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Belgium | Deloitte Tax | 12 May 2015

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## Constitutional Court's second verdict regarding annual tax on collective investment, credit institutions and insurance companies

The Constitutional Court annulled the rate increase, specifically applicable to credit institutions, of the annual tax on undertakings for collective investment, credit institutions and insurance companies (the "annual tax").

The annual tax is due by credit institutions governed by the Law of 22 March 1993[1] which pay or attribute income or dividends as referred to in Article 21, 5° and 6° of the Belgian Income Tax Code ("ITC 92"). The tax applies to a portion of the total amount, as calculated on 1 January of the tax year concerned, of the regulated savings deposits as referred to in Article 21, 5° ITC 92, the interest related to the previous year excluded. The portion is equal to the proportion between (i) the total of the income paid which is not taxable under Article 21, 5° ITC 92 and (ii) the total amount of the income attributed to these deposits during the year preceding the tax year.

The rate of the annual tax was increased twice in 2013:

- First by the Law of 17 June 2013 (the "first law"), which increased the tax rate from 0.08% to 0.0965%, effective **as of 1 January 2013**, and from 0.08% to 0.0925% **as of 1 January 2014**.
- Secondly by the Law of 30 July 2013 (the "second law"), which further increased the tax rate for credit institutions from 0.0965% to 0.1200% **as of 1 January 2013** and from 0.0925% to 0.1929% **as of 1 January 2014**.

In a previous decision, 1/2015 of 22 January 2015, the Constitutional Court ruled that the increase by the first law of the tax rate from 0.08% to 0.0965%, which became effective **as of 1 January 2013**, was retroactive and therefore cancelled the increase. The tax payer did not challenge the increase **as of 1 January 2014**.

In its current decision, 54/2015 of 7 May 2015, the Constitutional Court ruled, in line with its first decision, that the (second) increase (applicable to credit institutions) of the tax rate from 0.0965% to 0.1200% introduced by the second law and became effective **as of 1 January 2013**, to be retroactive and therefore cancelled the increase.

Furthermore, the taxpayer argued that the increase of the tax rate from 0.0925% to 0.1929%, effective **as of 1 January 2014**, is discriminatory because it hinders credit institutions which are financed by deposits made into savings accounts and are thus at a disadvantage compared to credit institutions which finance themselves on the capital market. The Court however, ruled that although different types of credit institutions are subject to the same (tax) treatment, such treatment is justified in light of the tax rate increase's aim to stimulate credit institutions to invest more in the 'real' economy. As such, the increase effective as of 1 January 2014 was upheld.

A request for refund may be introduced by the credit institutions for the excess paid in tax year 2013.

[1]Replaced by the Law of April 25, 2014 on the status and control of the credit institutions.

## Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or a member of Deloitte's FSI team:

- Wim Eynatten, weynatten@deloitte.com, + 32 2 600 67 59
- Geneviève Colot, gcolot@deloitte.com, +32 2 600 68 39

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

Visit Deloitte's FSI website: http://www.deloitte.com/be/en/industries/financial-services.html.

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