



## NEW TAX ON SECURITIES ACCOUNTS IN BELGIUM

The Belgian government recently had the law introducing an annual tax on securities accounts approved by the parliament. This law was published in the Belgian State Gazette on February 25<sup>th</sup> of this year; it entered into force the day after its publication, with the exception of the anti-abuse provisions (see below) which apply retrospectively from October 30<sup>th</sup>, 2020.

The new rules provide for the introduction of an annual tax on the holding of securities accounts, the average value of which exceeds €1,000,000. The average value is determined on the basis of the account balances as at December 31<sup>st</sup>, March 31<sup>st</sup>, June 30<sup>th</sup> and September 30<sup>th</sup> respectively.

The applicable tax rate is set at 0.15%, and the taxable base is the average value of the financial instruments held in the securities accounts. Where applicable, the amount of tax is limited to 10% of the difference between the tax base and the €1,000,000 threshold.

All financial instruments are covered by the new provisions, including shares, bonds, derivatives, holdings in investment funds etc. insofar as they are entered in an account. Registered shares do not fall within the scope of the law, however.

Securities accounts, in Belgium or abroad, of which the holder (beneficial owner) is a natural person resident in Belgium or a company established in Belgium are covered by the new rules, as are securities accounts held in Belgium by non-Belgian resident individuals or companies. The scheme also covers securities accounts held by a Belgian resident through foreign "legal constructions" when these "legal constructions" are covered by the "Cayman tax". This tax affects foreign securities accounts held by companies or entities established abroad that are subject to little or no tax and whose beneficial owner is a Belgian resident.

With regard to securities accounts held in Belgium, the Law states that the tax will be deducted at source by the Belgian financial institutions.

However, in the case of securities accounts held abroad, the account-holders themselves will be required to declare and pay the tax unless the foreign bank agrees to comply with these formalities on their behalf.

### WHAT ABOUT LUXEMBOURG LIFE INSURANCE POLICIES?

Luxembourg life insurance policies invested in units of account ("branch 23") technically fall within the scope of the tax, but only if the funds are deposited with a Belgian bank. In such a case, however, the legality of this tax should be checked in light of the tax agreement of September 17<sup>th</sup>, 1970 between Belgium and Luxembourg. In fact, Article 22 para. 4 of this agreement prevents the application of the tax, insofar as it states that "assets" relating to movable property are only taxable in the taxpayer's country of residence.

Under the terms of the law itself, if the funds are deposited abroad (i.e. with a non-Belgian bank), there is no person liable to pay the tax.

In conclusion, Luxembourg life insurance contracts invested in units of account are not affected by the tax regardless of whether the underlying securities accounts are held in Belgium or abroad. Luxembourg "branch 21" life insurance contracts are also exempt from the tax.

It should be noted, however, that the preferential treatment of unit-linked life insurance contracts distributed under the freedom to provide services does not apply if the contracts in question are taken out through a Belgium-based branch of a foreign company.

Finally, it should be noted that the Law of February 17<sup>th</sup>, 2021 also contains an anti-abuse provision which aims to prevent certain illegal tax avoidance transactions, such as the splitting of a securities account into several accounts at the same financial institution in order to avoid reaching the € 1,000,000 threshold.

If you have any queries on this subject, please do not hesitate to get in touch with your usual contact person.

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