

TAX ON SECURITIES ACCOUNTS 2.0 ADOPTED IN PARLIAMENT

The law introducing a new tax on securities account ("TSA 2.0") has been adopted yesterday by the federal parliament. Preparatory works clearly state that TSA 2.0 distances itself from its former version that has been deemed unconstitutional by the Constitutional Court in 2019. One may ask whether the changes made by the legislator would be sufficient to avoid a similar fate.

THE NEW TAX ON SECURITIES ACCOUNT

The TSA 2.0 applies to the holding of securities accounts whose average value exceeds EUR 1,000,000 at an annual rate of 0.15%. The threshold is determined for each securities account separately, and no consolidation of all accounts held by the same holder nor breakdown in case of co-ownership occurs.

The TSA 2.0 applies both to individuals and legal persons account holders, irrespective of their legal rights on the account. The tax covers in first place Belgian account holders on both their Belgian and foreign securities accounts. For non-Belgian account holders, although exemptions are available, the tax could be due on their Belgian securities accounts and on the securities accounts held with a Belgian establishment of a foreign financial intermediary. In contrast, the securities account held by a non-resident with a foreign branch of a Belgian financial intermediary is not included in the scope of the tax, subject to the application of the anti-abuse provision. Securities accounts held by non-residents with a central securities depository or an authorised depository bank also remain outside the scope.

If the securities account is held with a Belgian financial intermediary, that intermediary is responsible for the TSA and it must withhold, declare and pay the tax annually. The notion of Belgian financial intermediary includes the financial intermediaries incorporated under Belgian law, established in Belgium or having appointed a Belgian representative. A foreign bank operating securities accounts in Belgium should hence be considered as a Belgian financial intermediary and be responsible for the TSA. In any other case, these obligations fall on the Belgian account holder. A foreign intermediary can however – either by opting in, at its discretion, or by appointing a Belgian representative – comply with these obligations.

FOR WHICH SECURITIES?

The scope of the TSA 2.0 is broader than its predecessor and encompasses all financial instruments (publicly traded or not) provided they are held on the securities account, irrespective of their nature and/or their qualification. It includes but is not limited to:

- transferable securities;
- money-market instruments;
- units in collective investment undertakings;
- options, warrants, futures, swaps, forward rate agreements and any other derivative contracts;
- turbo, speeder, tracker, and ETFs;
- *kasbons / bons de caisse*;
- real estate certificates; and
- cash instruments including liquidities on the account.

Registered securities however remain excluded from the taxable basis, but only to the extent that they are not held on a securities account.

The inclusion of cash held on securities account and other money market instruments in the scope of the TSA could refrain institutional investors to hold such assets on their securities account in anticipation of an investment.

EXCLUSIONS

The TSA is not due with respect to securities accounts held exclusively for their own account by certain professional financial intermediaries, i.e. credit institutions, insurance companies, investment companies, and certain collective investment undertakings.

The exemption is available irrespective of the residence status of the intermediary. However, this exemption does not apply when a non-exempt third party has a direct or indirect claim on such securities account. For example, accounts held by Belgian insurance companies linked to class 23 investment insurance contracts may be liable to the tax provided the threshold is met. The cost of the tax may then be charged to the policy holder even though the value of his own insurance contract does not exceed the threshold.

In relation to class 21 insurance products, the Minister for Finance explicitly confirmed that these contracts are not included in the scope of the TSA, as they are deemed to be exclusively held by the insurance companies for their own account. This exclusion could lead to practical issues, as the securities relating to these two types of insurance contracts are generally held on the same securities account by the insurance company, and it may be difficult for the intermediary to break down the total amount.

A NEW ANTI-ABUSE PROVISION

The draft bill includes an anti-abuse provision aimed at fighting against transactions carried out to avoid the application of the TSA 2.0. Under this provision, any investment, split or value reduction in the securities account made as from 30 October 2020 (the date on which the TSA has been publicly announced) will be disregarded, unless the taxpayer can demonstrate substantial non-tax, economic motives justifying such transaction.

In addition, the draft law also provides that certain transactions constitute irrebuttable presumption of tax avoidance, if carried out as from 30 October 2020 (except in case of death or divorce):

- the split of securities accounts with the same financial intermediary; and
- the conversion of taxable financial instruments held on a securities account into registered securities which are not held anymore on the securities account.

WHAT'S NEXT?

Despite its revised scope and design, various uncertainties remain on this "tax on securities accounts 2.0".

Firstly, the draft bill does not really justify the EUR 1,000,000 threshold, the inclusion in the scope of certain class 23 insurance contracts and the exclusion of registered shares, which hence may still appear arbitrary.

Secondly, the practical application of the anti-abuse provision may lead to discussions between the financial intermediary, taxpayer and tax authorities about their relevant responsibility under the TSA 2.0.

The TSA 2.0 will apply as from tax income year 2021. The first payment will either have to be made by January 2022 when a Belgian financial intermediary is responsible for the tax, or by August 2022, in any other case.

CONTACTS



Alexandre Ooms
Partner

T +32 2 533 5073
E alexandre.ooms
@cliffordchance.com



Thomas Linard de Guertechin
Lawyer

T +32 2 533 5909
E thomas.linarddeguertechin
@cliffordchance.com



Pierre-Olivier van Caubergh
Lawyer

T +32 2 533 5910
E pierre-olivier.vancaubergh
@cliffordchance.com



Inès Mahaux
Lawyer

T +32 2 533 5042
E Ines.Mahaux
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Avenue Louise 65, Box 2,
1050 Brussels, Belgium

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