

Attacking a tax rule: where should you knock? The Court of Justice

What if the tax legislator introduces a rule you do not agree with because it infringes your fundamental rights. Depending on the rule you want to attack and the rights which are infringed, you should address another competent Court. In this contribution we discuss the Court of Justice.

Belgium legislator should respect the European law

Imagine that you have a discussion with the tax authorities on the application of a certain tax law. The tax authorities have applied the rule correctly, because you think the law itself is in breach with the European rules. Belgium should as a European member state after all respect the European legislation. Especially the rules on free trade are important. Citizens of the Union are free to transport goods to other countries, offer services in other countries, work in another country, setting up a company in another country, ... Member states should not hinder these freedoms.

Example: A national law which taxes dividends from foreign companies higher than dividends from local companies infringes the freedom of establishment and free circulation of capital.

A preliminary question on European law

If you think that a Belgian (tax) rule infringes your European 'freedoms', you can ask the judge to raise a *preliminary question* to the *European Court of Justice*. This is an European court which will examine this issue further. The Court will then decide whether European law was infringed. The judge which raised the question is held by the opinion of the Court.

Watch out: the lower courts are not obliged to raise such a preliminary question. Only in case no other legal actions are possible, the tribunal or court is obliged to raise the question. For us this means that the Court of Cassation cannot refuse to raise a preliminary question.

European Commission can submit a case to the court

Next to this the European Commission is also a watchdog. If it thinks that the national law of one of the member states is in breach with European law, it will admonish the member state in question to do something about it. If the member state does not act, the Commission can directly submit the case to the Court. The Court can potentially oblige the member state to amend its legislation.