

## **Research and development activities:**

### **Partial exemption from payment of Belgian payroll tax**

#### **1. Introduction**

Since 2003 Belgium has had an attractive scheme in place for the partial exemption from payment of payroll tax for employers who employ researchers. The content of this memorandum solely applies to companies paying salaries or wages to researchers who hold a specific degree and are taken on in research or development projects or programmes within the company.<sup>1</sup>

This measure benefits employers who are exempted from paying to the Belgian public revenue department part of the amount of the payroll tax (currently 80% of the payroll tax withheld!) that they withhold on the salaries or wages paid to their researchers.

#### **2. Legal provisions**

The relevant legal provisions concerning this subject are currently the following:

- Article 275/3, §1, para. 3.3 and para. 6 of the Income Tax Code
- Article 275/3, §2 and §3 of the Income Tax Code
- Article 95/2, §1 to 3 of the Royal Decree for the enforcement of the Income Tax Code
- Annex IIIb, point III of the Royal Decree for the enforcement of the Income Tax Code

#### **3. Administrative circular**

In May 2015 a circular from the Belgian Tax Administration<sup>2</sup> was published (with immediate effect) with a view to making the Administration's position clear as regards application of the partial exemption from payment of payroll tax for research and development (R&D), in terms of the researchers to whom the measure applies and the salaries or wages to be taken into account.

- Researchers to whom the measure applies:

<sup>1</sup> The other beneficiaries of this measure are therefore not concerned by this memorandum (universities/colleges, approved scientific institutions, companies employing researchers as part of partnership agreements entered into with universities/colleges or approved scientific institutions and Young Innovative Companies).

<sup>2</sup> Circular AGFisc No. 17/2015 (no. Ci.RH.244/635.467) dated 08.05.2015.

According to Article 275/3, §1, para. 3.3 of the Income Tax Code, the measure outlined in this memorandum benefits “companies that pay or award salaries or wages to researchers who are taken on in research or development projects or programmes and who have a degree referred to in §2” (our underlining).

As far as the concept of researcher is concerned, it emerges from the aforementioned circular that reference should be made to the definition of researcher contained in point III, e), para. 2 of Annex IIIb of the Royal Decree for the enforcement of the Income Tax Code:

*“The term researcher is understood to denote scientists or engineers working on the design or creation of new knowledge, products, processes, methods or systems. Those employees who have acquired this qualification within their company despite not fulfilling the degree conditions are placed in the same category as engineers”.*

However, this definition should be read in the light of the degrees listed in Article 275/3, §2 of the Income Tax Code, i.e. chiefly a PhD or Master’s degree in Science.

As regards the concept of “R&D projects or programmes”, the circular refers to Article 275/3, §3 of the Royal Decree for the enforcement of the Income Tax Code, which in fact takes up the European definition of the concepts of R&D (Commission Regulation (EC) No. 800/2008 of 6 August 2008). Reference is made in particular to projects/programmes in the field of basic, industrial or experimental research.

- Salary or wage to be taken into account

Finally, the circular stipulates that this measure may only be applied to the payroll tax payable on researchers’ salaries or wages pertaining to R&D work carried out as part of one or more R&D projects or programmes. In other words, the researchers’ pay is only eligible for this exemption measure pro rata the time actually devoted to R&D within the context of an R&D project or programme.

#### 4. The procedure

Since 1 January 2014 Belgium has supplemented its legislation on this measure by incorporating not only a definition of R&D projects or programmes (see above), but also and above all a new procedure aimed, according to the parliamentary work, at ensuring improved monitoring of cases of non-payment of payroll tax relating to scientific research.

This procedure is underpinned by Article 275/3, §3, para. 4 of the Income Tax Code, which subjects application of this measure to registration of the R&D project or programme with the Federal Public Planning Service for Science Policy.

Furthermore, the following paragraph of this provision (paragraph 5) establishes a ruling on the part of the above-mentioned Public Service which is authorised, through the effect of this provision, to issue binding opinions as to whether R&D projects/programmes fall within the scope of this exemption where the companies running them wish to obtain such a decision.

## 5. FAQ on R&D

FAQ have been drawn up by several websites with the aim of providing answers to the most commonplace questions. We have selected for you the two most pertinent sources of FAQ.

You can thus refer to the FAQ presented by the Federal Public Service for Finance, which mainly deal with questions relating to definitions (R&D, etc.), the companies/sectors benefitting from the measure (non-profit-making associations, the banking and financial sectors, etc.), practical terms and conditions (where the R&D activities are located, how much time has to be devoted to this type of activity, etc.) and the personal field of application of this measure (researcher, degrees giving rise to eligibility, etc.).

It is also worth referring to the FAQ listed on the website of the Federal Public Planning Service for Science Policy, which deal with questions relating primarily to the temporal scope of the measure, the way in which the payroll tax that is not paid should be posted in the accounts, and so forth.

## 6. Tax Consult and R&D activities

In order to follow up this measure as effectively and exhaustively as possible, we propose examining the possibility of applying this tax incentive in a framework of a wide-ranging assessment that is consistent with the definition of R&D.

More especially, we can help you decide which projects should be lodged with the Federal Service for Science Policy.

In the current budgetary context, inspections relating to implementation of this tax measure are to be anticipated (some inspections having already been carried out relating to previous revenue years). Because of this we suggest providing you with support and guidance in the preparation of the files and the setting up of a file presentation structure.

We are at your complete disposal to answer any questions you might wish to put to us on this subject or to give you any additional information you may need.

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