



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

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

On 28 October 2022, the Belgian tax administration filed an appeal with the Supreme Court against a milestone judgment obtained from the Ghent court of appeal by Deloitte Legal for a client on 24 May 2022 (see [Newsflash](#) of 28 June 2022), regarding the wage withholding tax exemption for R&D (art. 275³ ITC). The judgment confirmed some valuable principles that are of importance to taxpayers making use of the exemption.

Appeal with the Supreme Court

The tax administration has only appealed against the part of the previous decision that grants interest on overpaid taxes to the taxpayer on the basis of art. 418 - 419 ITC, and therefore the judgment of 24 May 2022 becomes final as far as all other parts of the decision of the Ghent court of appeal in that ruling are concerned.

This includes the confirmation 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 and the tax administration cannot demand that a notification is made via the BELSPO website.

More importantly, this also includes the decision that the tax administration must accept as evidence an explicit confirmation from BELSPO that the taxpayer communicated all legally required information in the framework of a notification.

Furthermore, the decision that the taxpayer may register a program with BELSPO is confirmed. There is no legal requirement to notify BELSPO of all individual projects undertaken in the framework of a program.

Implications of the appeal

It remains to be seen whether the tax administration will accept and apply the Ghent court of appeal's decisions in all cases, but for now taxpayers can treat the judgment of 24 May 2022 as final for all points not contested in the Supreme Court appeal. This should further strengthen the position of taxpayers that find themselves in similar circumstances.

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