

ECJ Referral: European Commission Refers Belgium to ECJ Regarding Rules on Tax Deductibility of Alimony Payments for Non-residents

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On 16 November 2023, the European Commission referred Belgium to the Court of Justice of the European Union (ECJ) over its rules on the tax deductibility of alimony payments for non-residents.

In its judgment of 10 March 2022 on [Commission v. Belgium \(Déduction des rentes alimentaires\)](#) (Case C-60/21), the ECJ found that Belgium infringed the [Treaty on the Functioning of the EU \(TFEU\)](#) by refusing non-resident taxpayers who earn less than 75% of their worldwide income in Belgium to deduct their alimony payments from their taxable income. Deduction is refused in Belgium even if the taxpayer has no significant taxable income in their state of residence, making it impossible to deduct payments from their taxable income in that state.

In response to that judgment from assessment year 2023, non-residents earning less than 75% of their professional income in Belgium can deduct alimony payments if several conditions are met (see [Government Proposes to Extend Scope of Expat Regime, Introduces Alimony Deduction for Non-Residents \(24 November 2022\)](#)).

The European Commission takes the view that those conditions still infringe the freedom of workers under article 45 of the [Treaty on the Functioning of the EU \(TFEU\)](#) and article 28 of the [EEA Agreement](#).

In the first place, the deduction cannot be carried forward to future tax years in the state of the taxpayer's residence. This unavailability of a similar relief in the other state should, however, be considered for the same tax year in both Belgium and the other Member State.

Secondly, the amending legislation refuses the tax deduction if the taxpayer's spouse could obtain a similar benefit in another state in future periods. By bringing the taxpayer's spouse into the comparability analysis, the amended legislation expressly contradicts the Court's judgment in Case C-60/21, which concerns discrimination of non-resident taxpayers and not of their spouses.

