

## “Belgian Stock Exchange Tax may also apply to securities that are not effectively quoted on a Stock Exchange.”

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### Raising the ceilings

Aside from expanding the tax on stock exchange transactions to include transactions performed abroad, the existing ceilings for that tax have also been doubled. This means the ceiling of 650 EUR for transactions involving bonds and similar instruments (subject to 0.09% tax on stock exchange transactions) will be raised to 1.300 EUR, from 800 EUR to 1.600 EUR for transactions involving shares and other financial instruments (subject to 0.27% tax on stock exchange transactions) and from 2.000 EUR to 4.000 EUR for the redemption (sale) of capitalization shares from investment companies (subject to 1.32% tax on stock exchange transactions).

The new ceilings are applicable to transactions that take place on Belgian or foreign accounts as from 1 January 2017.

The Q&A contain an important precision about the application of the ceilings to joint-accounts.<sup>23</sup> If an account is jointly held, these ceilings apply to

each of the co-holders of the account for its part in the indivision.

For example, if an account is jointly held by four Belgian individuals and a redemption (sale) of capitalization shares from investment companies<sup>24</sup> is made for a total amount of 400.000 EUR, then each co-holder of the account is supposed to have asked for an order of 100.000 EUR.

This amount is subject to a tax of 1.32% or 1.320 EUR. Multiplied by four means 5.280 EUR (thus above the ceiling of 4.000 EUR).

If one of the co-holders is a non-resident of Belgium, his part of the transaction can be exempted from Belgian Stock Exchange Tax.

### Taxable basis

The following rules apply

- › For purchases and acquisition for consideration, tax is computed on the amount to pay by the person that gave the order, with exception

of the commission fee due to the professional intermediary;

- › For sales and cessions for consideration, tax is computed on the amount to receive by the person that gave the order, without deduction of the brokerage fees due to the professional intermediary;
- › For the redemption of proper shares of an investment company, tax is computed on the net asset value of the shares, without deduction of flate rate expense, but reduced by the Belgian withholding tax if it concerns capitalization shares of an investment company subject to article 19*bis*, § 1, alinea 6, CRT 92.<sup>25</sup>

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23 Q & A nr. 21

24 Commercialized in Belgium

25 Collective investment vehicles from which the underlying assets are invested for more than 25% in debt-claims

Although the fact that this withholding is not applied abroad at the moment of the securities transaction, Belgian tax authorities accept that an equivalent of this withholding may be deducted from the amount received for Belgian stock exchange tax.

This tolerance by Belgian tax authorities causes a lot of problems, since foreign banks can't calculate this tax burden at this moment. Meanwhile, they will compute the stock exchange tax on the gross amount of the redemption price.

Up to now, it seems that the only solution for the Belgian customer to rectify this over taxation consists in introducing a claim for a reimbursement of the TOB afterwards.

### Who is the debtor of the tax?

For transactions entered or performed in Belgium, the tax is payable by the Belgian 'professional intermediary'.

However, intermediaries based abroad cannot be compelled to comply with Belgian tax legislation, which is why the bill states that when the 'professional intermediary' is based

052 abroad, the party issuing the order will be liable to pay the tax under the new regulation. As a consequence thereof, it is the client who must comply with the obligations in terms of submitting a return and paying the tax at the proper office.<sup>26</sup> The client is only released from these tax return and payment obligations if it can demonstrate that the tax was paid.<sup>27</sup>

In normal circumstances this means that the tax will be paid by the intermediary based abroad, who may have a commercial interest in making the payment instead of the Belgian client. After all, filing the tax return is not an easy one for the Belgian client, due to the existence of divergent rates and

ceilings that differ according to the financial product to which the transaction relates.

In practice, most foreign banks will ask their Belgian customers to receive a mandate to pay the tax on behalf of them. This is certainly the case for Swiss banks, since the Swiss Criminal Code defends Swiss banks to withhold a foreign tax on behalf of foreign tax authorities, unless they are authorized by Swiss law.<sup>28</sup>

But even Luxembourg banks, that are allowed to levy this tax and integrate these new application rules in their IT system, will mostly ask for an authorization of their Belgian customers.

As a consequence, most of the foreign intermediaries will ask for a mandate of their Belgian customers to file the return and to pay taxes. The question is to know if this is enough to consider the foreign intermediary as a debtor of the tax. I don't think so, due to the limited application of Belgian tax rules to Belgian residents or to the territory of Belgium. This vision is also confirmed in question no. 24 of the Q&A.

However, the model of the tax return, published on the website of the Federal Public Service of Finance, contains

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26 Cf. the obligations provided for under article 125 of the Tax Code.

27 New article 126.2.2 of the Tax Code.

28 Art. 271<sup>1</sup> Swiss Criminal Code: "Felonies and misdemeanours against the state / Unlawful activities on behalf of a foreign state  
Unlawful activities on behalf of a foreign state:

1 Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official, any person who carries out such activities for a foreign party or organisation, any person who encourages such activities, is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year

2 (...)

29 It was published in the Belgian Official Gazette of 22 February 2017.

30 New article 126.3 of the Code DRT.