The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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RENOUVEAU DEMOCRATIE CONSEIL

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Dear readers,

We welcome you back from the Easter break with some interesting news. In this month's edition, we present some clarifications provided by the Court of Justice regarding the notion of education allowance, as well as the state of play of the discussions on Brexit that could impact EU officials and agents of British nationality. As to the Belgian law, we focus on the new tax on securities accounts.

We wish you a very pleasant reading.

The DALDEWOLF Team

In brief...

Brexit: some details regarding the status of EU officials and agents of British nationality

The European Commission has recently released its draft agreement on the withdrawal of the United Kingdom. This draft agreement contains a basis for negotiations regarding the rights of EU officials and agents of British nationality.

The draft agreement provides that articles 11 to 13 of the Protocol on privileges and immunities of the EU (taxation, domicile for tax purposes and other facilities) will continue to be applied to officials and agents entered into service before the end of the transition period (period that would take place from 30 March 2019 to 31 December 2020). This document also provides that, for those EU officials recruited before the end of the transition period who wish to transfer their pension rights, the obligations incumbent on the United Kingdom shall be the same as those existing before the end of the transition period.

At this stage, this document is only a preliminary draft agreement that could be modified. We will provide you with regular updates on this subject, in the light of the progress of the negotiations.

Case law

Does the education allowance cover the contributions paid by parents to the Belgian schools' associations ?

In a judgment of 28 April 2017, the EU General Court rejected an action for annulment filed by four EU officials against a European Parliament's decision refusing to grant them education allowances. The applicants lodged an appeal before the EU Court of Justice (case C-390/17 P). On 22 March 2018, the Advocate General Juliane Kokott presented her opinion regarding the merits of the appeal. Although not binding, Advocate Generals' opinions are generally followed by the judges.

The case focuses on the notion of education allowance. Article 3 §1 of the Annex VII of the EU Staff Regulations provides that officials receive an education allowance that aims at covering the costs incurred for each dependent child who is at least five years old and in a regular full-time attendance at a primary or secondary school which charges fees or at an establishment of higher education. In the present case, the European Parliament refused to pay the allowance because the establishment where the children were enrolled was not a fee-paying school. In fact, the Belgian schools concerned are subject to the principle of free schooling, therefore enrolment is free of charge. However, in practice, the funding of these schools is guaranteed by non-profit associations that receive financial contributions paid by students' parents.

In rejecting the appeal in first instance, the General Court recalled that the notion of education allowance shall be interpreted as covering "*both fees enabling a pupil to access an educational establishment (registration fees) and fees enabling him to attend classes and participate properly in the programmes provided by that establishment (attendance fees*)". According to the judges, article 3 §1 of the Staff Regulations only concerns educational establishments that apply mandatory enrolment fees. In the present case, the admission to the establishments concerned and to their courses is not subject to any payment of fees neither to the establishments nor to any associations. The General Court thus concluded that the contributions made to non-profit associations cannot be considered as mandatory education fees and consequently do not give rise to any entitlements to an education allowance.

According to the applicants, the General Court misinterpreted the notion of education allowance as it interpreted it in the light of Belgian law. However, the Advocate General considers that the notion concerned has been interpreted autonomously with regard to the purpose of the education allowance, i.e. reimbursing the educational fees that EU officials must pay to enrol their children in school. Moreover, the Advocate General adds that provisions providing entitlements to financial benefits shall be interpreted strictly and that the European Parliament is bound by such provisions.

In conclusion, the Advocate General states that even if the establishments concerned cannot, in practice, finance their courses without the support of financial contributions to non-profit associations paid by parents, who are in fact bearing costs that are not mandatory, the notion of education allowance interpreted in accordance with the Staff Regulations does not allow for reimbursement of these fees.

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TAX ON SECURITIES ACCOUNTS: NON-RESIDENT TAXPAYERS ARE ALSO TARGETED!

The tax on securities accounts (TSA) is in force as from 10 March 2018.

The TSA aims at taxing the value of "in-scope" securities held by the natural person on his/her securities account(s) if the total average value of these "in-scope" securities amounts to at least 500.000 €. The threshold of 500.000 € must be assessed per taxpayer (on the basis of all the securities accounts he/she holds) and not per securities account.

"In-scope" securities are shares, bonds, units of contractual funds and shares of investments companies, warrants and notes. Registered (nominative) shares, derivatives and life-insurances are excluded.

The rate of the TSA is quite low, i.e. 0,15%.

The TSA taxable period does not correspond to the calendar year, as it lasts from 1st October until 30 September of the following year.

The TSA is applicable to all securities accounts held by a natural person having his/her tax residence in Belgium (e.g. a retired EU official), irrespective of whether his/her securities accounts are held in Belgium or abroad.

Surprisingly, the TSA also aims at taxing the Belgian securities accounts held by a natural person who has no Belgian tax residence (e.g. a EU official who falls under the Protocol on the Privileges and Immunities of the European Communities). This means that the TSA will be applied on the Belgian securities accounts held by a non-resident natural person if their total average value equals or exceeds the threshold of 500.000 €.

As to the declaration and payment of such annual tax, the non-resident taxpayer will have nothing to worry about: his/her Belgian bank or brokerage firm will declare and pay the TSA. However, when the value of the "in-scope" securities held by a person in a single Belgian bank/brokerage firm does not exceed 500.000 € and the same person owns in total more than 500.000 € of "in-scope" securities in several Belgian banks/brokerage firms, the taxpayer should ask to his/her bank or brokerage firm to declare and pay the tax (opt-in).

In this regard, the tax authorities declared that the non-Belgian individuals located in a country with which Belgium has signed a double taxation agreement regarding the "capital taxation" will not be subject to the TSA.

As an example, Spanish and German residents would be out of scope, while the French and English residents are in scope.

Therefore, the Belgian non-residents who hold one or more securities accounts in Belgium are advised to check if their home country has concluded a double taxation agreement with Belgium regarding the capital tax.

Our team

The Offici@l

European Union law Thierry Bontinck, Anaïs Guillerme and Marie Forgeois (avocats), Lauren Burguin (élève-avocat).
Belgian law Kévin Mununguu, Yaël Spiegl, Sarah Honincks, Olivier Bertin, Arnaud Piens, Julien Colson (avocats).