

## **Foreign pension funds can reclaim withholding tax on dividends distributed by Regulated Real Estate Companies following annulment decision of the Belgian Constitutional Court**

### **Background**

With its decision of 11 May 2016, the Constitutional Court has annulled article 95 of the Act of 12 May 2014 relating to Regulated Real Estate Companies (“the **B-REITS Act**”). Article 95 of the B-REITS Act prevented that some withholding tax (“**WHT**”) exemptions applied to dividends distributed by a B-REIT. In practice, this concerned mainly the following situations:

- The WHT exemption for dividends distributed by a public B-REIT to qualifying foreign pension funds (article 106, § 2 Royal Decree to the Income Tax Code 1992 (“**RD/ITC 1992**”))
- The WHT exemption for dividends distributed to resident companies owning a minimal participation of at least 10% in the capital of a public B-REIT, in case this minimal participation has been (or will be) owned during an uninterrupted period of at least one year (article 106, §§6-6bis RD/ITC 1992)

The Constitutional Court has annulled this article with retroactive effect.

### **Consequences: tax refund claim**

Following the annulment judgment said article 95 of the B-REIT Act is supposed to have never existed, and the above-mentioned shareholders can reclaim the WHT (increased with interest payments as the case may be). The shareholder can file to this end a tax refund claim.

In the hypothesis that no tax assessment has been established (or notified), it is recommended to file the tax refund claim with the competent regional Director of the tax administration. For foreign pension funds, this will be the regional Director of Brussels II Vennootschappen, Kruidtuinlaan 50 (floor 19P), box 340, 1000 Brussels. This claim must be submitted at the latest the 31<sup>st</sup> of December of the fifth year following the 1<sup>st</sup> of January of the year in which the WHT has been paid.

### **Temporal scope**

Following the Act of 18 December 2015, the above-mentioned article 95 was repealed as of the beginning of this year. Consequently the decision of the Constitutional Court is only relevant for dividends distributed in the period from 16 June 2014, date of entry into force of the B-REIT Act, and 7 January 2016, date of entry into force of the Act of 18 December 2015.

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