



GMS Flash Alert

Global Compensation Edition

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Belgium – Transactions with Non-Belgian Brokers Subject to Financial Transaction Tax

Belgium's Financial Transaction Tax (FTT) for the sale or purchase of shares and warrants is increased from 0.27 percent to 0.35 percent as from 8 January 2018. This move demonstrates the resoluteness of the Belgian government to raise more tax revenues from capital and assets.¹

Since 1 January 2017, the FTT (a tax on the transfer of quoted and non-quoted securities) has been applied to transactions that are concluded or executed outside Belgium through a non-Belgian financial intermediary, if the ordering party is a Belgian tax resident.²

WHY THIS MATTERS

Consequently, the Belgian FTT has become of particular importance for companies and employees with equity-based remuneration plans (stock options, warrants, and restricted stock units/income) that are organised through a non-Belgian bank or broker.

Employees and directors benefiting from an equity-based compensation plan that is organised through a non-Belgian intermediary (e.g., a bank, broker, or custody account) are liable to determine, declare, and pay the FTT themselves, under penalty of significant fines.

To alleviate the burden for affected employees, the Belgian company or its legal representative can elect to comply with all the required formalities on behalf of its employees. This requires, however, adequate internal procedures and communication.

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Background

Until 31 December 2016, equity-based compensation plans that were organised through a foreign bank, broker, or custody account were not subject to Belgian FTT. On 1 January 2017, however, the scope of the FTT was broadened, which has important practical and financial implications for Belgian companies and their employees with an equity-based remuneration plan.

In practice, however, the implication of this recent extension of the scope of the Belgian FTT has mainly remained unnoticed or undiscussed.

Stock Options, Warrants, RSUs, and RSIs

Generally, a sale or acquisition of shares and warrants is subject to a FTT of 0.35 percent (on the price paid or received).

Whether or not transactions by or for the account of an employee are subject to FTT, depends on the specific circumstances. For example, the following transactions may be taxable:

- The exercise of an option (a purchase of shares) except if it concerns newly-issued shares. In such case, the taxable base is equal to the exercise price paid to acquire the shares.
- The sale of a warrant³ by an employee or director (to the issuing bank or a third party) that is not followed by a cancellation of the security. In such case, the taxable base is equal to the price received for the warrant that is sold.
- The vesting or attribution (i.e., receipt) of shares under a Restricted Stock Unit (RSU) plan. In such case, the taxable base is equal to the (reduced) price paid by the employee to acquire the shares. If attributed for free, the taxable base is zero.
- The granting (i.e., receipt) of shares within the framework of a Restricted Stock Income (RSI) plan. In such case, the taxable base is equal to the (reduced) price paid by the employee to acquire the shares (e.g., the face value).
- The sale of shares (e.g., a sale of shares that were acquired further to the exercise of an option or warrant). In such case, the taxable base is equal to the (sales) price received

KPMG NOTE

Financial and Practical Implications

When designing, implementing, and executing equity-based compensation plans for Belgian employees and directors, the Belgian FTT should be taken into account, given that the FTT represents an additional cost and administrative burden for the employee or the employer. Thus, it is important to determine in advance whether or not the Belgian FTT will apply, who will bear the corresponding costs, and who will deal with the (monthly or bi-monthly) declaration and payment obligation. However, when doing so, due care is also needed for possible interference or interaction with personal income tax e.g., if the company would bear the FTT for its employees (which may qualify as benefit-in-kind, etc.).

KPMG NOTE (cont'd)

Possible Sanctions

In case of non-compliance, considerable sanctions may apply.

- For late filing of the tax return, in principle, the administrative fine is €50 per week of delay, with a maximum of €2,600 (each week started counts for an entire week).
- In case of late payment, late interest applies at a rate of 7 percent per annum, as from the day on which the FTT was due.

The period of limitation for the tax authorities (to claim FTT, fines, and late interest) is six years as from the day on which the tax liability arises. Possible tax audits on the FTT, for example, may be applied via a tax audit of the personal income tax return. Therefore, for the employees concerned, compliance is of critical importance to mitigate unpleasant surprises.

FOOTNOTES:

1 For the text of *25 Décembre 2017 — Loi-programme / 25 December 2017 — Programmawet* (published in the Belgian Official Gazette (*Moniteur Belge / Belgisch Staatsblad*) of 29 December 2017), [click here](#).

2 Until 31 December 2016, the Belgian FTT only applied to transactions for Belgian tax residents (both individuals and companies) that were concluded or executed through a Belgian bank or broker. For such domestic transactions, the FTT has to be paid and declared by the financial intermediary that is located in Belgium. Hence, for Belgian tax residents it was quite easy to avoid the Belgian stock exchange tax by investing through a foreign financial intermediary (e.g., a bank) or online trading platform. Also equity-based compensation plans for Belgian employees organised through a non-Belgian bank or broker, were thus not affected by the Belgian FTT.

3 A warrant is defined as a right to the subscription or acquisition of (newly issued) securities.

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Contact us

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