

Which interest rate to apply for late payment?

When no contractual interest rate is foreseen for late payment, the legal interest is applicable. The legal interest rate in civil and commercial matters which amounted in 2013 and last year to 2,75%, decreases to 2,50% in 2015. This interest rate is not applicable in tax and social matters, trade transactions or public contracting.

Interest rate in civil and commercial matters

In case parties agree upon which interest rate to apply in case of late payment, this contractual interest rate is applicable. Only in case no contractual interest rate is foreseen, the legal interest rate applies. The legal interest rate applies to: private matters between private individuals or corporations (civil matters); and transactions between dealers/retailers and private individuals (commercial matters).

Since 1 January 2007 the Belgian legal interest rate is determined in function of the market interest rate. We obtain the legal interest rate in civil and commercial matters of 2,50% by taking the average of the Euribor rate over 1 year (<http://nl.global-rates.com/rentestanden/euribor/2014.aspx>) during the month December of the previous year (0,475%) and round it to the higher multiple of 0,25% (0,50%) increased with 2%. This interest rate applies throughout the complete year.

In practice the contractual interest rate will be higher than the legal interest rate. Think twice since the judges can modify excessive interest rates.

Interest rate for trade transactions between entrepreneurs

The legal interest rate in civil or commercial matters should not be confused with the interest rate for arrears in trade transactions. Trade transactions are economical transactions for consideration: between entrepreneurs (so also between liberal professionals, independants or non for profit organisations); or between companies and public bodies (e.g. towns, counties, ..) when the public body is the debtor and 'small missions' are concerned. For small missions the amount to be paid is estimated to be less than 8.500€, or less than 17.000€ in the sector of water, post, energy or transport.

For trade transactions the law of 2 August 2002 on the fight against arrears is applied and the principle of payment within 30 days applies. But contractual agreements granting longer payment delays are possible, unless these agreements are a clear disadvantages for the creditor. When no payment is made within the legal period of 30 days, the legal interest will be due without notice when parties did not agree on another contractual interest rate. For the application of the interest rate in civil or commercial matters a notice or official letter is necessary in which the addressee is asked to fulfil his obligations (i.e. payment of a certain amount). Derogations are possible by means of the contract or general conditions.

The semi annual modification of the interest rate for arrears in trade transactions is published in the Belgian Official Gazette. For the second semester of 2014 the interest rate amounted to 8,5% for transactions closed, renewed or extended after 15 March 2013; and 7,5% for transactions closed, renewed or extended ultimately on 15 March 2013. This interest rate is significantly higher than the legal interest rate applicable in civil or commercial matters. For the first semester 2015 the same interest rate are applicable.

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Fixed interest rate in tax and social matters

The legal interest rate in civil and commercial matters is neither applicable in tax and social matters. In tax and social matters an interest rate of 7% applies, unless there are explicit derogations in the tax or social provisions. This rate is even applicable when the tax or social provisions refer to the legal interest rate in civil or commercial matters.

For VAT another regime applies. There the interest rate amounts to 0,80% per month or 9,6% per year.

Default interest is applicable in case of non-payment of the tax due within the legally foreseen time. Also in this case no notice is required.

Different interest rates for public contracting

For public contracting above the threshold of 8.500€ or 17.000€ three different interest rates apply:

- 8,5% for public contracting closed as from 16 March 2013;
 - 7,5% for public contracting entered into between 8 August 2002 and 15 March 2013;
- and
- a monthly interest for older public contracts.

The figures for 2015 are not yet known.

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