



## **Laga Newsflash**

### **CJEU: Application of Flemish inheritance exemption for forests conflicts with EU law**

Before the Court of Justice of the European Union (CJEU), Laga successfully claimed that the Flemish inheritance regime for forests contradicts EU law and should be extended to forests located abroad. In a landmark case, the CJEU declared this regime in its judgement of 22 November 2018 as a prohibited restriction of movement of capital.

#### **Special Inheritance Regime for Forests**

The former Inheritance Tax Code Article 55quater and the current Flemish Tax Code Article 2.7.6.0.3 foresee a full exemption from inheritance tax for immovable property that is considered a 'forest'.

In order to benefit from this exemption, the inheritor has to lodge a formal application, and has to develop and file a sustainable maintenance plan. The exemption is provided in the form of a 30 year subsidy, which sets the term for compliance with the maintenance plan and other legislative criteria.

#### **Exemption conflicts with EU law**

In the case at hand, the inheritor filed a formal application and provided a forest maintenance plan. Nonetheless, due to the fact that the forest is located in the Netherlands, the Flemish authorities claimed that the exemption could not be granted.

Upon Laga's suggestion, the Court of Appeal in Antwerp referred the case to the CJEU for a preliminary ruling.

The CJEU consequently declared in its judgement of 22 November 2018 that the Belgian inheritance regime for forests conflicts with EU law. Once the criteria in the legislation are met, the authorities cannot refuse the exemption on the sole ground that the forest is located outside the territory of Flanders. According to the CJEU, the objective of protecting the environment – one of the EU's core objectives – implies a common responsibility of EU Member States and cannot be restrained to the territory of one region or country.

## A far-reaching landmark case

This landmark ruling has far-reaching consequences, as the exemption of inheritance tax for forest extends globally.

The authorities could only refuse the exemption if conditions in the law are not met or if it is impossible to obtain information from authorities in third countries, as is necessary for the exemption's fiscal supervision.

The relevance of the ruling is expected to apply similarly to the new beneficial inheritance tax regimes in force as of 9 June 2018 for undeveloped immovable property, which replace the current exemption of Article 2.7.6.0.3 of the current Flemish Tax Code.

## Laga approach

The below contacts are readily available to help with questions regarding the judgment and, upon request, provide support with the application of this special inheritance tax exemption.

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