

# GMS Flash Alert

2026-079 | 25 March 2026



## Belgium – ECJ Rules Belgian Communal Tax on Non-Residents Discriminatory

Belgium's fixed seven percent communal tax on Belgian source income for non-resident taxpayers has been found by the European Court of Justice (ECJ) to violate Article 45 TFEU on the free movement of workers (ECJ - CHEFQUET C 119/24, 12 March 2026). The court held that non-residents can potentially face a higher tax burden than Belgian residents living in municipalities with low or zero percent communal tax rates, resulting in indirect discrimination based on residence.<sup>1</sup>

### WHY THIS MATTERS

The ECJ ruling will require Belgium to reassess the application of communal taxes to non-resident taxpayers. The court's position may also give rise to claims in respect of prior tax years. The outcome could have implications for affected taxpayers and their employers, including potential refund opportunities, increased administrative activity, and changes to future withholding and compliance processes.

### Background

Belgian tax non-residents (French tax residents) earning income taxable in Belgium are subject to communal taxes at a fixed rate (currently seven percent) on the Belgian income. The taxpayers claimed that the application of these communal taxes is discriminatory in view of the freedom of movement for workers. In some cases, applying the fixed rate of (currently) seven percent leads to a higher tax burden for non-residents compared to residents, when comparing with municipalities with low or zero percent communal tax rates. The Liège Court of Appeal had requested the European Court of Justice to issue a preliminary ruling (*prejudiciële vraag / renvoi préjudiciel*).

### Key Highlights

#### ECJ ruling

- The court found that the Belgian communal tax regime for tax non-residents violates Article 45 TFEU (freedom of movement for workers), as it results in indirect discrimination based on tax residence.
- According to the ECJ, non-residents and residents are in a comparable situation regarding taxation on Belgian income when it comes to applying communal taxes to the taxable income. As the current

application can lead to non-residents being taxed at a higher rate than residents, at least in certain cases, the Belgian rules are deemed to be discriminatory towards non-residents in similar situations.

## Implications

- The ECJ has issued this position in reference to a preliminary ruling. Consequently, the Liège Court of Appeal will now have to rule on the case based on this position. It remains up to the Liège Court of Appeal to definitively confirm that the Belgian tax residents living in municipalities with lower communal tax rates enjoy more favorable tax treatment, although based on the facts at hand that seems rather straightforward.
- Regardless of the outcome of the specific case, the ECJ-interpretation is binding *erga omnes*. As a result, all Belgian non-resident taxpayers can theoretically use this position to appeal application of the Belgian communal taxes at (currently) seven percent on their taxable income in Belgium. Taxpayers could use any of the available procedures depending on the relevant deadlines, be it via tax claim or request for ex officio tax relief, or through court proceedings.
- It will be up to the Belgian authorities to amend the national legislation to remediate the established discrimination. It is anticipated that Belgium may hold off on taking any action until they see how the Liège Court of Appeal rules on the case, but the potential budgetary ramifications at play for Belgium are enormous.

## KPMG INSIGHTS

In light of the ECJ ruling, organizations may wish to monitor legislative changes and guidance from Belgian tax authorities following the final decision from the Liège Court of Appeal.

KPMG in Belgium will continue to follow up on the matter and will provide subsequent updates. If assignees and/or their programme managers have questions about this development, they may wish to contact their usual tax professional or a member of the GMS tax team with KPMG in Belgium (see the Contacts section) for further information.

## ENDNOTE:

1 EUR Lex, "[EUR-Lex - 62024CJ0119](#)," published on 12 March 2026.

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## Contacts

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**The information contained in this newsletter was submitted by the KPMG International member firm in Belgium.**

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