EBF European Banking Federation

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SUBJECT: BELGIAN STOCK EXCHANGE TAX

Dear Minister,

I am writing to you as Chief Executive of the European Banking Federation (EBF) which is the voice of European banks, in relation to the recent extension of the territorial scope of the Belgian stock exchange tax (*taxe sur les opérations de bourse / taks op de beursverrichtingen*) (hereinafter referred to as the "Tax").

Per the Belgian Finance Law of 25 December 2016, the scope of the Tax is extended, as from 1 January 2017, to securities transactions made by Belgian residents through intermediaries established abroad. This extension is of direct relevance for banks established outside Belgium and executing securities transactions for the account of Belgian residents.

In the absence of any detailed guidance, European banks will have practical difficulties to comply with the related requirements in such unrealistic timeframe.

In view of the background which is detailed in the appendix, I would like to present you with the three following suggestions.

The framework and practical arrangements applicable for the collection and payment of the Tax regarding transactions performed by foreign intermediaries need to be confirmed as soon as possible. This would essentially entail a clarification of the options offered to foreign intermediaries under Belgian law, as well as the obligations related to such options.

The executive orders (French: *arrêtés royaux*) required in order to confirm the formalities for the appointment of a representative in Belgium as well as the format and content of the information to be reported in the relevant tax returns should be adopted forthwith.

Last but not least, more time is required by foreign intermediaries to understand the scope of the Belgian legislation at hand and to make the necessary adaptations in their systems and procedures. Pending a clarification of the points mentioned in the appendix, an adequate transitional relief should be allowed for foreign intermediaries and their clients as regards the filing of the relevant returns and the effective payment of the Tax. During any such transitional relief period, we recommend that transactions made by foreign

intermediaries should not trigger any penalties under Belgian law in case of late payment of the Tax and/or late remittance of the related returns to the competent Belgian authority.

Considering the reliefs and postponements usually granted by other countries regarding the implementation of tax measures targeting non-resident intermediaries, we trust that the above suggestions are more than reasonable.

We would very much welcome your position regarding these matters at your earliest convenience. We remain at your disposal either by conference call or in the framework of a meeting in Brussels.

Yours sincerely,

Wim MIJS

Copy to:

- Mr Sven De Neef, Head of Cabinet, Minister of Finance
- Mr Jeroen Jacobs, Assistant Director - Tax policy
- Mr Danny Delvaux, General Adviser - General Administration of Taxation

APPENDIX

Many financial institutions across Europe are currently considering how to handle the Tax on behalf of their clients. In this context, the current lack of clarity regarding the rules and practical arrangements applicable to the collection and payment of the Tax, coupled with the very ambitious timeframe for the implementation, is a source of multiple concerns.

Upon review of the legal provisions, the question as to which obligations and options apply to transactions executed by foreign intermediaries remains open in many aspects. It is noted that Belgian investors placing an order for the purchase or sale of securities with a foreign intermediary are liable for the payment of the Tax unless they can demonstrate that "the tax has been paid"[1]. This would suggest that foreign intermediaries have the option to withhold and to pay the Tax to the competent Belgian authority. We note that foreign intermediaries may but, as we understand, are not obliged to, appoint a representative in Belgium for the purpose of the execution of their obligations under the legal provisions under review[2]. The scope and limits of the said obligations are still unclear to many institutions, while the formalities for the appointment of a representative in Belgium shall be confirmed by executive order, which, at the time of writing, has not yet been adopted[3].

We further note that the personal scope of the Tax remains under certain aspects open to interpretation as the legal provisions at hand refer to transactions made by individuals having their "habitual residence" in Belgium[4]. This concept is understood to be distinct from the concept of tax residence for income tax purpose and might therefore require on the part of financial intermediaries and their clients alike to perform a specific, and possibly cumbersome, analysis under Belgian law. In this respect, we suggest that financial intermediaries should be able to rely on the tax residence of their clients, as determined for income tax purposes, for the purpose of determining the personal scope of the Tax. Financial institutions across Europe are indeed performing an extensive screening of their accountholders in the context of the implementation of the OECD Common Reporting Standard (CRS). We would therefore very much welcome any possibility offered to financial intermediaries to capitalize on the results of their due diligence under the CRS in the context of the implementation of the Tax.

It is further understood that the filing of monthly returns with the competent Belgian authority is required, with penalties assessed on a weekly basis in case of late filing. Depending on whether the Tax is paid by the foreign intermediary or the ordering customer, it is understood that the deadline for payment is set at the end of the first or, as the case may be, the second, calendar month following the month in the course of which the transaction was concluded or executed[5]. This would mean that the Tax applicable to

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[1] *«Toutefois, lorsque l'intermédiaire professionnel est établi à l'étranger, le donneur d'ordre est redevable de la taxe et est assujetti aux obligations visées à l'article 125, sauf s'il peut établir que la taxe a été acquittée.»*

[2] *«Les intermédiaires professionnels non établis en Belgique peuvent avant d'exécuter ou conclure des opérations de bourse en Belgique faire agréer par le ministre des Finances ou son délégué un représentant responsable établi en Belgique. Ce responsable s'engage solidairement, envers l'Etat belge, au paiement des droits sur les opérations faites par l'intermédiaire professionnel, soit pour le compte de tiers, soit pour son compte propre, et à l'exécution de toutes les obligations dont l'intermédiaire professionnel est tenu conformément au présent titre.»*

[3] *«Le Roi fixe les conditions et modalités d'agréation du représentant responsable.»*

[4] *«Les opérations visées à l'alinéa 1er sont également réputées être conclues ou exécutées en Belgique lorsque l'ordre relatif aux opérations est donné directement ou indirectement à un intermédiaire établi à l'étranger :*
- soit par une personne physique ayant sa résidence habituelle en Belgique; […]»

[5] *«La taxe est payable au plus tard le dernier jour ouvrable :*
1° du deuxième mois suivant celui au cours duquel l'opération a été conclue ou exécutée, lorsque le donneur

transactions carried out in January 2017 will need to be paid by foreign intermediaries by 28 February 2017 or, in cases where the Tax is paid by the ordering client, by 31 March 2017.

We would like to stress that the aforementioned deadlines, which, we understand, must be met under penalty of fine, are extremely ambitious considering the overall context of this regime. Not only the provisions under review apply to transactions carried out as early as 1 January 2017, that is 3 days after their formal publication in the official gazette, but also the executive order required to confirm the information to be reported in the relevant tax returns as well as the name of the competent Belgian authority has, at the time of writing, not yet been adopted[6].

Various precedents in the field of operational tax provide ample evidence that financial intermediaries can simply not be required to understand and to implement overnight a complex set of rules under foreign law. A series of adaptations to the internal systems and procedures are necessary and very often options will need to be weighed by the competent corporate bodies within member banks. As a matter of example, the very tight timeframe involved contrasts with the significant lead-time that was left to financial institutions across the globe ahead of the implementation of FATCA.

All in all, the current lack of clarity regarding the framework and applicable arrangements regarding collection and payment of the Tax by foreign intermediaries, together with extremely challenging deadlines for compliance, put a severe strain on the ability of member banks to serve the Belgian market from abroad. In many instances, leaving to clients the administration of the Tax barely constitutes an option from a commercial perspective. The resulting administrative burden, which includes a monthly reporting regime, coupled with weekly penalties in case of missed deadline, contrasts quite unfavorably with the treatment that would prevail if the transactions at hand were made through an intermediary established in Belgium.

d'ordre est le redevable de la taxe;
2° du mois suivant celui au cours duquel l'opération a été conclue ou exécutée, dans les autres cas.»

[6] *«Les éléments à faire connaître dans la déclaration visée au paragraphe 1er ainsi que le bureau compétent sont déterminés par le Roi.»*