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Operational Tax News

Belgian tax on securities accounts: Draft law adopted

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The Belgian draft law implementing the tax on securities accounts (TSA) has been adopted on 1 February 2018. As a reminder, the TSA is a new tax levied at the rate of 0.15% on the total value of in-scope securities held by:

- Belgian tax resident individuals on securities accounts with Belgian or foreign banks
- Non-resident individuals on securities accounts maintained with Belgian banks

to the extent that the average annual value of such securities exceeds €500,000. The €500,000 threshold is calculated in accordance with a specific mechanism outlined below.

The TSA follows the footsteps of the Belgian stock exchange tax (known as the TOB, whose scope was extended with effect from 1 January 2017) in that both tax regimes have significant extraterritorial implications and foresee optional withholding mechanisms for non-Belgian financial intermediaries.

The TSA will enter into force one day after the law will be published in the Belgian official gazette.

Scope

As mentioned above, the TSA is aimed at taxing the value of in-scope securities held by Belgian tax resident individuals on securities accounts with Belgian and foreign banks as well as securities held by non-resident individuals on securities account maintained with Belgian banks. Consequently, securities held by corporate entities are out of scope. Securities held by non-Belgian individuals with non-Belgian banks are out of scope of well. The draft law foresees an anti-abuse measure aimed at preventing TSA avoidance by transferring securities to corporate entities for the sole purpose of avoiding the tax on securities accounts. Any such transfers occurring after 1 January 2018 shall be disregarded for TSA purposes.

Securities caught by the TSA are:

Listed and unlisted shares as well as certificates on such shares
Listed and unlisted bonds as well as certificates on such bonds
Treasury bills
Warrants
Units of contractual funds and listed and unlisted shares of investment companies (both UCITS and AIFs)

Derivatives such as options, futures, or swaps should be out of scope. Units of contractual funds and listed and unlisted shares of investment companies held as part of a pension savings plan are also out of scope of the TSA. The draft law does not clearly specify which pension savings plans are eligible for the exemption, which may be a source of uncertainty especially when it comes to non-Belgian pension savings regimes.

It is worth mentioning that, according to the parliamentary documents, unlisted securities are in scope only to the extent that they present sufficient liquidity. For instance, registered shares that are deposited on a securities account are deemed to be liquid and should typically be in scope. In contrast, registered shares that are only referenced in a shareholder register but not in a securities account are deemed illiquid and should thus be out of scope. To prevent avoidance, a specific anti-abuse measure has been introduced whose aim is to disregard conversions (occurring after 9 December 2017) of in-scope shares to shares that are only referenced in a shareholder register.

The TSA is due with respect to a given account holder only if the average value of the securities attributable to that account holder exceeds €500,000. The €500,000 threshold is thus assessed at the account holder level for jointly held accounts and not at the account level.

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Example 1

Facts: Mr. X and Mrs. Y, Belgian tax resident individuals, hold a securities account whose average value amounts to €900,000. The account is equally held by both account holders (i.e., the value attributable to each account is €450,000). No other securities are held by Mr. X and Mrs. Y. on any other account with any other bank.

Analysis: Despite the fact that the total joint account value is €900,000 and thus exceeds the €500,000 threshold, neither Mr. X's nor Mrs. Y's portion of that account is above the threshold. Therefore, neither Mr. X nor Mrs. Y should be liable to the TSA.

Obligations with respect to the declaration and the payment of the TSA

For securities accounts maintained with Belgian banks, the responsibility to declare and pay the TSA typically falls on the Belgian banks themselves. As the same account holder may hold securities accounts with several banks (some of which may be below the €500,000 threshold), the account holder will be able notify (in principle electronically) a bank to withhold the tax regardless of the total value of the securities account maintained at that bank. In the absence of such notification, and provided that the €500,000 threshold is exceeded, the account holder will be required to self-asses, declare, and pay the TSA.

Example 2

Facts: Mr. X, a Belgian tax resident individual, holds two securities accounts with Belgian banks with the following average values:

- Bank A: €300,000
- Bank B: €250,000

Total holdings: €550,000

Analysis: Since Mr. X's total holdings exceed €500,000, Mr. X is liable to the TSA regardless of the fact that the value of each account on a stand-alone basis is below €500,000. Mr. X will have two options:

- Notify Bank A and Bank B that they should levy the TSA in which case Bank A will levy €450 (i.e. 0.15% of €300,000) and Bank B will levy €375 (i.e. 0.15% of €250,000)
- Not notify the banks in which case Mr. X will have to self-assess, declare and pay a TSA amounting to €825 (i.e. 0.15% of €550,000)

For securities accounts maintained by Belgian tax residents with non-Belgian banks, the responsibility to declare and pay the TSA typically falls on the Belgian tax residents themselves. There is no legal obligation for non-Belgian banks to declare and pay the TSA. An option exists, however, for non-Belgian banks to become withholding agents with respect to the TSA.

Example 3

Facts: Mrs. Y, a Belgian tax resident individual, holds a securities account with Bank L, a Luxembourg bank. The average value of the account is €1,000,000.

Analysis: Since Mrs. Y's total holdings exceed €500,000, Mrs. Y is liable to the TSA. Mrs. Y will have to self-assess, declare and pay a tax (€1,500) unless Bank L opts to levy and declare the tax itself.

Determination of the tax base, due date for the payment of the tax, and penalties for noncompliance

The tax base corresponds to the average value of securities accounts during the reference period. The reference period is defined as the period between 1 October and 30 September. The average value is determined by taking into account the account values on four key dates: 31 December, 31 March, 30 June, and 30 September. Exceptionally, the tax base for 2018 is determined as the average value of securities accounts as of 31 March 2018, 30 June 2018, and 30 September 2018.

Example 4

Facts: Mrs. Y, a Belgian tax resident individual, holds a securities account with Bank L, a Luxembourg bank. The value of the securities account is:

- 31 December: €900,000
- 31 March: €400,000
- 30 June: €300,000
- 30 September: €600,000

Average value: (€900,000 + €400,000 + €300,000 + €600,000) / 4 = €550,000

Analysis: Since the average value of the securities account exceeds €500,000, Mrs. Y is liable to the TSA. The tax base is equal to the average value of the securities account (i.e., €550,000) and the corresponding TSA is €825.

The draft law foresees numerous specific calculation mechanisms in case the account is opened or closed during the reference period; the securities are transferred to another account with another bank; the account holder ceases to be a Belgian tax resident; the number of joint account holders changes during the reference period; or the account is jointly held by individuals and corporate entities.

The due dates for the declaration and the payment of the TSA are:

- For Belgian financial intermediaries: by the 20th day following the end of the reference period, i.e., 20 December
- For Belgian account holders (in case the TSA has not been withheld by any financial intermediary): the due for filing the TSA return is the same as the due date for the personal income tax return (typically mid-July) while the due date for paying the TSA is 31 August.

Penalties for failure to declare the tax, for late, inaccurate, or incomplete declaration of the tax, or for late payment of the tax should range between 10% and 200% of the tax due plus late interest.

Practical implications for Luxembourg financial intermediaries

Because of the introduction of the TSA, Luxembourg financial intermediaries will typically have three options:

1. **Do nothing:** In this case, the obligation to asses, declare, and pay the tax will fall on the Belgian account holders.
2. **Assume withholding responsibility:** In this case, the Luxembourg financial intermediary would become responsible for assessing, declaring, and paying the TSA in the same fashion as Belgian financial intermediaries. It is worth reiterating that this regime is optional and should be assessed on an individual basis in light of operational, commercial, and risk-related implications.
3. **Assist Belgian account holders without assuming withholding responsibility:** Since many Luxembourg banks provide period tax statements to their foreign account holders (in order to facilitate the completion of tax returns in home countries), those banks may find it useful to start including the relevant TSA information in the tax statements sent to their Belgian clients.

If you have any questions regarding the above, please do not hesitate to contact us.

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