



Deloitte Legal Newsflash | *Gi³* Alert Tax Dispute Resolution – R&D

Belgian landmark case on wage withholding tax exemption for R&D

On 24 May 2022, Deloitte Legal obtained a milestone judgment from the Ghent court of appeal for one of its clients regarding the wage withholding tax exemption for R&D (art. 275³ ITC). In the judgment, the court confirmed some valuable principles that are of importance to taxpayers making use of the exemption.

Notification/registration requirement

The discussion between the taxpayer and the tax administration concerned the upfront notification/registration requirement (cf. art. 275³, §3, 4th indent ITC). It was not disputed by the administration that the other conditions laid out in art. 275³ ITC had been met.

The court confirmed that art. 275³ ITC does not specify how the taxpayer needs to notify BELSPO. Therefore the notification can take place verbally, during a meeting with BELSPO. The tax administration cannot demand a notification via the BELSPO website.

In this case, such a verbal meeting did indeed take place. In order to prove this, the taxpayer presented the court with a letter from BELSPO. In its letter, BELSPO explicitly confirmed that the taxpayer communicated all information legally required in the framework of a notification, i.a. the estimated starting date and end date of the program. Given the fact that BELSPO is an independent government body, competent for the notifications, the tax administration needs to accept the letter as evidence of the notification.

Registration of a program

Furthermore, the court ruled that the taxpayer can indeed register a programme with BELSPO. There is no legal requirement to notify all individual

projects which are undertaken in the framework of such a programme with BELSPO.

Interest on overpaid taxes

Lastly, the court ruled that the taxpayer was entitled to interest on overpaid taxes on the basis of art. 418 ITC. The exception foreseen in art. 419, 4° ITC does not apply as of the first day of the month following the month in which the administration received a notice of default (in this case the notice of objection). As of that date, the administration must be deemed to have wrongfully refused to reimburse the taxpayer, which does not longer warrant the denial of interest on overpaid taxes to the taxpayer.

Contacts

If you have any questions concerning the items in this newsflash, please get in touch with your usual Deloitte or Deloitte Legal - *Lawyers* contact at our office in Belgium or:

- Annick Visschers, avisschers@deloitte.com, + 32 2 800 70 72
- Jan Pattyn, jpattyn@deloitte.com, +32 2 600 68 55
- Frank Vanbiervliet, fvanbiervliet@deloitte.com, + 32 56 59 43 34
- Michail Perez Van Gaeveren, mperezvangaeveren@deloitte.com, + 32 2 800 70 59

For general inquiries, please contact:

bedeloittelegal@deloitte.com, + 32 2 800 70 00

Be sure to visit us at our website: <http://www.deloittelegal.be>

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