

Tax Newsletter

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How to secure a tax deduction for rent paid in 2023?

- The rent should qualify as a '**business expense**'. You will thus need to evidence that the rental cost has been incurred to acquire or maintain income during the year at hand.
- In case of intercompany rent, the rent as such should be **at arm's length**.
- If the **landlord is a Director** of the company, a "professional income" arises to the extent that the rent exceeds 5/3rd of the revalued deemed rental income (DRI) of the property being rented. The 2023 revaluation coefficient amounts to 5,37. The company – lessee should thus duly satisfy certain **payroll formalities**, as well as the **conflict of interest procedure laid down in company law**.
- Going forward, the taxpayer bearing the rent needs to add an **Enclosure 270.MLH** with his Belgium income tax return clearly mentioning the identity of the landlord, the address of the leased property, the rent and the amount for which a tax deduction is claimed. This Enclosure is also mandatory for **payments made to compensate 'real rights' as defined in the Civil Law Code** (like *superficie*, *emphytéose*, *usufruit*, *servitude*). Rent paid for leasing furniture or property amortizations do not need to be disclosed. This Enclosure is mandatory for all entities. Individuals only need to file it when they want to claim a tax deduction for rental charges.
- Only when the lessee has a **vat-compliant invoice** issued by a landlord based in the EEA, the **Enclosure is not required**.
- Moreover, the **rental charge will anyhow be disallowed if the rental agreement has not been registered or has been registered for free**. In case of registration of a commercial rental contract, 0,2% registration duties are due on the total rent and rental benefits. Registration of a private dwelling rental agreement is not subject to registration duties. Hence, no tax deduction of rental costs is allowed, except if such private dwelling rental contract relates to the contractually foreseen private dwelling of a Director or employee.
- A Circular Letter of 23.04.2024 confirms that, in case of the free-of-charge registration of an **alleged private dwelling rental contract**, (1) there is no tax deduction for the rental costs, even if it appears that the lessee uses the property for business purposes, and (2) the natural person – **lessee is not taxed on 60% of rental income** (but only on 1,4 of the indexed DRI as if it were a genuine private dwelling contract; the 2023 indexation coefficient amounts to 2,0915).
- An additional **exemption for agricultural rent** has been announced.