



Corporate tax alert Belgium

Constitutional Court: Judge can lower secret commissions tax



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On Friday 6 June 2014, the Constitutional Court issued decision n° 88/2014 ([Dutch](#) | [French](#)) regarding a prejudicial question with respect to Art. 219 ITC, submitted by the Leuven Court of First Instance on 10 May 2013.

The Leuven Court enquired whether the secret commissions tax violates Art. 10, 11 and 13 in the Constitution, when read in conjunction with Art. 6.1 of the European Human Rights Convention and taking into account that the tax judge cannot reduce the 309% secret commissions tax despite the tax's criminal nature.

The Constitutional Court is of the opinion that Art. 219 ITC indeed violates the afore-mentioned provisions to the extent that it would be interpreted as preventing a judge from examining the secret commissions tax assessment in order to determine whether it is factually and legally justified and whether all legal provisions and general principles - including the proportionality principle - have been respected. Stated differently, the tax judge is allowed to lower the secret commissions tax.

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