



GES NewsFlash

Belgium – New Law Impacts R&D Payroll Tax Incentives for Universities and Registered Scientific Institutions

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Background

Universities and Registered Scientific Institutions have been exempted to remit to the State a part (75% since 1st January 2009) of the payroll taxes that are withheld from the salaries and wages of its Post-Doctoral Researchers and Assistant Researchers.

This payroll tax incentive has been available to Universities since 1st October 2003 and has been extended to Registered Scientific Institutions since 1st January 2006.

This partial exemption aims to give these institutions more financial leeway to increase their R&D budget or to hire additional researchers, (i.e. to promote research activities in Belgium).

Reinvestment requirement with retroactive effect

Articles 12 and 13 of the 21 December 2009 law (Belgian Gazette 31 December 2009, p. 82820) clarifies that the payroll tax incentive cannot be used by Universities and Registered Scientific Institutions to decrease the cost of the research that gave rise to aforementioned incentive. According to the parliamentary documents, the tax incentive must be reinvested in additional research activities.

The legislator is of the opinion that the reinvestment requirement has always been implied for the payroll tax exemption but different interpretations as regards to its existence could follow from the text of the law and the parliamentary documents. Therefore, the legislator now explicitly introduces as a requirement for Universities and Registered Scientific Institutions that the funds saved via the tax incentive may not be used solely for the reduction of the R&D cost but must be reinvested in additional R&D. Since the legislator deems that this requirement has always been implicitly part of the R&D payroll tax incentive regime he considers this explicit

confirmation to be nothing more than an interpretational provision, as a result of which it applies as from the entry into application of the regime (as from 1 October 2003).

Sanction

Since the law is not entirely clear on all technical aspects, the Deloitte specialist team has contacted several government officials for clarification on its scope and impact.

According to information currently available, it is most probable that non-compliance with the reinvestment requirement would lead to administrative fines ranging from EUR 50 to EUR 1,250 per infraction in accordance with article 445 of the Income Tax Code. The taxpayer (Universities of Registered Scientific Institutions) will not have to refund the tax incentive itself. However, the impact of non-compliance towards EU grants should carefully be assessed.

A circular letter is currently under draft by the tax authorities and should be issued shortly.

Accounting treatment

The Belgian Accounting Standards Board” (Commissie voor Boekhoudkundige Normen / Commission des Normes Comptables”) considers the professional withholding tax exemption for researchers as a subsidy for accounting purposes (standard 2009/13).

In principle, the exemption constitutes an operational subsidy. Initially, the entire gross amount of the salary cost must be recorded as debt (including the professional withholding tax at 100%). Subsequently, the exemption of the withholding tax is recorded as operational income.

However, when the total or a part of the remuneration of the researchers is capitalized (research to develop fixed assets) the professional withholding tax exemption is considered to be a capital subsidy. In that case, the part of the exempt withholding tax must be recorded as a capital subsidy on the liabilities side. Over time, this subsidy is recorded in the profit and loss account in accordance with the amortization rate of the related fixed asset. As a result, corporate taxpayers benefit from deferred taxation on the incentive.

Taxpayers who are subject to the reinvestment condition must be able to provide evidence of meeting this requirement in their financial accounts. Appropriate accounting treatment may also help in evidencing the compliance with the reinvestment requirement.

Action points

Taxpayers benefiting from the payroll tax incentive must clearly document the reinvestments made and correctly record them in their financial accounts.

The Deloitte specialist team has the expertise to help taxpayers with implementing the correct accounting treatment. Deloitte may also assist with the implementation of an ad hoc monitoring of the R&D investments to secure the tax incentive. Our unique multi-disciplinary approach (personal tax, corporate tax, transfer pricing and legal aspects) and in-depth expertise allow us to help taxpayers in talking full benefit from the R&D payroll incentive (including retroactive implementation), adequately face tax audits and benefiting from other tax incentives that are available for R&D activities (e.g. Patent Income Deduction).

Deloitte's View

Although the reinvestment requirement is introduced retroactively going back to 1 October 2003, the chance seems remote that sanctions will be imposed for non-compliance with this requirement before 10 January 2010. As from this date, non-compliance may lead to administrative fines.

However, taxpayers will not be obligated to pay back the payroll tax incentive. Impact of non-compliance towards EU grants should carefully be assessed.

In order to avoid sanctions, it is advisable for the taxpayers to clearly document their R&D investments and correctly record them in the financial accounts. Appropriate monitoring of the R&D cost should be implemented going forward.

People to Contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

Joël Lebersorg

Tel: + 32 2 600 68 42

Patrick Brauns

Tel: +32 2 600 66 62

Wim Eynatten

Tel: +32 3 600 67 59

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United States

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