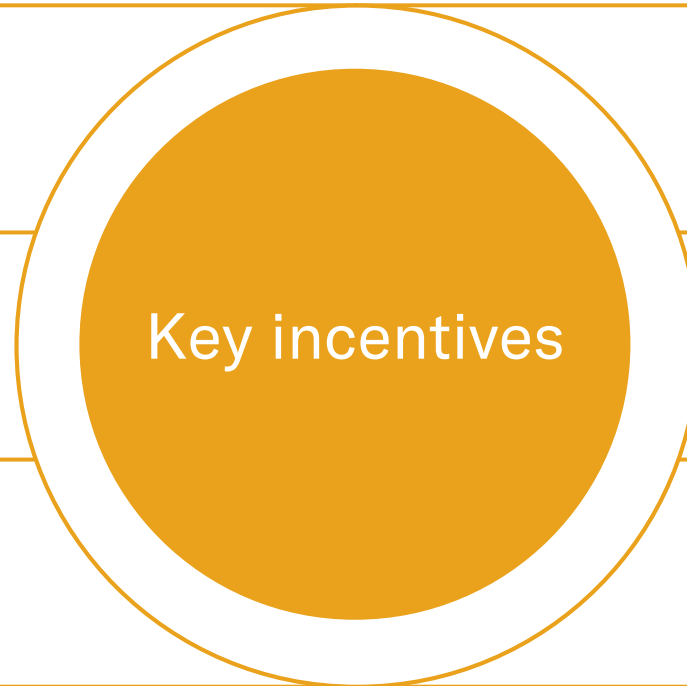
Reliefs in construction activities

Customs preferences

Simplified procedure  
on employment of foreign citizens

Stability of laws guarantee

Relieves in currency regulations



## 4.2 GREAT STONE

### TAX INCENTIVES



## 4.2 GREAT STONE

### TAX INCENTIVES

PIT for employees of the Great Stone Residents	9% (standard rate 13%)
VAT	Exemption from VAT out of the certain services acquired by the Great Stone resident from foreign companies (legal, audit, accounting, marketing services)
Social security contributions for employees of the Great Stone Residents	Decreased basis for calculation: social security contributions are not charged on the income in excess of the average salary accrued in Belarus for the preceding month

### WHO MAY APPLY?

#### Great Stone Resident

```
graph TD; A[Great Stone Resident] --> B[Legal entity registered in the territory of the Great Stone]; A --> C[Planned activity:]; B --> D[Volume of investments:]; D --> D1[EUR 5 Mio]; D --> D2[500 kEUR - in case the planned project covers scientific and technological activity]; D --> D3[500 kEUR - in case the investments in other areas are to be provided within 3 years]; C --> C1[Electronic and telecommunication]; C --> C2[Pharm industry]; C --> C3[Fine chemie]; C --> C4[Biotechnologies]; C --> C5[Mechanical engineering]; C --> C6[New materials]; C --> C7[Complex logistics]; C --> C8[E-commerce]; C --> C9[Big Data]; C --> C10[Scientific and technological activity]
```

Legal entity registered in the territory of the Great Stone

#### Volume of investments:

- EUR 5 Mio
- 500 kEUR – in case the planned project covers scientific and technological activity
- 500 kEUR – in case the investments in other areas are to be provided within 3 years

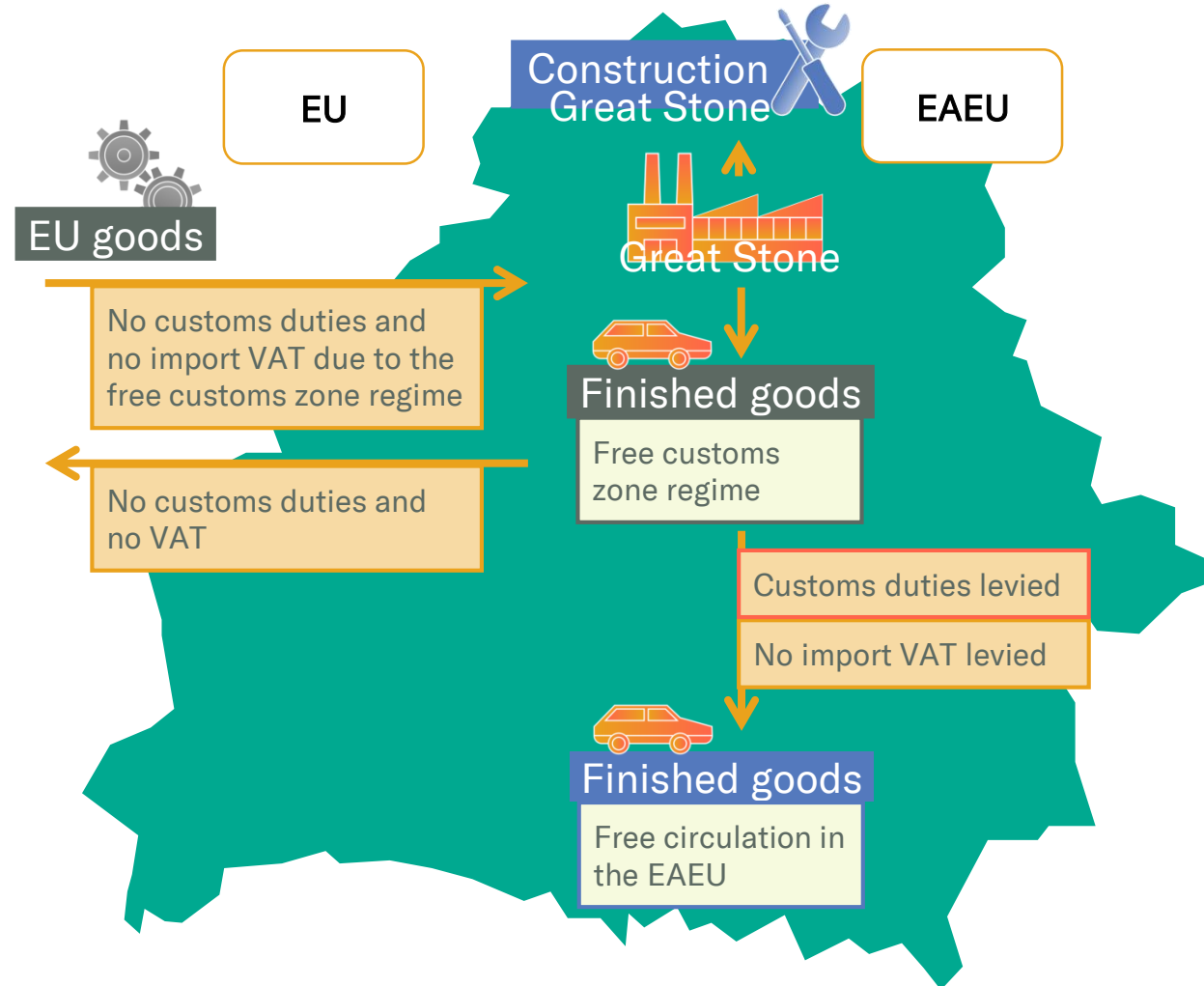
#### Planned activity:

- Electronic and telecommunication;
- Pharm industry;
- Fine chemie;
- Biotechnologies;
- Mechanical engineering;
- New materials;
- Complex logistics;
- E-commerce;
- Big Data;
- Scientific and technological activity

### CUSTOMS PREFERENCES

#### GREAT STONE – SPECIAL ECONOMIC ZONE

- Free customs zone procedure (possibility to import the goods into the territory of Great Stone without payment of customs duties and VAT)
- In case the goods manufactured by the Great Stone Resident out of the imported foreign goods are released for free circulation in the EAEU, they are exempt from the import VAT
- Goods, used to construction purposes in Great Stone, are exempt from the import VAT



## 4.2 GREAT STONE

# FOREIGN CURRENCY REGULATIONS

- Authorised capital of Great Stone resident may be nominated and paid up in a foreign currency [general rule: BYN only]
- Restrictions on completion of foreign-trade operations do not apply to the residents of Great Stone [general rule: fines are imposed on a Belarusian business entity in case its export invoices are not paid within 180 days and/or imported goods do not arrive or imported services are not rendered within 90 days from the payment]



## 4.2 GREAT STONE

### FURTHER INCENTIVES

#### Construction

- Requirements for certification of construction works/supplies are lifted
- Customers under construction projects to be implemented in Great Stone are exempted from attestation
- Pre-project/pre-investment documentation is not required

#### Employment migration

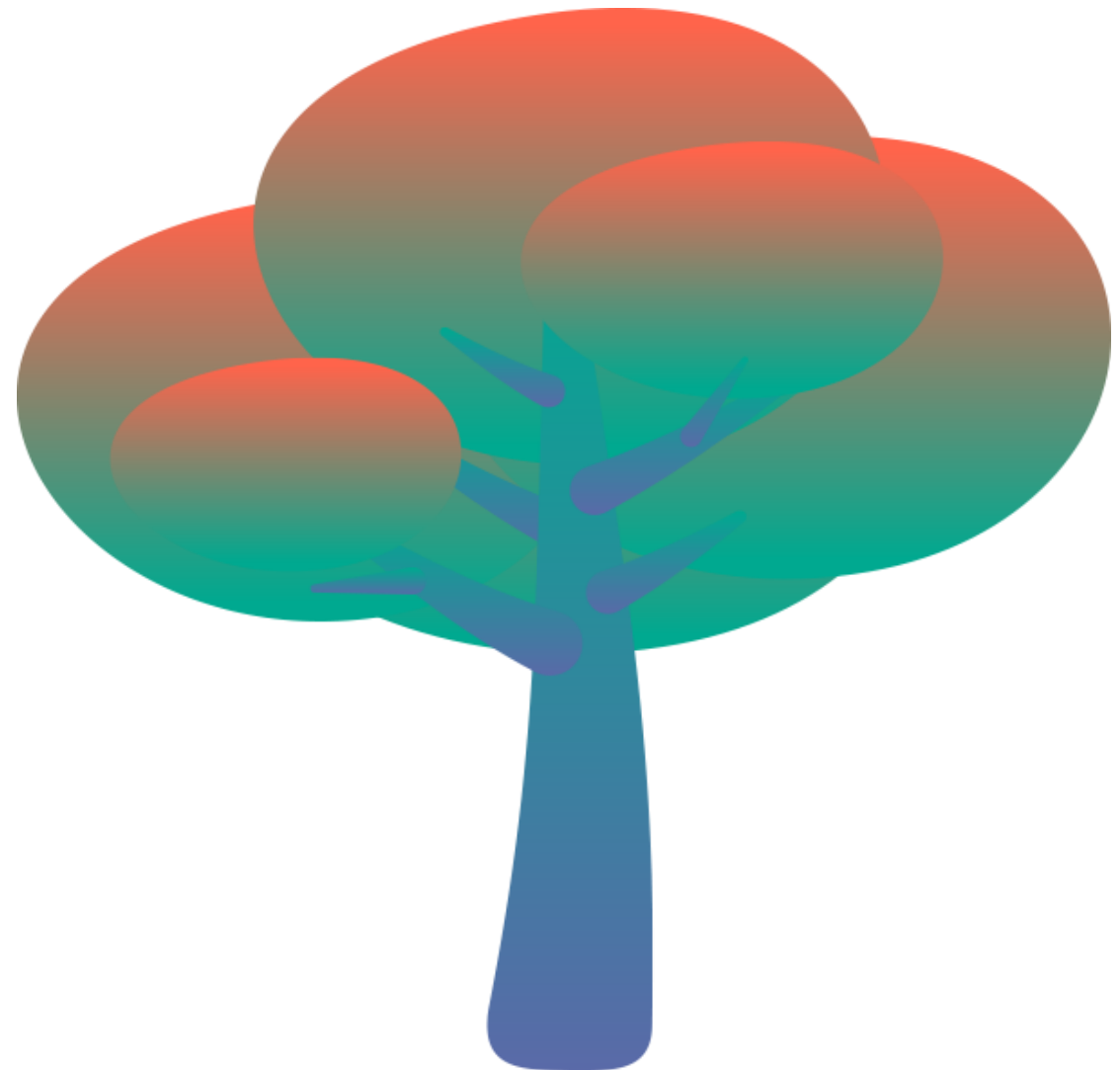
- Foreign companies involved into implementation of the investment project in the Great Stone are entitled to engage foreign citizens for performance of such works
- Simplified procedure of employment of foreign citizens
- Visa-free staying for the period of 180 days in a calendar year may be sought

#### Further incentives

- Blended tariffs for certain energy resources
- Prohibition of administrative inspections without consent of the Great Stone Administration
- Stabilisation clause (guarantee from adverse changes in laws) up to 01.01.2027
- E-documents are allowed (no need for routine paperwork)

## 4.3 FREE ECONOMIC ZONES

- 6 economic zones with incentive legal regime located in different parts of Belarus
- Incentive legal regime is effective until 31.12.2049
- Designated for export-led activities
- Free customs zones
- Minimum volume of investments:
  - EUR 1 Mio;
  - EUR 500 kEUR (in case the investments are to be performed within 3 years)





## 4.3 FREE ECONOMIC ZONES

### TAX INCENTIVES

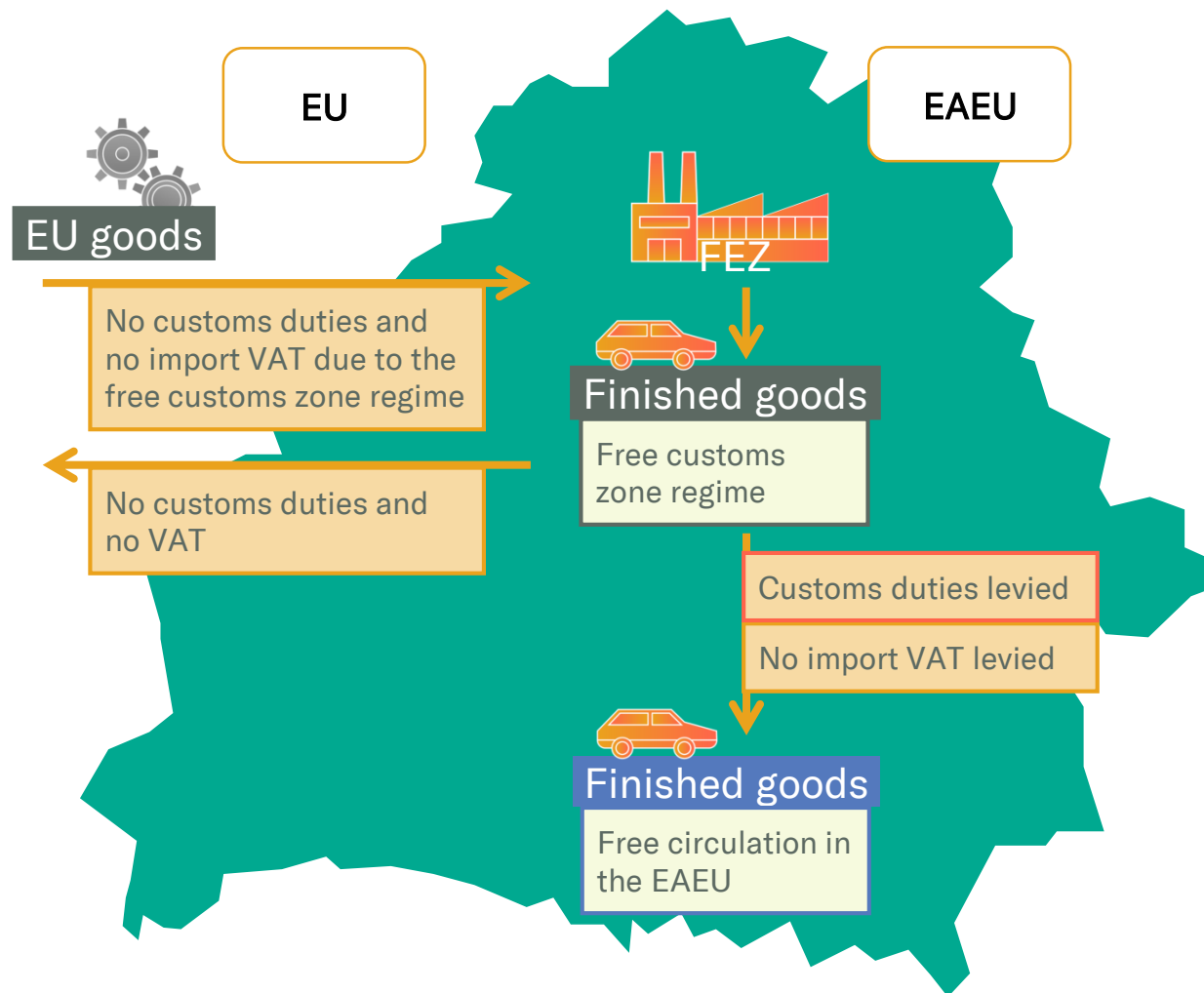


## 4.2 FREE ECONOMIC ZONES

### CUSTOMS PREFERENCES

#### FREE CUSTOMS ZONE

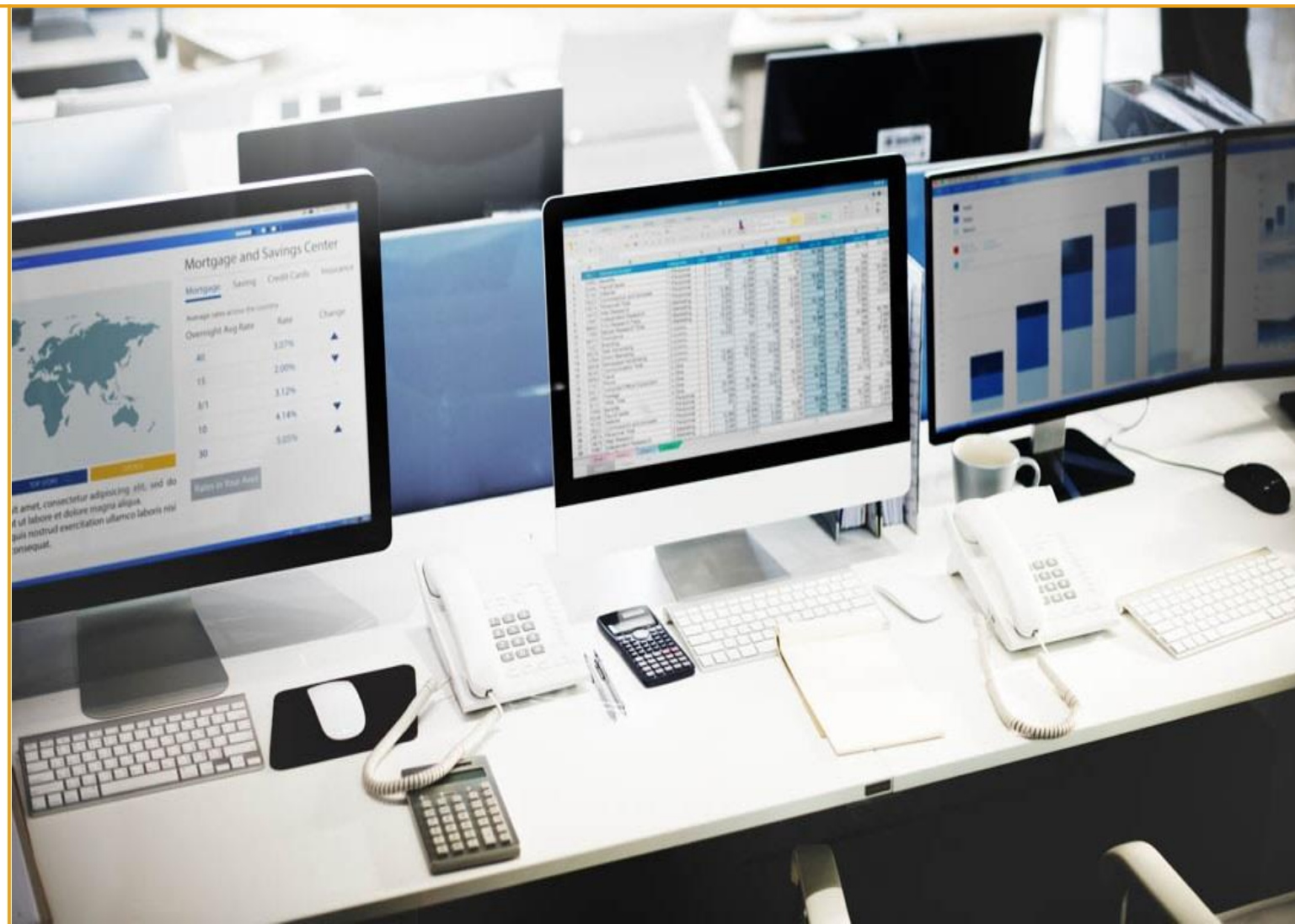
- Free customs zone procedure (the goods can be imported into the territory of FEZ without payment of customs duties under certain conditions)
- The goods manufactured by the resident of FEZ out of the imported foreign goods are exempted from the import VAT, but NOT from the customs duties



## 4.4 HI-TECH PARK

### BELARUSIAN SILICON VALLEY

- Products/services of the HTP residents are purchased by the customers out of 67 countries worldwide
- Unique legal regime for IT-entrepreneurs
- Wide (and not exhaustive) range of allowed types of business activities
- Legal framework for cryptocurrency and block chain operations



## 4.4 HI-TECH PARK

CIT	<b>Exemption.</b> Instead of CIT the HTP residents pay symbolic 1 % out of their revenue
VAT	HTP residents – <b>exemption</b>
	Foreign companies – <b>exemption</b> from VAT out of rendering of certain services in favour of the HTP resident (legal, audit, accounting, marketing services)
Customs payments	<b>Exemption</b> with respect to equipment which is imported for implementation of an IT project
PIT	<b>9%</b> (standard rate 13%)
Mandatory social security contributions (MSSC)	<b>Decreased basis for calculation:</b> social security contributions are not charged on the income in excess of average salary accrued in Belarus for the preceding month

## 4.4 HI-TECH PARK

### SPECIAL LEGAL ENVIRONMENT, UNIQUE FOR BELARUS

CONVERTIBLE LOAN AGREEMENTS

OPTION AGREEMENTS

INDEMNIFICATION AGREEMENTS

NON-COMPETE AND NON-SOLICITATION  
AGREEMENTS WITH EMPLOYEES

As a general rule, such agreements, concluded  
by employers other than the HTP residents in  
Belarus are deemed void



## 4.4 HI-TECH PARK

### FURTHER INCENTIVES

Accounting issues	Currency regulations	Employment migration	Other preferences
<ul style="list-style-type: none"><li>- Simplified rules apply to the primary accounting documents</li><li>- PAR drafted in a foreign language are acceptable</li></ul>	<ul style="list-style-type: none"><li>- Foreign-trade transactions are performed without restrictions for period</li></ul>	<ul style="list-style-type: none"><li>- Foreign citizens can be employed with no need for work permit</li><li>- Visa-free regime with a duration of stay up to 180 days in a year can be sought by employees and shareholders of HTP residents</li></ul>	<ul style="list-style-type: none"><li>- Prohibition for administrative inspections without preliminary consent of the HTP administration</li><li>- Subsidiary liability of CEO/shareholders of HTP residents can only be faced in case of criminal prosecution</li></ul>

## 4.4 HI-TECH PARK

### FURTHER INCENTIVES

Accounting issues	Currency regulations	Employment migration	Other preferences
<ul style="list-style-type: none"><li>- Simplified rules apply to the primary accounting documents</li><li>- PAR drafted in a foreign language are acceptable</li></ul>	<ul style="list-style-type: none"><li>- Foreign-trade transactions are performed without restrictions</li></ul>	<ul style="list-style-type: none"><li>- Foreign citizens can be employed with no need for work permit</li><li>- Visa-free regime with a duration of stay up to 180 days in a year can be sought by employees and shareholders of HTP residents</li></ul>	<ul style="list-style-type: none"><li>- Prohibition for administrative inspections without preliminary consent of the HTP administration</li><li>- Subsidiary liability of CEO/shareholders of HTP residents can only be faced in case of criminal prosecution</li></ul>

## 4.4 HI-TECH PARK

### FURTHER INCENTIVES

Accounting issues	Currency regulations	Employment migration	Other preferences
<ul style="list-style-type: none"><li>- Simplified rules apply to the primary accounting documents</li><li>- PAR drafted in a foreign language are acceptable</li></ul>	<ul style="list-style-type: none"><li>- Foreign-trade transactions are performed without restrictions for period</li></ul>	<ul style="list-style-type: none"><li>- Foreign citizens can be employed with no need for work permit</li><li>- Visa-free regime with a duration of stay up to 180 days in a year can be sought by employees and shareholders of HTP residents</li></ul>	<ul style="list-style-type: none"><li>- Prohibition for administrative inspections without preliminary consent of the HTP administration</li><li>- Subsidiary liability of CEO/shareholders of HTP residents can only be faced in case of criminal prosecution</li></ul>




## 4.4 HI-TECH PARK

### FURTHER INCENTIVES

Accounting issues	Currency regulations	Employment migration	Other preferences
<ul style="list-style-type: none"><li>- Simplified rules apply to the primary accounting documents</li><li>- PAR drafted in a foreign language are acceptable</li></ul>	<ul style="list-style-type: none"><li>- Foreign-trade transactions are performed without restrictions for period</li></ul>	<ul style="list-style-type: none"><li>- Foreign citizens can be employed with no need for work permit</li><li>- Visa-free regime with a duration of stay up to 180 days in a year can be sought by employees and shareholders of HTP residents</li></ul>	<ul style="list-style-type: none"><li>- Prohibition for administrative inspections without preliminary consent of the HTP administration</li><li>- Subsidiary liability of CEO/shareholders of HTP residents can only be faced in case of criminal prosecution</li></ul>

### 7 YEARS FOR SUCCESS

- 
- Incentives may be enjoyed by entrepreneurs which are registered and perform their business activities in Belarus outside of the territory of 22 largest cities
  - Incentives are provided for 7 years following the date of state registration

#### KEY INCENTIVES

- Exemption from CIT out of disposal of own goods/services/works
- Exemption from customs duties with respect to certain goods which are contributed into the company's authorised capital

## 4.6 ORSHANSKY REGION

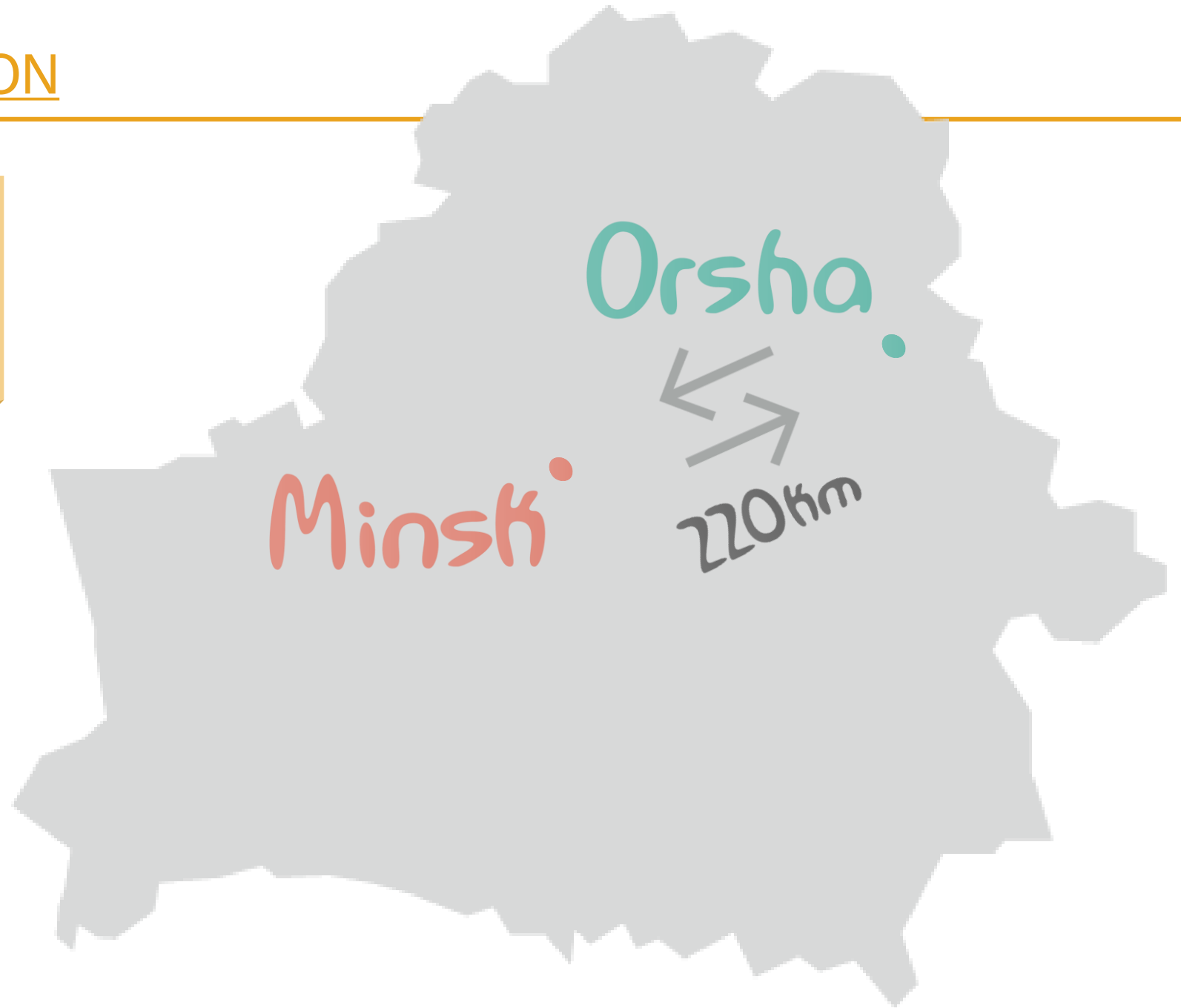
Who will benefit?	>	Entrepreneurs registered and entirely acting in the Orshansky region
Key tax incentives	>	Entrepreneurs, which apply <b>simplified taxation system</b> : <ul style="list-style-type: none"><li>- 1% from revenue out of disposal of own goods</li><li>- 2% from revenue out of disposal of own services/works</li></ul>
Further incentives	>	<ul style="list-style-type: none"><li>- Pension Social Security Contributions are paid under the rate 24% (instead of 28%)</li><li>- State inspections may be performed only in exclusive cases up to 31.12.2023</li><li>- Exemption from payment of state fee levied for issuance of work permit for foreign employees</li></ul>

**Simplified taxation system** provides for payment of tax at the reduced (3-5%) rate, which is levied out of gross revenue (not from income). Its application is subject to fulfillment of statutory conditions. In particular, a business entity may not apply the simplified system in case its annual gross revenue exceeds ca. 790 kEUR.



## 4.6 ORSHANSKY REGION

Orsha is a 115.000-large city on the eastern Belarusian border, which is situated on crossroads of several important railway and road routes. Travel distance from Minsk – 220 km – is covered in two hours.



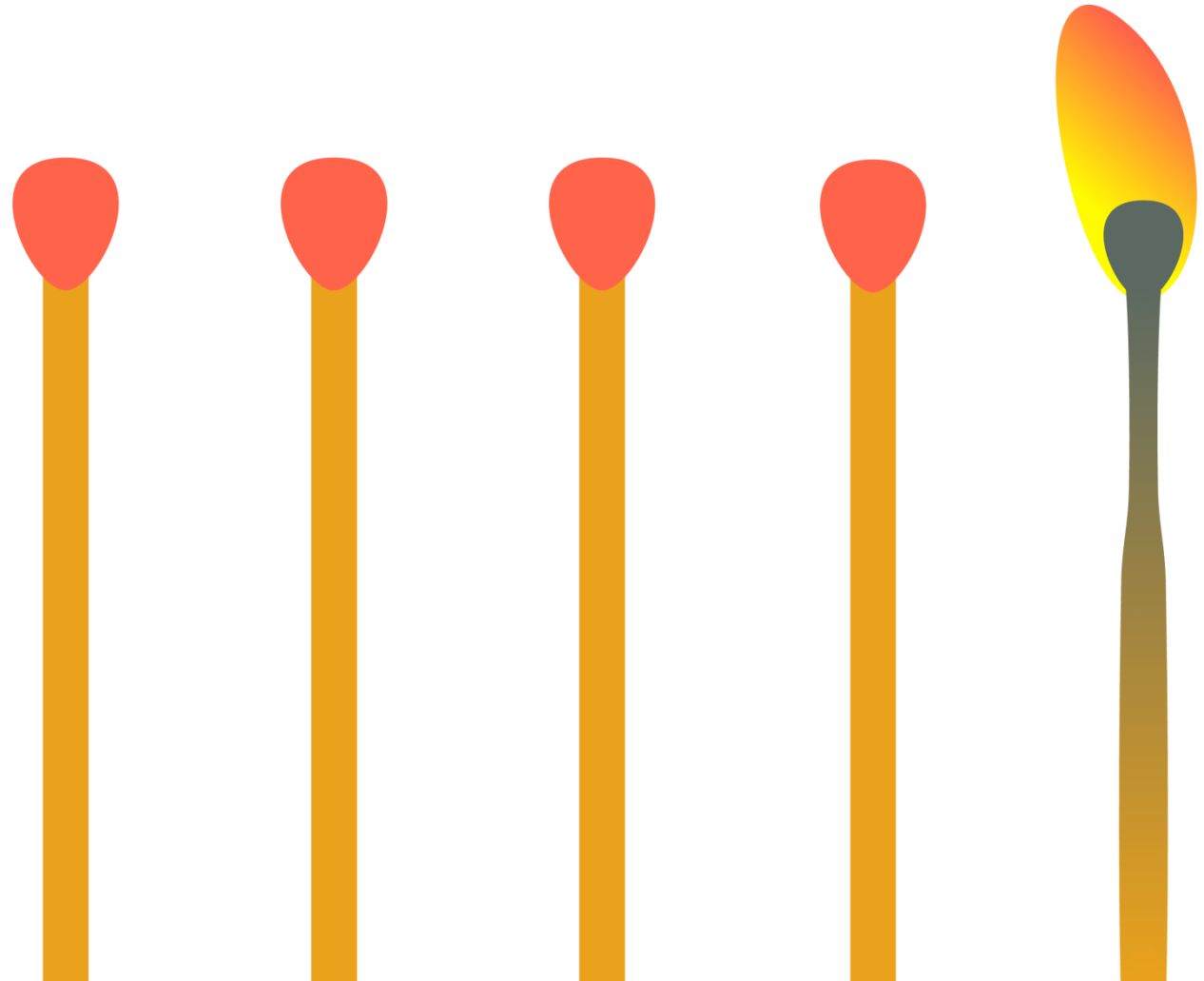
# TAXATION HOT TOPICS

5.1 Permanent establishment

5.2 Transfer pricing

5.3 Dividends

5.4 Costs and other issues



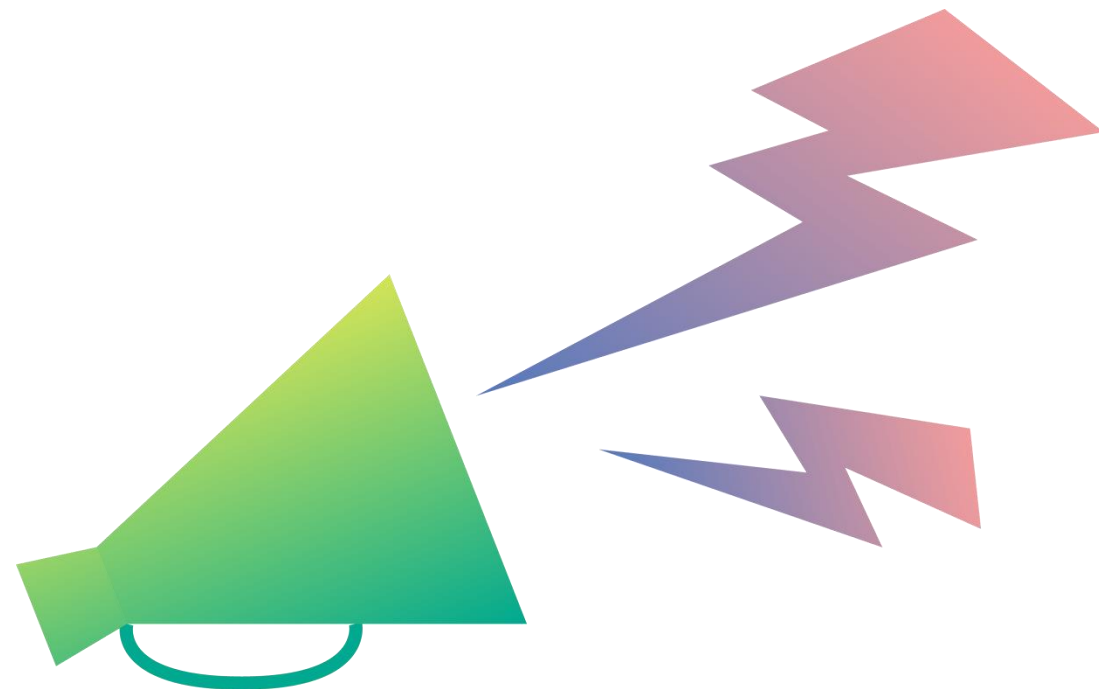
## 5.1 PERMANENT ESTABLISHMENT

The use of foreign subsidiaries of Belarusian companies and Belarusian subsidiaries of foreign companies for outsourcing of certain functions gets more risky, as the awareness of tax authorities of the permanent establishment principles and rules rises.

e.g. financing of Belarusian business, easier VAT administration in Russia, licensing issues.

Since 2019 the definition of activities, falling under the PE regulations has been broadened: a PE can, inter alia, emerge from the lasting and regular activities, such as rendering of services on regular basis. This concerns both the agency and business activities carried out via a fixed place of business.

The rules for the transfer of costs of the parent company are getting stricter (time limit for presentation of the audit report for the year: March 20, for the quarter – 20<sup>th</sup> of the following month). The tax authorities use the cameral tax audits to put additional pressure on the tax payers and take advantage of the vague legal norms.



## 5.2 TRANSFER PRICING

Documentation thresholds have been increased. The actual limit in general case amounts to kBYN 400 p.a. This may be sufficient for financing via the purchase of services of a typical Belarusian subsidiary, set up for marketing purposes.

Beginning with 2019 a taxpayer may sign a contract with tax authorities for up to 3 years, stipulating the pricing principles. Such a contract may replace the documentation, however the statutory fee for its conclusion is as high as kBYN 12.75 (ca. EUR 5,500), and the time and effort connected to its preparation is comparable to the preparation of the documentation.



## 5.3 DIVIDENDS

Tax incentives for leaving the not distributed income in the company (applicable for Belarusian shareholders only).

The concept of the final beneficiary (the WHT rate applicable to the final beneficiary, no to the first recipient is used), which as an anti-avoidance rule has been in place for several years, gains increasing interest of the tax authorities and shapes the international transactions.

Thin capitalisation rules are to be taken into account when the distribution of dividends is launched.



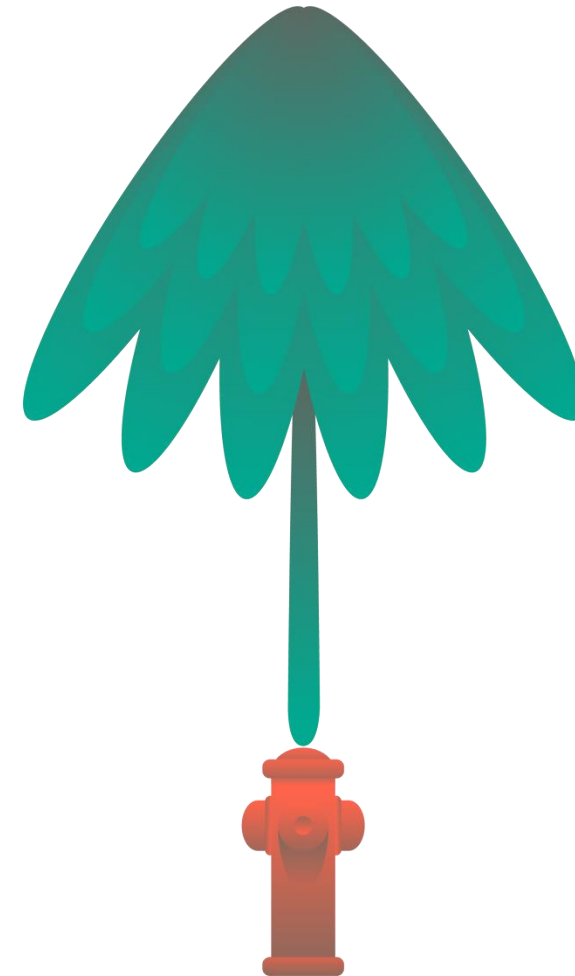


## 5.4 COSTS AND OTHER ISSUES

Official limitation period for taxes comprises since 2019 five years. This has already led to a rally in the cameral tax audits.

New, simplified, rules apply to the costs, related to business trips.

In the latest version of the Tax Code, a range of costs fall under the so-called other normalised costs, which in total are deductible in the amount of 1% of revenue.



# RÖDL & PARTNER BELARUS

Since 2007 in Minsk

More than 30 multi-lingual experts

4 service lines:

Legal  
Tax  
Audit  
BPO

Advising some of the largest international transactions in Belarus (including the largest private M&A transaction in the history of the Republic of Belarus)

Legal, tax and financial advisers to some of the most prominent cross-border localisation, construction and mining projects of recent years.

Supporting leading international brands to expand to the local market and using Belarus as a sales and distribution hub for the Eurasian Economic Union.





TOBIAS KOHLER

Attorney-at-law (Germany)  
Partner  
Head of offices Vilnius and Minsk

T +370 5 212 35 90  
M +370 6 873 32 88  
[Tobias.Kohler@roedl.com](mailto:Tobias.Kohler@roedl.com)



YURIY KAZAKEVITCH

Associate partner  
Head of Legal Services  
Rödl & Partner Minsk

T +375 17 209 42 84  
M +375 29 621 89 74  
[Yuriy.Kazakevitch@roedl.com](mailto:Yuriy.Kazakevitch@roedl.com)



ALEXEY KOSUKHO

Associate partner  
Head of Assurance Services  
Rödl & Partner Minsk

T +375 17 209 42 84  
M +375 29 173 12 11  
[Alexey.Kosukho@roedl.com](mailto:Alexey.Kosukho@roedl.com)

# RÖDL & PARTNER BELARUS

Ul. Rakovskaya 16B-5H  
220004 Minsk, Belarus  
T +375 17 2094284  
F +375 17 2094285  
E [minsk@roedl.com](mailto:minsk@roedl.com)  
[www.roedl.com](http://www.roedl.com)  
[www.roedl.de/belarus](http://www.roedl.de/belarus)

 [Rödl & Partner Belarus](#)

This presentation is a non-binding information offer and serves general information purposes. It does not constitute legal, tax or business advice, nor can it replace individual advice. Rödl & Partner always endeavors to exercise the greatest possible care in the preparation of the presentation and the information contained therein, but Rödl & Partner is not liable for the correctness, up-to-dateness and completeness of the information. The information contained herein does not refer to any specific circumstances of an individual or legal entity, therefore professional advice should always be sought in a specific individual case. Rödl & Partner accepts no responsibility for decisions made by the reader on the basis of this presentation. Our contact persons will be happy to assist you.

The entire content of the presentation and the technical information on the Internet is the intellectual property of Rödl & Partner and is protected by copyright. Users may download, print or copy the contents of the presentation only for their own use. Any changes, duplication, distribution or public disclosure of the content or parts thereof, whether online or offline, require the prior written consent of Rödl & Partner.

