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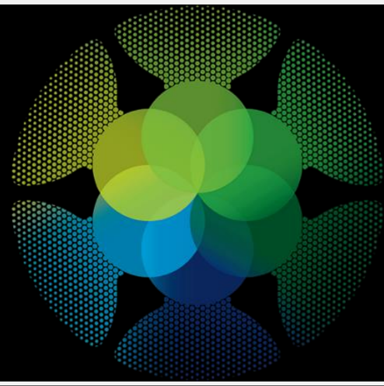

Global Employer Services
Individual tax

Draft legislation on new annual tax on securities accounts published

On 5 January 2021, a draft law was submitted to the Belgian parliament introducing the successor to the previous annual tax on securities accounts that was annulled by the Constitutional Court in October 2019. Broadly, as currently drafted, the proposal is for a 0.15% annual tax on securities accounts where the average value of taxable financial instruments held within an account exceeds EUR 1 million. Although the new tax shares many similarities with the previous tax, there are a number of key differences, such as the link to qualifying legal arrangements, branch 23 insurance products, and the introduction of a broad anti-abuse measure. The draft law is being debated by the parliament and is subject to amendment. The new law will come into effect from the day following its publication in the official journal, with the exception of the anti-abuse measures that it currently is proposed would apply retroactively as from 30 October 2020.

This alert highlights the basic principles of the new tax as set out in the current draft law. More detailed commentary and analysis will be provided once the legislation is finalised.

Overview

As currently drafted, the law provides for a tax of 0.15% to be levied on securities accounts once the average balance of an account exceeds the threshold of EUR 1 million during the reference period. A recent proposed amendment would replace the flat rate by progressive tax rates from 0%-3% but it remains to be seen whether this amendment will be adopted.

Key features include:

- The threshold must be assessed for each securities account separately, i.e., two accounts each with an average balance of EUR 600,000 would not trigger the application of the tax, other than in the case of fiscal abuse.
- The reference period is the 12-month period starting on 1 October and ending on the following 30 September. The current expectation is that the first reference period will start on the day following the publication of the law in the official journal and end on 30 September 2021.
- Where the EUR 1 million threshold is exceeded, the tax will be levied on the entire balance.
- To mitigate the effect of the tax, the proposal is that for securities accounts whose balance fluctuates around the threshold, the tax is limited to 10% applied to the difference between the average balance and the threshold, so that where:
  - The average balance is EUR 1 million, no tax is payable; and
  - Where the average balance is EUR 1,000,001, the tax would otherwise be EUR 1,500, causing the average balance to drop below the EUR 1 million threshold. To mitigate this, the draft law would limit the tax to EUR 0.1 (i.e., 10% of 1).
- All securities are in scope, i.e., not only shares, bonds, warrants, etc. but also derivatives such as trackers and turbos. Cash amounts also must be taken into account with the exception of capital gains following the sale of the securities that are immediately transferred to an ordinary bank account.

Personal scope

The proposed new tax on securities accounts essentially does not target the account holder(s), but the securities account itself, as it is considered to be a subscription tax. As such the personal scope is not limited to individuals (both resident and nonresident); legal entities, associations, public entities, qualifying legal arrangements, etc., also are within the scope of the charge. Exceptions are expected for certain players within the financial industry for whom holding securities accounts is their primary activity (such as financial institutions, insurance companies, and pension providers).

For Belgian residents both Belgian and foreign securities accounts are in scope, whereas for nonresidents only Belgian securities accounts are targeted.

Compliance obligations

The compliance obligations are broadly in line with those for the previous tax on securities accounts. The Belgian intermediary would be responsible for filing the tax return, and withholding and paying the tax in relation to Belgian securities accounts. With respect to foreign securities accounts, the overall responsibility to comply with the formalities remains with the account holder(s), unless the foreign intermediary voluntarily assumes responsibility, or a responsible representative is appointed.

If a securities account is held by several account holders, the ownership structure (joint ownership, bare ownership, usufruct, etc.) is not taken into account. Every account holder is severally liable to file the tax return and to pay the full amount of the tax due. One account holder may file the return on behalf of all account holders.

Where the account holder is responsible for the formalities:

- The filing deadline for the return corresponds to the online filing deadline for the personal income tax return (i.e., mid-July) in the year following the reference period.
- The payment deadline is 31 August of the year following the reference period.

Assuming the first reference period ends on 30 September 2021, the first returns would be due in June/July 2022, with the first tax payments by 31 August 2022. Filing in principle should be done electronically via the MyMinfin platform.

In the case of a failure to file a return, an incomplete return, or late submission of the return, a penalty of between 10%- and 200% of the tax due may be imposed. In the case of late payment, late payment interest of 7% is payable.

Contacts

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