



Deloitte Legal Newsflash

Tax Dispute Resolution

Constitutional Court reviews and annuls aspects of law on annual tax on securities accounts

In its judgment of 27 October 2022 (case number 138/2022), the Constitutional Court ruled on the various annulment appeals brought against the Law of 17 February introducing an annual tax on securities accounts. Although the tax in itself is not annulled by the Court, and will thus continue to exist, the specific anti-abuse provisions and the retroactive entry into force of the general anti-abuse measure were found unconstitutional and annulled.

According to the Constitutional Court, it is up to the legislator to impose a ‘subscription tax’ (‘abonnemestaks’ / ‘taxe d’abonnement’) such as the annual tax on securities accounts and the Court did not find that the legislator acted manifestly unreasonably by, for example, setting the threshold amount at EUR 1,000,000 or only targeting securities accounts with exclusion of other types of assets.

Annulment of specific measures and retroactive effect

The specific anti-abuse provisions did not, however, survive the review of the Constitutional Court. Those provisions targeted two types of transactions that are not opposable to the tax authorities (the splitting of one securities account into multiple securities accounts held with the same intermediary and the conversion of taxable securities into registered securities). According to the Constitutional Court, it is not sufficiently clear, in the legal text and the parliamentary documents, which transactions are targeted. It entails that the anti-abuse provision is contrary to the constitutional principle of legality in tax matters and must therefore be annulled.

The retroactive entry into force of the general anti-abuse provision is also prohibited by the Constitutional Court. The Court holds that there is no reasonable justification to implement the general anti-abuse provision

retroactively. A notice in the Belgian Official Journal preceding the Law is deemed insufficient to justify any retroactive effect. As a consequence of this annulment, the general anti-abuse provision only applies to transactions after the entry into force of the annual tax on securities accounts, i.e. transactions occurring after 26 February 2021. Therefore, conversions of securities, splitting of accounts or other transactions with a potential impact on the tax that took place between 30 October 2020 and 26 February 2021 cannot be disregarded by the tax authorities.

Refund of overpaid taxes

Deloitte Legal's tax dispute resolution team is proud to have successfully assisted one of the plaintiffs on both aspects of the law which were annulled.

The Constitutional Court's ruling will have an impact for many taxpayers who were subject to a taxation (withheld by their financial institution) based on the now annulled (specific or retroactive) anti-abuse provisions. If you are in such a situation, our team can assist you with a refund claim for overpaid taxes.

Contacts

If you have any questions concerning the items in this newsflash, please get in touch with your usual Deloitte Legal - *Lawyers* contact at our office in Belgium or:

- Annick Visschers, avisschers@deloitte.com, + 32 2 800 70 72
- Filip Smet, fsmet@deloitte.com, + 32 2 800 70 64
- Samuel Vanthienen, savanthienen@deloitte.com, + 32 2 800 70 44
- Frouke Van Gaeveren, froukvangaeveren@deloitte.com, +32 9 331 64 74

For general inquiries, please contact:

bedeloittelegal@deloitte.com, + 32 2 800 70 00

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

As a top legal practice in Belgium, Deloitte Legal - *Lawyers* is a full service business law firm, highly recommended by the most authoritative legal guides. Deloitte Legal - *Lawyers* is based in Zaventem, Watermael-Boitsfort, Antwerp, Ghent and Kortrijk. It consists of close to 150 highly qualified Bar-admitted lawyers. Deloitte Legal - *Lawyers* offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, insolvency and reorganisations, real estate, EU law, tax law, tax & legal services for high-net-worth families & individuals (Greenille Private Client) and dispute resolution. Whenever required to ensure a seamless and comprehensive high-quality service, Deloitte Legal - *Lawyers* collaborates closely with other professions (e.g. tax, financial advisory, accountancy, consulting), and with a select group of law firms all over the world.

Deloitte Legal - *Lawyers* provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises, financial institutions, government bodies to private clients.

More information: www.deloittelegal.be

© 2022, Deloitte Legal – *Lawyers* - The content and layout of this communication are the copyright of Deloitte Legal – *Lawyers* or its contributors, and are protected under copyright and other relevant and intellectual property rights laws and regulations. No reproduction in any form or through any medium is allowed without the explicit consent of Deloitte Legal – *Lawyers* or its contributors.

[Subscribe](#) | [Unsubscribe](#)