

Safeguarding Belgium's partial withholding tax exemption for researchers

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Background

For many years now, Belgium has aimed to promote research and development (R&D) activities through various tax measures, among which the **partial withholding tax exemption on salaries for researchers**.

The partial withholding tax exemption measure allows companies that employ researchers who are holding a specific bachelor, master or doctoral degree and who carry out research or development activities within the company **to benefit from a partial exemption up to 80% from the wage withholding tax on their salaries**. This has proven to be a very effective measure as it results in an immediate labor cost reduction for the employers concerned.

Since 2014, companies must notify R&D projects and/or programs to the Belgian Science Policy Office (BELSPO) in advance, with a possibility to request a ruling to validate such projects and/or programs as being compliant with the legal definition of R&D. This upfront reporting must include a description of the project or program demonstrating that it falls within the scope of the actual R&D definition as well as the expected start and end dates.

The recent tax audits of the Belgian tax authorities

Over the last year and months, the Belgian tax authorities carried out extensive and numerous tax audits relating to the application of the partial R&D withholding tax exemption.

Unfortunately, a lot of **tax audits now seem to challenge the exemption on rather formalistic grounds**.

One of the main problems is that the tax administration requires that an end date is mentioned for an R&D “program”, which is however not always realistically possible when the R&D activities are conducted in a structural way with a long-term perspective (contrary to a project which is limited in time).

The Belgian tax authorities have recently been challenging the tax exemption which has been applied during the last five to six years in good faith and in line with BELSPO guidelines, whenever *no* end date has been mentioned for an R&D program. This very formalistic approach has led to discussions with the tax authorities, quite often also involving significant additional cost for the audited companies.

Need for more legal certainty and support for this R&D tax incentive

The Employee Tax Subcommittee – an initiative of AmCham Belgium’s [Legal & Taxation Committee](#) – has taken the lead in supporting the Chamber’s member companies that have been affected by these measures. This applies particularly in cases where no discussions exist about the substance of the R&D activities as such, but where very formalistic approaches had been taken by the tax authorities, amongst others, with regard to the “end date of the R&D program” (see AmCham Belgium’s [Position Paper](#) dated November 29, 2019).

It is obvious that tax audits need to take place in order to make sure that there are no abuses. However, companies starting innovation or **R&D investments in Belgium must have legal certainty** about the budget they have earmarked for their R&D activities. And audits challenging the application of R&D incentives on formalistic grounds that go against the explicit guidelines that have been set by (another) governmental body (*i.e.* BELSPO) certainly do not contribute to such legal certainty.

Moreover, AmCham Belgium is not only concerned about the financial challenges this could cause for some companies, but also about the negative effect it will have on the attractiveness of Belgium for investors in the field of innovation.

Further to the [Position Paper](#) issued in November 2019 and the meetings held with the Central Tax Authorities in December 2019 on this subject, BELSPO gave some additional instructions in their newsletter of January 2020 in which they now insist on yearly updates to R&D programs with regard to start and end dates. More recently, at the end of January 2020, Kathleen Depoorter (N-VA) introduced a bill before the House of Representatives, which aims to clarify the application of the exemption of withholding tax for R&D activities (particularly with regard to the conditions underlying the prior notification of the R&D projects and programs). Unfortunately, until now, this bill has not yet been passed.

We will continue our efforts to support this primary R&D tax incentive in order to continue to attract and maintain investments in the field of innovation in Belgium.

About the author

An De Reymaeker is an International Tax Lawyer and Partner at the Law Firm Vandendijk & Partners. She is specialized in personal taxation in an international context. She is, since last year, a Vice-Chair of AmCham Belgium’s Legal & Taxation Committee and is also Chair of the Employee Tax Subcommittee since December 2017.

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