

# European Commission Asks Belgium to Terminate Infringement of Free Movement of Workers

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Report from Dr René Offermanns, Principal Associate, IBFD

On 14 July 2023, the European Commission sent a reasoned opinion to Belgium for not properly complying with the ruling of the Court of Justice of the European Union in [Commission v. Belgium \(Déduction des rentes alimentaires\) \(Case C-60/21\)](#). In that case, the ECJ found that Belgium infringed the [Treaty on the Functioning of the European Union \(TFEU\)](#) by not allowing non-resident taxpayers earning less than 75% of their worldwide income in Belgium from deducting alimony payments. This deduction is refused in Belgium even when the taxpayer has no significant taxable income in the state of residence, making it impossible to deduct the above payments from taxable income in the state of residence.

The European Commission considers that this non-deductibility penalizes non-resident taxpayers who have exercised the right of freedom of movement of workers. This is because the alimony payments are neither deducted in their state of residence nor in the employment state Belgium.

If Belgium does not reply to the arguments put forward within 2 months, the Commission may decide to refer the case to the Court of Justice of the European Union (ECJ) with proposed financial sanctions.

*Note:* From assessment year 2023, non-residents earning less than 75% of their professional income in Belgium can deduct alimony payments if the following cumulative conditions are met:

- the taxpayer is a resident of an EEA state;
- the taxpayer derives taxable professional income in Belgium, which is subject to the tax for non-residents;
- the taxpayer does not invoke the [Schumacker \(Case C-279/93\)](#) doctrine in another EEA state;
- alimony payments are not deducted in the residence state of the taxpayer;
- the taxpayer proves that they cannot (fully) benefit from the alimony deduction in their state of residence due to low taxable income there. This proof must be provided by means of an official declaration from the tax administration of their state of residence; and
- the taxpayer does not carry forward the non-deductible alimony in the residence state.

Alimony paid by the taxpayer's spouse who does not derive taxable income in Belgium is not deductible.

