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Reasoned opinion concerning Belgian annual tax on undertakings for collective investment

In a 26 September 2013 press release, the European Commission announced that it sent a reasoned opinion to Belgium, officially requesting it to amend the legislation concerning the annual tax on collective investment institutions.

The Belgian Inheritance Tax Code provides for an annual tax on, among others, undertakings for collective investment (regardless of tax transparency). This annual tax is calculated based on the number of shares / units (deemed) placed in Belgium, multiplied by the net asset value per 31 December. It is assessed by compartment / class of shares, where applicable. The law of 30 July 2013, containing various fiscal and financial measures, provided for a rate increase from 0.08% to 0.0965% as of 1 January 2013 and to 0.0925% as of 1 January 2014.

Domestic funds can benefit from a reduced rate of 0.01% if certain conditions are met. More specifically, it is required that one or more compartments or classes of the collective investment institutions' shares are collected exclusively from institutional or professional investors acting for their own account. Furthermore, it is required that their securities may only be purchased by such investors.

Similar EU or EEA collective investment institutions fulfilling the same conditions cannot apply for this reduced rate, which results in a less favourable treatment of 'foreign' collective investment institutions.

According to the European Commission, this provision falls foul of the EU's freedom of establishment and free movement of capital principles. The Commission urged Belgium to take the necessary steps to amend its legislation. If Belgium does not react within a two month period, the Commission may refer the matter to the European Court of Justice.

It should however be pointed out that, in order for the tax to apply, it is required that the fund be registered with the FSMA (the Belgian regulator). Since (compartments / share classes of) institutional funds do not need to register with the FSMA, they are in principle not tax liable, as also confirmed by the Service for Advanced Decisions.

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