

Application of the stock exchange tax to stock-market transactions processed abroad

The Belgian program-act of 25 December 2016 foresees, as from the first of January 2017, in an extension of the scope of the Stock Exchange Tax (hereunder the “SET”) to the stock-market transactions processed abroad.

Which transactions are falling within the scope?

The actual purpose of the Belgian program-act of 25 December 2016 is to make the SET applicable to the stock-exchange transactions processed by a Belgian resident via an internet interface made available by foreign intermediaries.

Nevertheless, the terms used in the Belgian program-act are broader in their scope. The SET should be applicable to the stock-market exchange transaction as soon as the underlying purchase / sale order has been issued by a Belgian tax resident to a foreign intermediary (with no regards to the *instrumentum* concerning the aforementioned order).

The Belgian Minister of Finances has also pointed out that the orders issued to foreign intermediaries by private wealth structures (as falling within the scope of the Belgian Cayman Tax) of which the final beneficiary is a Belgian resident, could constitute a stock-exchange transaction for the application of the SET.

This being said, we are of the opinion that stock-exchange transactions on foreign bank accounts of Belgian residents processed by foreign discretionary private wealth managers should not be impacted by this legislation. However, this should require a confirmation from the tax authorities.

Who is subject to the SET?

Natural and legal Belgian resident person’s operating stock-market transactions as defined above are subject to the SET.

The concept of Belgian resident must be broaden interpreted. Therefore, are considered as Belgian resident the natural persons having their habitual place of residence located on the Belgian territory. A foreign executive benefiting from the Belgian special tax regime for expatriates could qualify for the application of the SET, as his habitual place of residence may be located in Belgium.

Are also subject to the SET, all the legal entities established or having their main seat of business located in Belgium.

Who is liable to pay the SET?

The Belgian resident issuing the underlying purchase/sale order to the stock-exchange transaction is liable to pay the SET on the stock-exchange transaction he is performing unless he can prove that the SET has been paid by the foreign bank or broker.

What is the rate of the SET?

The SET relating to bonds or similar financial instruments amounts to 0.09% with a maximum of EUR 1,300.00 per single transaction.

The SET relating to the purchase of their own shares by capitalization SICAVs amounts to 1.32% with a maximum of EUR 4,000.00 per single transaction.

The SET relating to any other financial instrument (as e.g. stocks, shares...) amounts to 0.27% with a maximum of EUR 1,600.00 per single transaction.

What is the timeliness of reporting and paying the SET?

A SET tax return has to be submitted by the Belgian resident the last working day of the second month following the month of the realization of the stock-exchange transaction at the latest. An administrative fine of EUR 50.00 will be due for each week of delay.

The payment of the SET has to be made within the same timeline, upon interest penalty.

However, foreign banks or brokers can accomplish those administrative formalities (including the payment of the SET) on behalf of their Belgian clients, in particular by the appointment of a Belgian responsible representative.

When does it enter into force?

This new legal instrument will apply to stock-exchange transactions processed as from the first January 2017.

However, the deadline for filling out the SET returns and for the payment of the tax has been postponed on June 30th, 2017 for the transactions realized during January, February and March 2017.