

## (International) non-profit associations under scrutiny – the Belgian Constitutional Court puts the patrimony tax on the map

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In a judgment of 23 January 2020, the Constitutional Court ruled that the exemption for patrimony tax on immovable property located abroad (i.e. buildings such as offices and flats) cannot be justified and is contrary to the constitutional principle of equality. As a result, the exemptions included in the Inheritance Tax Code as well as the tax itself are brought back into the picture.

### Patrimony tax?

In principle, the patrimony tax is a tax intended as compensation for inheritance tax which cannot be levied in the hands of legal persons. This tax is due by NPAs, but also by INPAs and private foundations.

The tax is generally due on all the assets, both movable and immovable, with the exception of, among others:

- cash and working capital intended to be used during the year for the activity of the association or foundation; and
- immovable property located abroad.

Each year, all associations and foundations subject to this tax must spontaneously submit a declaration and pay the tax by 31 March at the latest. However, we notice that this is often forgotten by a large number of associations and foundations.

### Foreign real estate

Under both the "old regulation" on which the Constitutional Court had to rule and the current article 150 of the Inheritance Tax Code, foreign real estate is excluded from the tax.

The Council of Ministers did not find this exemption problematic and even justified by the fact that, under the prior NPA regulations, an association could only own immovable property which is necessary to achieve its purpose. Therefore, according to the Council of Ministers, it was not common for an association to own real estate abroad. Because of the limited cooperation between the tax authorities in the various countries, the Council of Ministers stated that the cost of collecting the patrimony tax would be excessive.

The Constitutional Court does not follow the Council of Ministers in this respect. It is not justified to apply a different tax treatment for real estate, solely based on whether it is located in Belgium or abroad.

### Gateway to more tax audits?

At the moment, it is unclear what actions the administration will take in the framework of this judgment. If the regulation will be amended in this sense, the administration will be able to collect more taxes. For associations and foundations that do not own immovable property abroad, this does not have any consequences at first sight. However, it is a fact that this judgment has put the patrimony tax back on the map which could potentially increase the chance for every association and foundation to be confronted with an audit.

### How can EY (Law) help you?

A patrimony tax audit is not in itself problematic. Our EY VAT colleagues will be happy to advise you on the application of this tax, with possible exemptions or optimizations. They can also make an assessment of possible risks during an audit, with possible remediation if an annual declaration has not been submitted.



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