

R&D tax alert

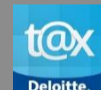
Belgium

European Commission's favourable decision on wage withholding tax partial exemption for Young Innovative Companies

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On Friday 23 January 2014, the European Commission issued a positive decision regarding the compatibility of the application of the wage withholding tax partial exemption for Research & Development by Young Innovative Companies ("YICs") with the internal market. The European Commission's decision has not yet been published but it is understood that this positive decision covers the partial exemption's application by YICs up to 30 June 2014.

Late 2011, the European Commission started a state aid investigation regarding the partial exemption of wage withholding tax for Research & Development with a special focus on the application by YICs. Under the regime applicable for YICs, this partial exemption applies to all scientific personnel employed in R&D activities including employees without a qualifying degree (e.g. employees with a bachelor degree).

Under current Belgian tax law, a Young Innovative Company is defined as:

- A small company as defined in Article 15 of the Belgian Company Code;
- Existing for less than 10 years before 1 January in the year of application of the partial exemption on wage withholding tax;
- Not established in the context of a merger, restructuring, expansion of an existing activity or the acquisition of such activity; and,
- At least 15% of the total costs of the preceding taxable period must have been used for Research and Development.

As the YIC regime (without diploma requirement) only applies to Young Innovative Companies as defined above, it is regarded as selective aid.

The European Commission tested the compatibility of the Belgian YIC regime with the internal market based on the European Framework for state aid for research and development and innovation ("R&D&I State Aid Framework"), as it applied up to 30 June 2014. This framework contains specific provisions regarding both aid for R&D projects and aid for young innovative enterprises.

Effective as of 1 July 2014, the European Commission adopted both a new R&D&I State Aid Framework and a new General Block Exemption Regulation ("GBER"). GBER outlines the conditions under which state aid may be granted without prior notification to the European Commission. The new R&D&I State Aid Framework and new GBER contain specific provisions regarding investment aid for SMEs, aid for start-ups and aid for R&D&I including innovation aid for SMEs.

The impact of the European Commission Decision regarding the YIC regime can be summarised as follows:

- Young Innovative Companies which benefited from the partial exemption of wage withholding tax with respect to employees working on eligible R&D activities without a qualifying degree should not reimburse benefits received up to 30 June 2014;
- The YIC regime's compatibility with the internal market from 1 July 2014 onwards will need to be assessed based on the new R&D&I State Aid Framework and new GBER;
- It can be expected that the Belgian Government will, going forward, conform the YIC regime to the provisions of the new R&D&I State Aid Framework and new GBER in view of ensuring compatibility of the (revised) YIC regime with the internal market. Such alignment of the YIC regime with the new R&D&I State Aid Framework and new GBER may reduce the benefits of the YIC regime for some Young Innovative Companies.

Deloitte will continue to follow-up on this and will provide updates on further developments in this respect.

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