

Tax on securities accounts



The new tax on securities accounts: almost a fact?

Undoubtedly you have already heard about it in the media in recent weeks: the De Croo I government have announced a new tax on securities accounts.

Below we give you more details on the key features of the upcoming tax. The Council of State has been requested to give its opinion on the draft law. It is yet to be voted in parliament. The information below is therefore not final yet.

Who is subject to the tax?

Unlike the first tax on securities accounts (TER 1.0), which only targeted natural persons, the new draft law has a **much broader scope of taxpayers**. Legal entities (companies, non-profit organisations, foundations, etc.), founders of legal arrangements, partnerships and indivisions will also be subject to the tax. In principle, it does not matter whether they are **Belgian or foreign residents**.

For Belgian residents, this applies both to **securities accounts** held with Belgian financial intermediaries and to securities accounts held with **foreign financial intermediaries**. For non-residents, only securities accounts held with **Belgian financial intermediaries** will be eligible. However, an exception is made for non-residents who can rely on a **double tax treaty** granting the taxing rights on assets to the state of residence.

Certain companies are excluded for securities accounts held exclusively for their own account. However, it is unclear at this stage how this measure is to be understood.

Which financial instruments are in scope?

The TER 1.0 had a limited scope. The legislator now wants to tax **all financial instruments** held in a securities account. As a result, e.g. turbos and trackers are in scope of the new tax.

The **cash** amount of a securities account is **not subject to the new tax**. Nor does the tax apply to investment insurances (**branch 23**). However, the Government does intend to tax the securities accounts held by insurance companies for such investment insurances. The exact consequences of this are not clear at this stage.

How is the tax calculated?

Only securities accounts with **an average value of more than 1 million euros** are affected by the tax. It is no longer important how many holders the securities account counts. In order to calculate the average value of the securities account, this value is **no longer divided by the number of holders**. A trading account with e.g. a value of 1,2 million euro and with 3 account holders is therefore subject to the tax.

To calculate the average value, **quarterly 'pictures'** will be taken. If this value exceeds 1 million euros, a **rate of 0.15%** will be applied to the average value of the securities account. However, a mitigation is included for securities accounts with a maximum value of **1,015,228.00 euros**. In that case, the tax is limited to 10% of the difference between the taxable base and 1 million euros.

For example: a securities account with a value of 1,001,000.00 euros will be subject to a tax of 100.00 euros instead of 1,501.50 euros.

Who is responsible for levying the tax?

For securities accounts held with **Belgian financial intermediaries**, the latter will be responsible for **the calculation and deduction of the tax**. In cases where the tax has not been withheld, it is up to **the holder(s) themselves** to file **a declaration** and **pay the tax** to the tax authorities.

An **'opt-in procedure'** as applicable to the TER 1.0 is **not offered**. Since it is the securities account itself that is taxed and no longer the holder, the holder also no longer has to aggregate the average values on securities accounts in order to check whether the EUR 1 million threshold has been exceeded.

Anti-abuse rule

Even though the tax has not yet been voted, a report on the introduction of the tax on securities accounts was published in the Belgian Official Gazette on 4 November. That report referred to the **general anti-abuse rule** that will be introduced in the Code in which the new tax will be included. It states that certain legal acts which the taxpayer would carry out in order to ensure that **the average value of his securities account falls below the EUR 1 million threshold**, are rebuttably presumed to constitute

tax avoidance. The taxpayer will then have to provide the rebuttal evidence in order to escape this anti-abuse rule.

Some examples that are mentioned are: **the splitting of securities accounts, the transfer of securities from one securities account to another, the registration of certain securities**, etc. The anti-abuse rule will, subject to a vote, enter into force **retroactively** on **30 October 2020**.

When will the new law enter into force?

It is difficult to predict exactly when this new tax will come into force. After all, everything depends on the legislative process that the draft law has to go through. However, the intention is to have an initial reference period from the publication of the Act **until 30 September 2021**, after which the financial intermediaries will calculate, withhold and pay the tax over that period to the tax authorities. **As from 1 October 2021, a new reference period** will start, which will last 12 months. The new tax will be an **annual tax** on securities accounts of more than EUR 1 million.

We are closely following the further decisions on this new securities tax. We will inform you as soon as more information is available.