

The Constitutional Court invalidates the tax on the conversion of bearer shares

The Constitutional Court has recently invalidated the tax on the conversion of bearer shares (judgment of 5 February 2015). As we wrote in our newsletter of November 21, 2014 the Court of Justice has ruled that a tax on the conversion of bearer shares is in conflict with European law (judgment of 9 October 2014). The Court of Justice pronounced on the matter as a result of a preliminary ruling of the Constitutional Court. As expected, the latter followed the judgment of the Court of Justice in its decree.

Despite the fact that this tax was already largely inoperative mostly due to the judgment of the Court of Justice, the judgment of the Constitutional Court is noteworthy. So, henceforth, all taxpayers who have paid the tax will be able to recover this tax, however only within the established time limits. Taxpayers, who have paid this tax in 2013 and at the end of 2012, could already claim reimbursement of this tax after the judgment of the Court of Justice. Taxpayers who no longer fell within the period of two years from the date the legal action was filed, had to wait for the judgment of Constitutional Court (see Art. 202/8 of the Code on miscellaneous duties and taxes).

Generally, the only taxpayers who will be able to reclaim the tax are the financial institutions (for shares registered as dematerialized securities) and the issuing companies themselves (for registered securities). Holders of securities to which the tax was charged cannot reclaim the tax themselves. They may possibly contact the financial institution or the company that issued securities to try to work out a settlement.

For more information on this specific subject, please contact Wout De Cock (the author) and Gwen Bevers (head of department).