



## Corporate tax alert

### Belgium

## Constitutional Court issues decision on fairness tax

A wealth of tax information within your fingers' reach  
Discover Deloitte's apps



Belgium app



Global tax app

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.

For general inquiries, please contact: [bedeloittetax@deloitte.com](mailto:bedeloittetax@deloitte.com).

Be sure to visit us at our website: <http://www.deloitte.com/be/tax>



Deloitte Belgium  
Berkenlaan 8A, 8B, 8C  
1831 Diegem  
Belgium

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 200,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

Click [here](#) to (un)subscribe or modify your subscription.

© 2015. For information, contact Deloitte Belgium.