



FSI Tax alert

Tax on securities accounts

Compliance process for financial intermediaries clarified but potential annulment lurking around the corner

A Royal Decree published on 23 August 2021 ([Dutch](#) | [French](#)) clarifies the compliance process for Belgian intermediaries with respect to the new annual tax on securities accounts.

As a reminder, the legislator introduced a new version of the tax on securities accounts in February 2021 following the annulment of the previous version by the Constitutional Court on 17 October 2019. See our previous [alert](#) for more information.

Compliance process

As the new annual tax on securities accounts went into effect on 26 February 2021, the compliance obligations of Belgian intermediaries (such as financial institutions, insurers, etc.) was reinstated. As such, Belgian intermediaries are again liable to withhold, report, and pay the tax on securities accounts that are

within the scope of the revised tax (for foreign securities accounts, however, the overall compliance responsibility remains with the account holder(s)).

In this respect, the Belgian Federal Public Service of Finance is will introduce an online platform allowing intermediaries to submit securities accounts tax returns, which will have to include the following information:

- The reference period covered by the return;
- The name or company number of the intermediary;
- The number of securities accounts included in the return;
- The cumulative taxable base and the tax due; and
- Any other elements necessary for the correct collection of the tax.

In addition, intermediaries will be required to maintain a list of all securities accounts covered by each return, including all account numbers, the taxable amount, and the amount of the tax, to be made available to the tax authorities upon request.

The first reference period ends on 30 September 2021 and Belgian intermediaries will have declare and pay the tax by 20 December 2021. If the account holder must declare and pay the tax itself (e.g. for a foreign securities account), the first declaration should in principle be submitted by July 2022 and the tax must be paid by 31 August 2022 at the latest.

On 31 August 2021 a ministerial decree ([Dutch](#) | [French](#)) was published with respect to the practicalities for recognizing a Belgian fiscal representative for foreign intermediaries regarding the new annual tax on securities accounts.

Annulment procedures

As expected, however, new annulment procedures have been initiated before the Constitutional Court. Assuralia (the association representing most Belgian and foreign insurance companies operating in Belgium) as well as wealthy families (through their holding/investment companies) are of the opinion that the revised version of the tax on securities accounts again violates the Belgian Constitution.

Assuralia has requested the annulment of the provisions applicable to unit-linked insurance products (in Belgium known as branch 23 insurance products, i.e. products involving the payment of an insurance premium by an insured person to an insurance company that in turn invests the premium in investment funds (by means of securities accounts) according to the provisions of the insurance contract). This request is based on the following arguments: (i) unequal treatment (given that banking products and foreign branch 23 insurance products are not in scope, leading to a competitive disadvantage) and (ii) lack of clarity in the law. With respect to the latter and as explained in our previous [alert](#) of 10 March 2021, because the law is unclear, different interpretations are possible with respect to branch 21 insurance products, pension products, etc.

Certain holding/investment companies have requested the annulment of a new specific anti-abuse provision that introduced two irrefutable presumptions of tax abuse. Based on this provision, (i) the splitting of securities accounts into several accounts with the same intermediary and (ii) the conversion of taxable financial instruments into registered financial instruments out of scope of the tax are automatically considered tax abuse. This means that situations in which there might be legitimate reasons for these actions should be ignored.

Moreover, the fact that exceptions to these irrefutable presumptions are unclear (based on the law's Preparatory Documents) and the fact that the specific anti-abuse measure (in combination with a new general anti-abuse measure) has retroactive effect has increased taxpayers' concerns. Although the law came into effect in February, the tax authorities have not yet published any clarification.

It remains to be seen how the Constitutional Court will evaluate the new version of the tax on securities accounts.

What to do?

As the first general reference period ends on 30 September 2021 and the decision of the Constitutional Court is not expected in the short term, Belgian intermediaries and account holders should assess the impact of the new law and their compliance obligations while at the same time trying to safeguard their interests in case all or part of the new law is annulled.

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