

## Corporate tax alert

### Belgium

## Constitutional Court issues decision on fairness tax

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The Belgian Constitutional Court has issued today, 28 January 2015, its decision 11/2015 on the request for the fairness tax's annulment ([Dutch](#) | [French](#)).

This request had been filed by a taxpayer on 3 February 2014 against the articles 43 through 51 of the Law of 30 July 2013, which introduced the fairness tax. The taxpayer requested the fairness tax provisions' annulment based on 4 different grounds.

Today's decision only addresses the first ground, i.e. the violation of the constitutional non-discrimination principle, read in conjunction with the EU freedom of establishment principle and Articles 4 and 5 of the Parent-Subsidiary Directive.

The Court decided to submit 3 prejudicial questions to the Court of Justice of the EU:

- Does the fairness tax's application to Belgian branches of EU resident companies violate the freedom of establishment principle?
- Is the fairness tax a prohibited withholding according to Article 5 of the Directive?
- Does Article 4 of the Directive allow that dividends received from subsidiaries impact the parent's fairness tax liability when these dividends are redistributed in a subsequent year?

As the Court of Justice's decision is required for the Constitutional Court to decide on the first ground, the 3 other grounds were not (yet) addressed.

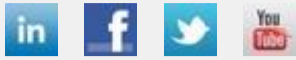
It should be noted in this respect that, according to the judgment, the European Commission has already notified Belgium by a letter, dated 1 August 2014, that the fairness tax seems to violate both Article 4 of the Parent-Subsidiary Directive and the freedom of establishment principle. The Belgian authorities expressed their disagreement with this position in a letter dated 9 October 2014.

### Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium.

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