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Speculation tax: draft law published

Newsflash

The tax would apply to certain capital gains of individuals on financial instruments.

The draft law regarding the reinforcement of job creation and purchasing power introduces the so-called "speculation tax" (art. 90, 13° ITC. and Art. 228, §2, 9° ITC). It should be noted that the final version of the text may deviate from the version currently published.

The tax is due on capital gains realised (outside the exercise of a professional activity) by Belgian resident individuals on quoted shares, options, warrants or other quoted financial instruments which have been acquired for consideration less than 6 months before the alienation for consideration. Gifts are disregarded in view of determining the 6 months period. The tax equally applies to capital gains on short sales ("shorttransactie/vente à découvert") as meant by Art. 2, 1st ind., b of EU Regulation n° 236/2012 dd. 14 March 2012. Non-Belgian resident individuals are subject to the tax in case the capital gain is realised via a Belgian intermediary.

The shares, options, warrants or other financial instruments must be quoted (i) on a Belgian or foreign regulated market in the sense of Art. 2, 1st ind., 3° of the Law of 2 August 2002, or (ii) on a multilateral trading facility in the sense of Art. 2, 1st ind., 4° of the Law of 2 August 2002 (provided there is daily trading and a central order book), or (iii) on a trading platform of a third country fulfilling a similar function.

The draft law definitions the notions of quoted ‘shares’, ‘options’ and ‘warrants’. The definition of ‘shares’ excludes units or shares in UCITS and undertakings investing in debt claims, as well as in alternative investment funds (as meant in the Law of 3 August 2012 and the Law of 19 April 2014 respectively or a similar provisions of foreign law) and shares in regulated real estate companies. Hence, capital gains realised on the sale of shares or units in quoted exchange traded funds (so called ‘trackers ‘ or ETFs) are out of scope. Are furthermore targeted by the tax, capital gains realised on ‘other quoted financial instruments’, leveraged or not, through which an investor invests in the evolution of the value of an underlying asset, provided the underlying asset consists solely of one or more specific quoted shares. The explanatory memorandum clarifies that quoted turbos, speeders, sprinters, warrants and futures may fall under the latter category and excludes convertible bonds.

The (less than) 6-month period is calculated based on the LIFO (‘last in, first out’) method. In case of short selling, this period is calculated between the date of sale and the date of acquisition of the shares, options, warrants or other quoted financial instruments concerned.

The capital gain is equal to the positive difference between:

- the sales price reduced with the stock exchange tax borne by the taxpayer on the sale; and

- the acquisition price paid by the taxpayer (or the donor in case of a gift) increased with the stock exchange tax borne by the taxpayer (or donor) on the acquisition.

Under very specific circumstances, capital losses may be taken into account for determining the capital gain realised. If the acquisition price is unknown, the withholding tax will be levied on the entire sales price (less the stock exchange tax) and taxpayer will have to reclaim any excess through his personal income tax return.

The following gains are excluded from the speculation tax:

1. capital gains realised on quoted shares, options and warrants, acquired in the context of a professional activity (stock option plan), where the acquisition has triggered a taxable professional income, according to the Belgian Income Tax Code, other specific provisions, or similar foreign law provisions;

2. capital gains realised further to the transfer of quoted shares, options, warrants and other quoted financial instruments, solely at the initiative of the issuer and where no choice is available for the taxpayer (e.g. mergers, demergers, spin-offs, squeeze outs and (non-optional) stock dividends).

The tax rate is equal to 33%. The tax is in principle levied through a withholding tax due by the intermediaries established in Belgium who intervene in the transaction. This withholding tax is final, so that no reporting is required if the withholding tax is levied. If no Belgian intermediary intervenes, Belgian individuals must report the capital gain in their yearly tax return.

The speculation tax applies on shares, options, warrants or other quoted financial instruments acquired as of 1 January 2016. In case of short selling, the tax applies on sales occurring as of 1 January 2016.

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