Baker McKenzie.

Private Wealth Newsletter

First Quarter 2021

Editor's note

By Elliott Murray & David Berek

Editor's note

On behalf of Baker McKenzie's Global Wealth Management Practice Group, it is our pleasure to share with our clients, friends, colleagues, and readers across the world the First Quarter 2021 issue of the Private Wealth Newsletter.

This edition features articles on the impact of Brexit on a UK citizen's ability to purchase real estate in Switzerland, a loosening of the strict capital controls in South Africa, and new taxes in Belgium and Argentina targeting budget shortfalls brought on by the pandemic. As far as legal developments go, arguably none was bigger for the private wealth industry than the passage of the Corporate Transparency Act by the United States to introduce federally-mandated beneficial ownership reporting obligations for US corporations and limited liability companies, which is the subject of our feature article.

We hope you find something interesting, informative, or thought provoking in this edition. Our editors Elliott Murray and David Berek, or any of the authors listed throughout the newsletter can be contacted with any feedback or questions.

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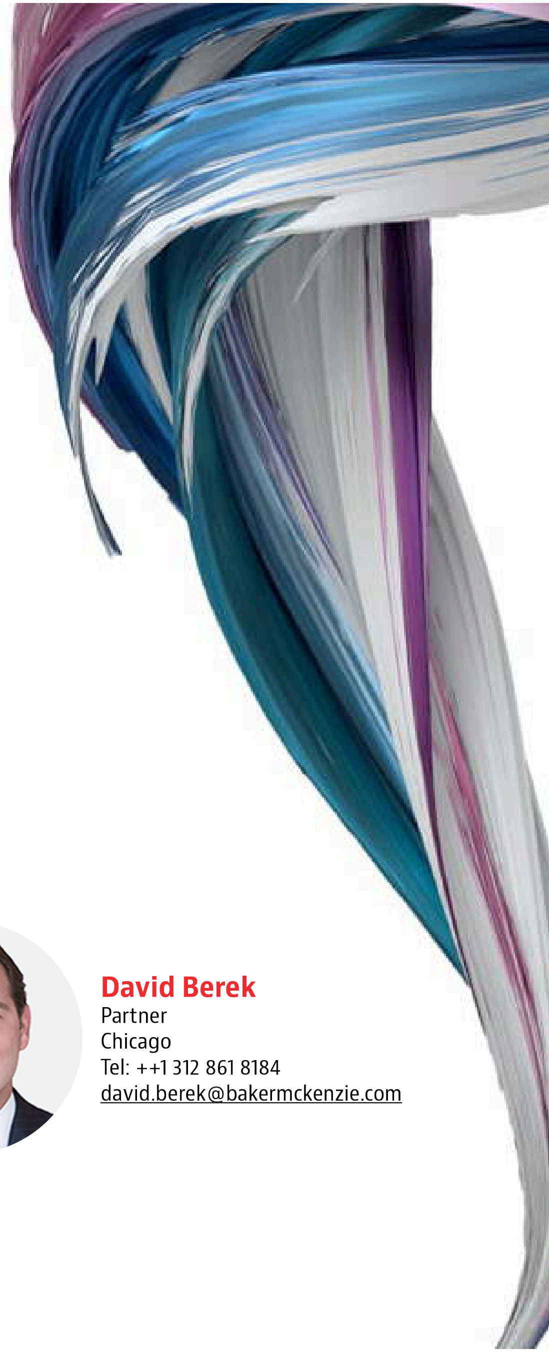


Beneficial Ownership Reporting Coming to America

Introduction

After an initial attempt to introduce a federal register of company beneficial owners in 2017, the US passed the Corporate Transparency Act ("Act") as part of the fiscal year 2021 National Defense Authorization Act (NDAA). The House of Representatives and the Senate passed the NDAA in mid-December 2020; however, President Trump vetoed the bill on Wednesday, 23 December 2020. In its first veto override of President Trump's term, the House of Representatives, on 29 December 2020, and the Senate, on 1 January 2021, passed the NDAA again by more than the two-thirds majority required.

The Act is another step toward placing the US on similar footing with the EU, UK and other similarly positioned OECD and the Financial Action Task Force (FATF) nations in requiring the reporting of the ultimate beneficial owners of companies and similar corporate entities and making such information available for certain anti-money laundering (AML) and other countering of terrorist financing purposes, albeit with significant points of divergence notably related to scope and accessibility. The information gathered under the Act may be made available upon request to law enforcement agencies at federal, state, and local levels, as well as from other non-US jurisdictions.

Summary of the Corporate Transparency Act

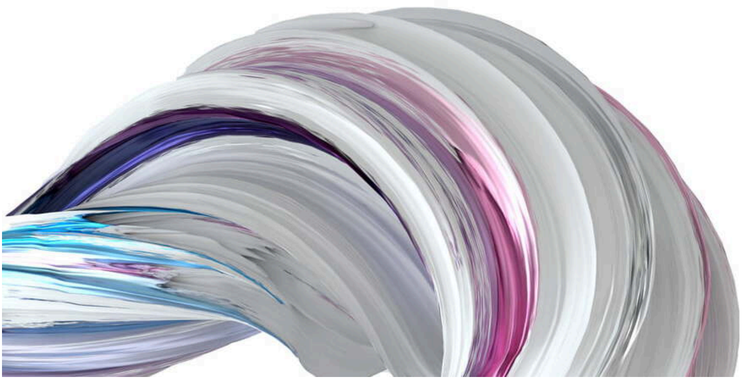
Collection of information: The Act implements the collection of beneficial ownership information by requiring a "reporting company" to submit to the US Department of the Treasury's ("Treasury") Financial Crimes Enforcement Network ("FinCEN") a report that identifies each "beneficial owner" of the reporting company and each "applicant" with respect to that reporting company. The specific identifying information that is required to be reported is each beneficial owner's and applicant's name, date of birth, current address, and unique identifying number from an acceptable identification document or FinCEN identifier.

The secretary of the Treasury ("Secretary") has broad regulatory authority under the Act and they are required to promulgate such regulations within one year after the date of enactment, which is 1 January 2022. The regulations may have an effective date subsequent to 1 January

2022. As discussed below, a number of provisions of the Act require regulatory action for an application to be clarified.

Definition of a beneficial owner:

A "beneficial owner" is defined as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise exercises substantial control over the entity or owns or controls not less than 25% of the ownership interests of the entity. Whether the beneficiary of a trust that holds an interest in a reporting company can be considered a beneficial owner is not clear, but presumably if it can be determined that a beneficiary has at least a 25% interest in a trust that holds an interest in a reporting company, such a person would be a beneficial owner.



A beneficial owner does **not** include the following:

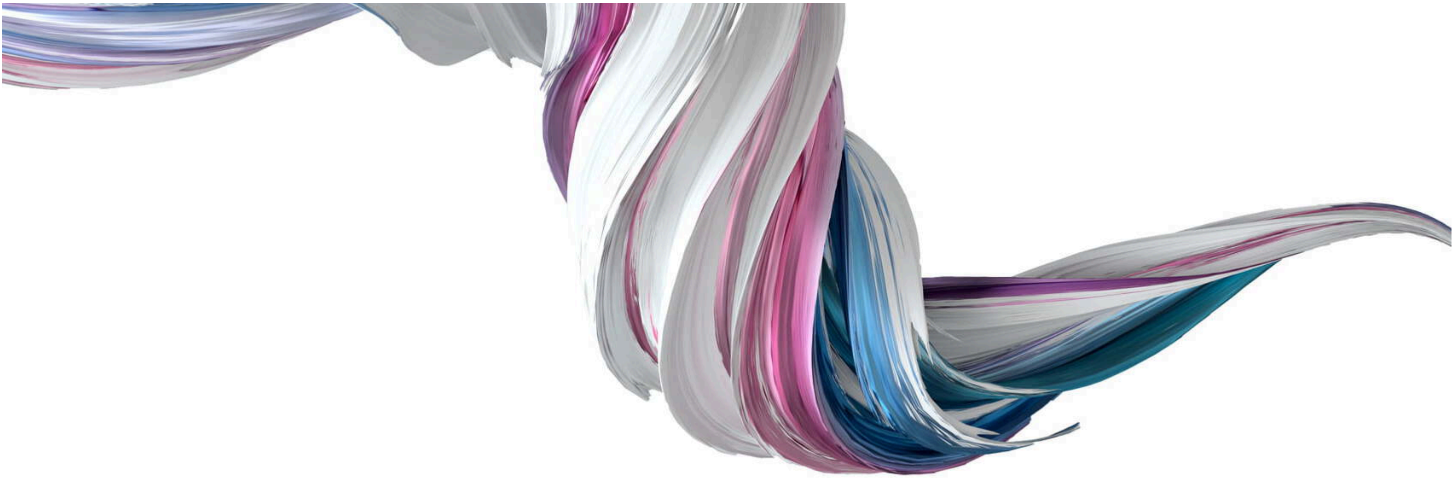
- a minor child if the information of the child's parent or guardian is reported in accordance with the Act
- someone acting as a nominee, intermediary, custodian or agent on behalf of another person
- an individual acting solely as an employee of a corporation, limited liability company (LLC) or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person
- an individual whose only interest in a corporation, LLC or other similar entity is through a right of inheritance or a creditor thereof

In order to prevent the beneficial owners of an entity from being obfuscated, the Act prohibits a corporation, LLC or other similar entity formed under the laws of a US state or Indian Tribe from issuing a certificate in bearer form (i.e., a form where a certificate is issued without a name and whoever actually holds the certificate is the owner).

Definition of an applicant:

As noted above, the information that must be reported under the Act includes that of the "applicant" as well as of the "beneficial owner." The applicant is the person who "files" an application to form a corporation, LLC or other similar entity, or who registers or files an application to register a corporation, LLC or other similar entity formed under the laws of a foreign country to do business in the US. Therefore, if an adviser or agent of an entity or the beneficial owner, such as an attorney, files the application for the entity, their information will be provided to FinCEN as well. The regulations need to clarify what it means to "file" the application for the entity.

Scope of the reporting obligation: For the purposes of the Act, a "reporting company" means a corporation, LLC or "other similar entity" that is created by filing a document with a secretary of state or a similar office under the



law of a US state or Indian Tribe, or formed under the law of a foreign country and registered to do business in the US by filing a document with a secretary of state or a similar office under the laws of a US state or Indian Tribe.

An earlier draft House of Representatives bill from 2019 limited its application to corporations and LLCs and it did not reference "other similar entity" in the definition of the entities covered by the Act. The earlier version also specifically carved out certain other types of entities for later consideration.

Presumably, the Secretary will address the definition of the term "other similar entities" in the required regulations under the Act. As discussed below, reporting under the Act is not required until after the regulations are issued. This should provide clarity in terms of whether entities that are not corporations or LLCs fall within the term "reporting company." The requirements for further study of beneficial ownership reporting with respect to partnerships and trusts (see "Future studies" below) imply that partnerships and particularly trusts are more likely to fall outside the scope of "other similar entities," at least for now. However, the status of such other legal entities (including trusts for this purpose) will only become clear as implementing regulations are developed. It seems less likely that at least common-law trusts would be included, as these are not considered entities for state law purposes generally. However, regulations could potentially include partnerships or even certain types of statutory trusts, such as business trusts and investment trusts, as "other similar entities." The study required as to other entity types may also lead to further legislative or regulatory updates expanding the scope of reporting companies later. If the regulations do not provide such clarity, however, entities that are not corporations or LLCs may nevertheless decide to report under the act out of caution and to avoid penalty exposure.

With that said, in terms of defining the "applicant" of an entity, the Act references the idea of filing an application to form a corporation, LLC or other similar entity that is subject to the reporting requirements of the Act. This implies that a structure that is not formed by a government filing would not be a "similar entity" that is required to provide a beneficial ownership report under the Act.

Exceptions to reporting obligations:

The Act itself specifically carves out a number of entities from the definition of "reporting company." Such entities are relieved from the reporting obligations of the Act. The following four are worth noting:

1. an organization that is described in Section 501(c) of the Internal Revenue Code (IRC), so long as it is exempt from taxation under the IRC, which includes charitable organizations, social welfare organizations, labor organizations, business leagues, chambers of commerce and social clubs (any such organization will be required to comply with the reporting requirements of the Act if it loses its tax exemption, although it will continue to be exempt from reporting for the 180-day period beginning on the date of the loss of its tax-exempt status)

2. an entity that employs more than 20 employees on a full-time basis in the US; that filed in the previous year federal income tax returns in the US demonstrating more than USD 5 million in gross receipts or sales in the aggregate; and that has an operating presence at a physical office within the US

3. a corporation, LLC or other similar entity in existence for over one year that is not engaged in active business; that is not owned, directly or indirectly, by a foreign person; that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than USD 1,000 (including all funds sent to or received from any source through a financial account or accounts in which the entity or an affiliate of the entity maintains an interest); and that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, LLC or other similar entity

4. an entity that the Secretary, with the written concurrence of the attorney general and the secretary of homeland security, has, by regulation, determined should be exempt from the reporting requirements because requiring reporting for such an entity would not serve the public interest and would not be highly useful in national security, intelligence and law enforcement agency efforts to detect, prevent or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud or other crimes

Presumably, the Secretary would take into consideration whether certain entities report beneficial ownership information already in other reports filed with the IRS and FinCEN, as discussed further below. This is contemplated by the Act itself, which provides that in promulgating regulations the Secretary should collect beneficial ownership information through existing federal, state and local processes and procedures, and should minimize the burdens on reporting companies.

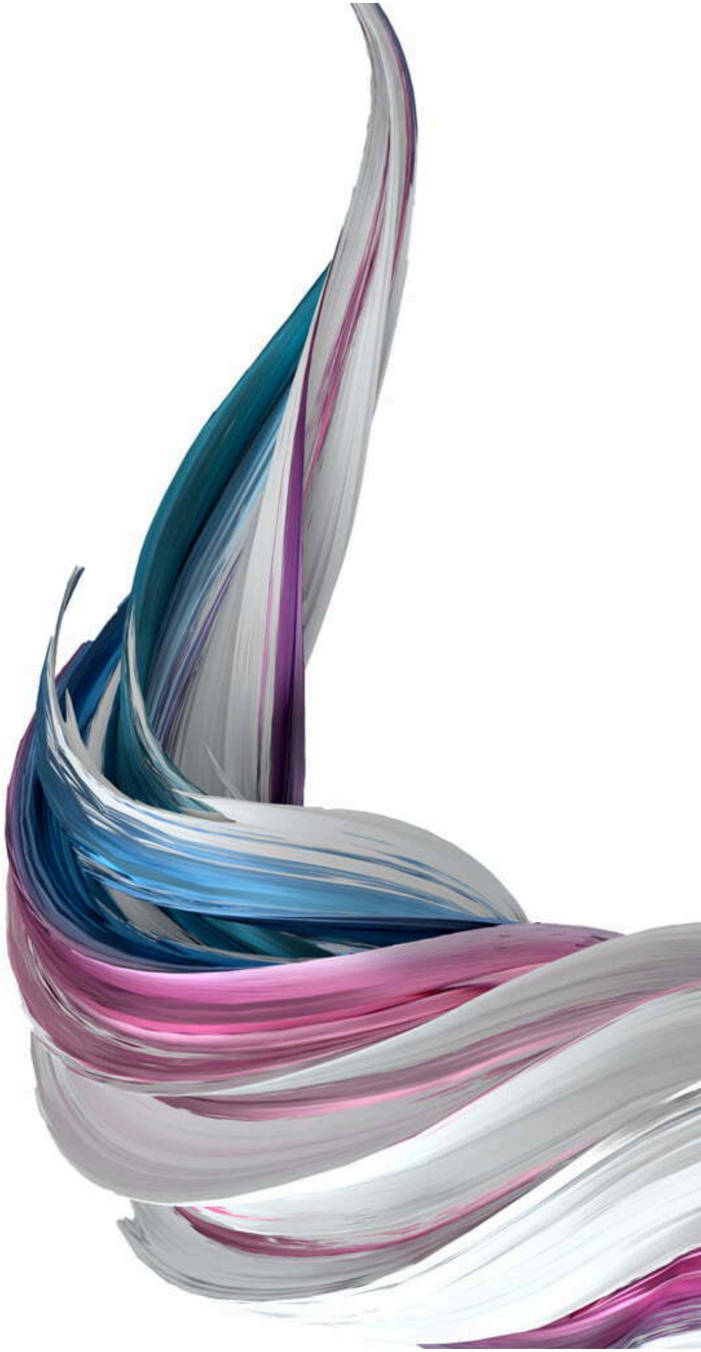
Reporting deadline: As to the deadline for a reporting company to report beneficial ownership and applicant information to FinCEN, for a reporting company that has been formed or registered before the effective date of the regulations issued by the Secretary that implement the provisions of the Act, the company is required to provide such information to FinCEN not later than two years after the effective date of such regulations. As to a reporting company that has been formed or registered after the effective date of such regulations, the company is required to provide such information to FinCEN at the time of formation or registration.

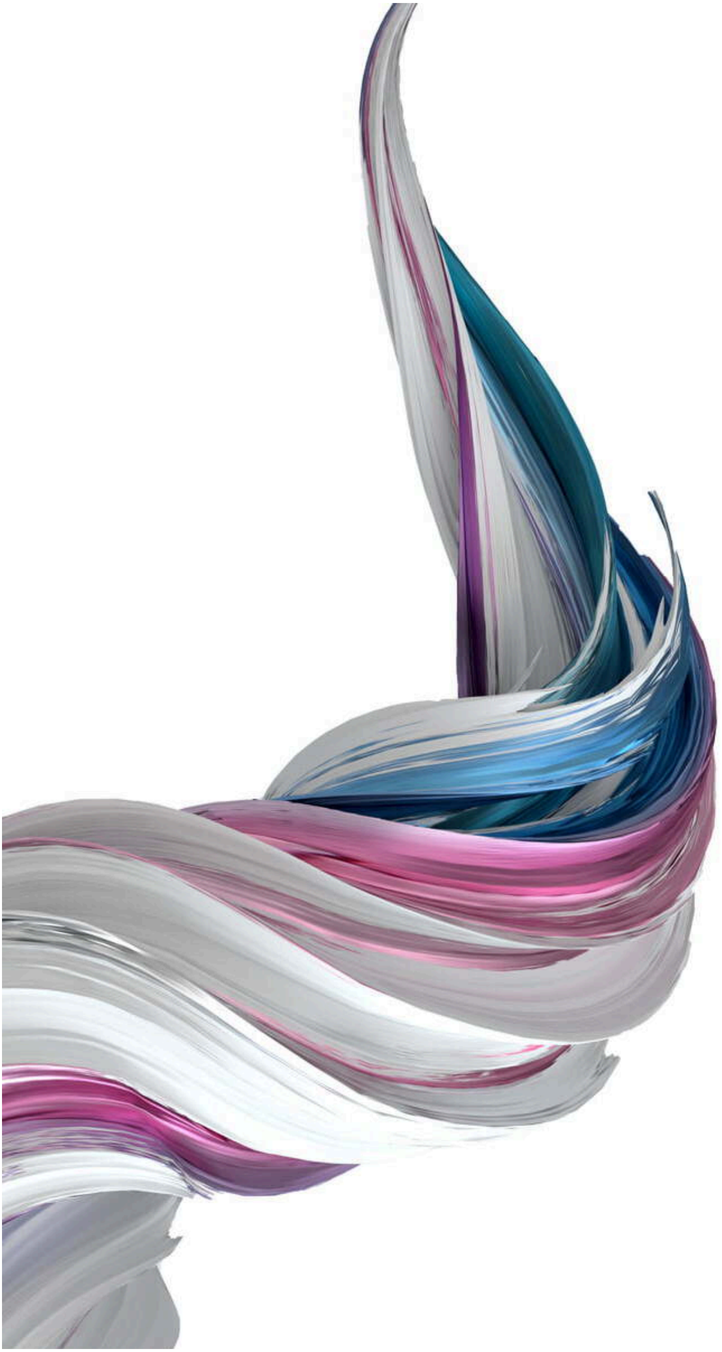
In addition, as to any reporting company for which there is a change with respect to any beneficial owner information, the company is required to submit to FinCEN a report that updates the information not later than one year after the date on which the change occurred (this one-year period could be reduced under regulations issued by the Secretary).

The important takeaway from these provisions is that the reporting requirements of the Act are not annual requirements. As such, for reporting companies that have few ownership changes, the reporting under the Act should be infrequent and not overly burdensome.

Maintenance and disclosure of information: A fundamental provision of the Act is that the Secretary should maintain the beneficial ownership information collected in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level. The Secretary is also required to take all steps to ensure that government authorities accessing such information do so only for authorized purposes consistent with the Act. Since the Secretary is already required to protect similar information from the public domain under the tax reporting system of the IRC, persons impacted by the Act should have confidence that the beneficial ownership information that is collected will remain confidential.

Specifically, the Act provides that beneficial ownership information may not be disclosed by an officer or employee of the US or of any state, local or Tribal agency or by an officer or employee of any financial institution or regulatory agency receiving information under the Act.





However, FinCEN may disclose beneficial ownership information reported under the Act only upon receipt of a request from certain federal, state or local agencies or to foreign governments if requested through a federal agency on behalf of a law enforcement agency, prosecutor or judge of the other country under an international treaty, agreement, convention or by way of certain other official requests when there is no such foreign agreement. Furthermore, the reporting company may allow the information to be provided to the financial institution subject to customer due diligence requirements to verify the beneficial ownership.

Potential penalties:

Any person who willfully provides or attempts to provide false, fraudulent, incomplete or not updated beneficial ownership information to FinCEN:

1. will be liable for a civil penalty of not more than USD 500 for each day that the violation continues or has not been remedied
2. may be fined not more than USD 10,000, imprisoned for not more than two years or both

Under the Act's safe harbor provision, a person will not be subject to these civil or criminal penalties if the person:

a) has reason to believe that any report submitted by the person to FinCEN contains inaccurate information (so long as the person was not trying to evade the Act's reporting requirements)

b) submits a report containing corrected information voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report.

Conclusion

The Act brings the US in line with the EU as well as other OECD and FATF member countries to have available promptly upon request basic beneficial ownership information for certain legal entities. However, while the Act is already in force, the Treasury must first promulgate regulations in 2021 to clarify the above-mentioned questions, most importantly which entities should report and who should be treated as applicants and beneficial owners among other uncertainties. Any reporting company that has been formed or foreign company registered to do business in the US before the effective date of these regulations will have two years to report the necessary information. Therefore, the deadline for reporting by such existing companies should be at the latest in 2023. New companies will have to submit the report to FinCEN at the time of formation or registration after the effective date of the regulations and thus it can be expected sometime in 2021. Afterward, the IRS and non-US tax authorities for the purposes of enforcement, as well as financial institutions for their KYC due diligence, should be able to obtain upon request (not automatically) from FinCEN the basic information of beneficial owners available under the Act. We expect that partnerships and trusts will not be covered by this reporting for AML purposes to FinCEN until after the mandatory survey and report to Congress. Eventually, following the example of the EU and the UK, such information may become publicly available, at least upon a legitimate request from interested parties.

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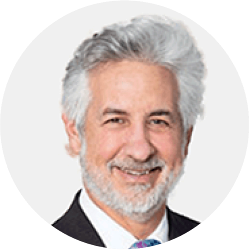

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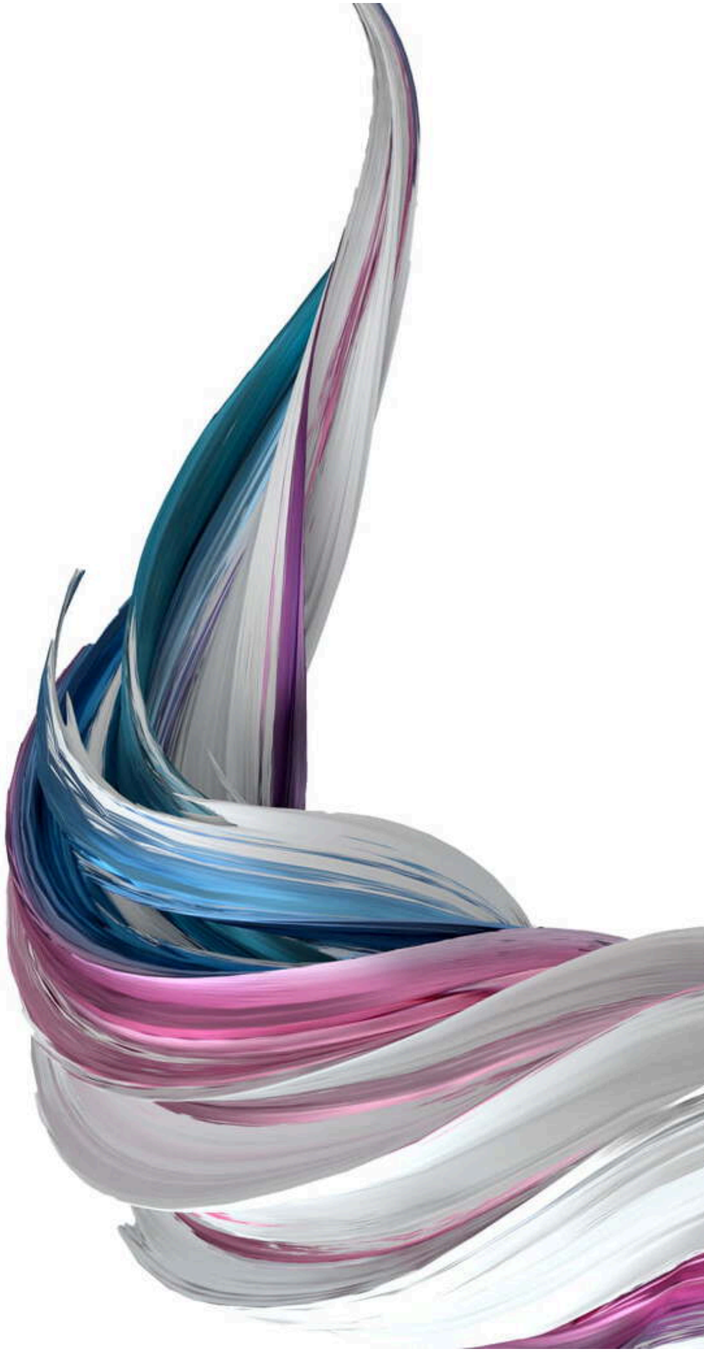
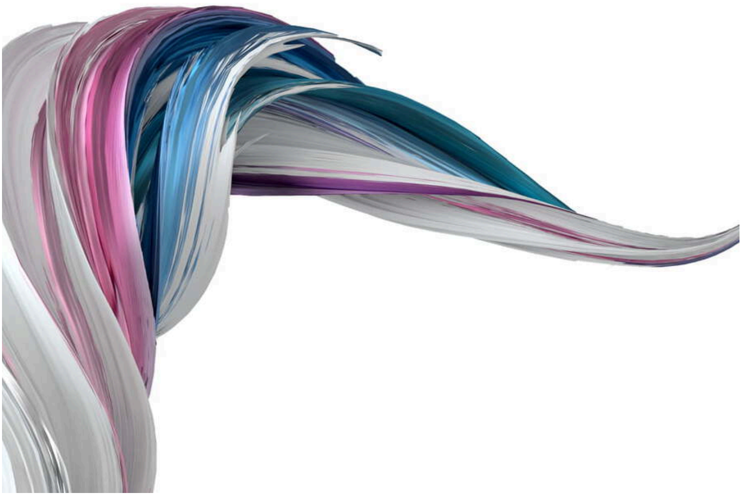


Removal of the prohibition of "loop structures"

Don't forget to check the tax consequences

In line with the South African Reserve Bank's (SARB) undertaking to implement a new capital flow management system, changes began to come through in early 2021. In the first circular for the year, issued on 4 January 2021 ("Circular"), the SARB announced that with effect from 1 January 2021 the full "loop structure" restriction for private individuals and companies that are tax resident in South Africa had been lifted to encourage inward investments into South Africa.



The removal does come with caveats, however, in that such structures are subject to the normal criteria that apply to inward investments into South Africa, and they must be reported to the Financial Surveillance Department ("FinSurv").

History

In terms of Regulation 10(1)(c) except in accordance with conditions imposed, no person will enter into any transaction whereby capital or any right to capital is directly or indirectly exported from South Africa. Thus, residents may not (utilize funds or any other authorized foreign assets to) enter into a transaction or a series of transactions, where the purpose and/or effect is to export capital directly or indirectly from South Africa (i.e., to, directly or indirectly, through any structure or scheme of arrangement, acquire shares or any other assets/interests in a common monetary area (CMA) country ("Transactions").

These Transactions:

i. invariably entail the formation by (or at the instance of) a resident of an offshore structure that — by a reinvestment into the CMA - acquires shares or some other interest in a CMA company or CMA asset

ii. contravene the regulations, including Regulation 10(1)(c), as they result in and/or have the potential to result in the direct or indirect export of capital abroad

"Loop structures" are generally created by a South African resident individual, trust or company transferring authorized or unauthorized funds from South Africa to, for example, set up a foreign trust or foreign company. The foreign trust or company would then directly or indirectly (via another offshore entity) invest the authorized or unauthorized funds in South Africa, thereby creating a" loop structure". The investment could be in the form of South African

shares, loans or other assets. Returns accruing to the foreign company or trust on the South African investments could be in the form of dividends, interest or other amounts, resulting in profits from investments by the offshore trust or company into South Africa being accumulated offshore.

Over the years, FinSurv has relaxed the restrictions around "loop structures", initially with the relaxation of its policy in relation to "loop structures" into the CMA by companies (Exchange Control Circular No. 5/2018) and, more recently, the relaxation of its policy in relation to private individuals. FinSurv issued Exchange Control Circular No. 18/2019, which is applicable to "loop structures" formed after 30 October 2019 and which provides that private individuals may individually or collectively acquire up to 40% equity and/or voting rights, whichever is higher, in a foreign target entity. In turn, the entity may hold investments in, and/or make loans to, any CMA country. Existing "loop structures" (i.e., created by individuals prior to 30 October 2019) and/or "loop structures" where the 40% shareholding is exceeded must be regularized with FinSurv. Failure to do so may result in a fine or imprisonment or both. As an exception, and only in respect of "loop structures" formed after 30 October 2019, South African private, public, and listed companies may, on application to their authorized dealer, acquire up to 40% equity and/or voting rights, whichever is higher, in a foreign target entity. In turn, the entity may, in turn, hold investments in and/or make loans to any CMA country. This dispensation does not apply to foreign direct investments where the South African company on its own, or where several South African companies collectively, hold an equity interest and/or voting rights in the foreign entity exceeding 40% in total.

Then, in his budget speech in February 2020, the Minister of Finance announced the intention to introduce a new capital flow management system over the next 12 months, with all foreign currency transactions being allowed unhindered except for a risk-based list of measures being introduced, including among other things relaxing the exchange control requirements pertaining to "loop structures". These changes would only be introduced after relevant income tax provisions have been amended and introduced, which will be aimed at protecting the South African tax base.

Once a "loop" transaction is completed, an Authorized Dealer must provide FinSurv with a report including among others, the following:

1. the name(s) of the South African affiliated foreign investor(s)
2. a description of the assets to be acquired (including inward foreign loans, the acquisition of shares and the acquisition of property)
3. the name of the South African target investment company, if applicable
4. the date of the acquisition
5. the actual foreign currency amount introduced including a transaction reference number

The Circular also provides that existing unauthorized current "loop structures" created prior to 1 January 2021 must still be regularized with FinSurv, including those where the 40% threshold has been breached.

Other consequential changes are as follows:

- All inward loans from South African affiliated foreign investors must comply with the directives issued in Section I.3(B) of the Manual.

- Residents, who became entitled to a foreign inheritance from the estate of a resident and who are required to declare such foreign assets inherited via an Authorized Dealer to FinSurv are now permitted, on application, to retain the assets abroad and invest in a "loop structure"; the only restriction applicable now is that the assets cannot be placed at the disposal of other residents.

- In respect of loans received from foreign lenders, these will no longer be subject to the restrictions that the loan funds may not represent or be sourced from a South African resident's authorized foreign assets or that there may not be any direct/indirect South African interest in the foreign lender.

Tax considerations

As noted above, the removal of the "loop structures" prohibition was premised on the undertaking that there would be adequate tax provisions in place to protect the South African tax base. In line with this undertaking, amendments to the Income Tax Act, 1961 have been proposed and will be effective from 1 January 2021, being in essence:

- Dividends received by a controlled foreign company (being a company where more than 50% of its shares, for example, are held directly or indirectly by a South African resident) from a South African company will now be taxed at a ratio of the number 20 to 28 and taking into account any dividends tax paid.

- The disposal of shares in a controlled foreign company will not qualify for the so-called participation exemption to the extent the value of the assets of the controlled foreign company are derived from South African assets. In other words, a resident will pay capital gains tax only in respect of the portion of the sale price that represents the value of the South African assets.

The takeaway

While the removal of the prohibition of "loop structures" is a welcome change and a step in the right direction, it does come with the cautionary note that it is not an absolute removal of the prohibition, especially when one bears in mind that structures that were in contravention of the restrictions as at 1 January 2021 must still be regularized. It would also appear that the restrictions would still be applicable to South African trusts looking to set up "loop structures." Then there is the tax caveat, which requires that, the tax considerations of any "loop structure" or any structure for that matter, be considered carefully before being implemented.

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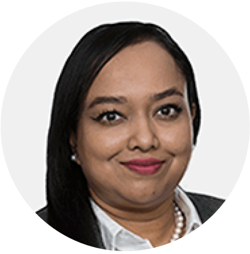

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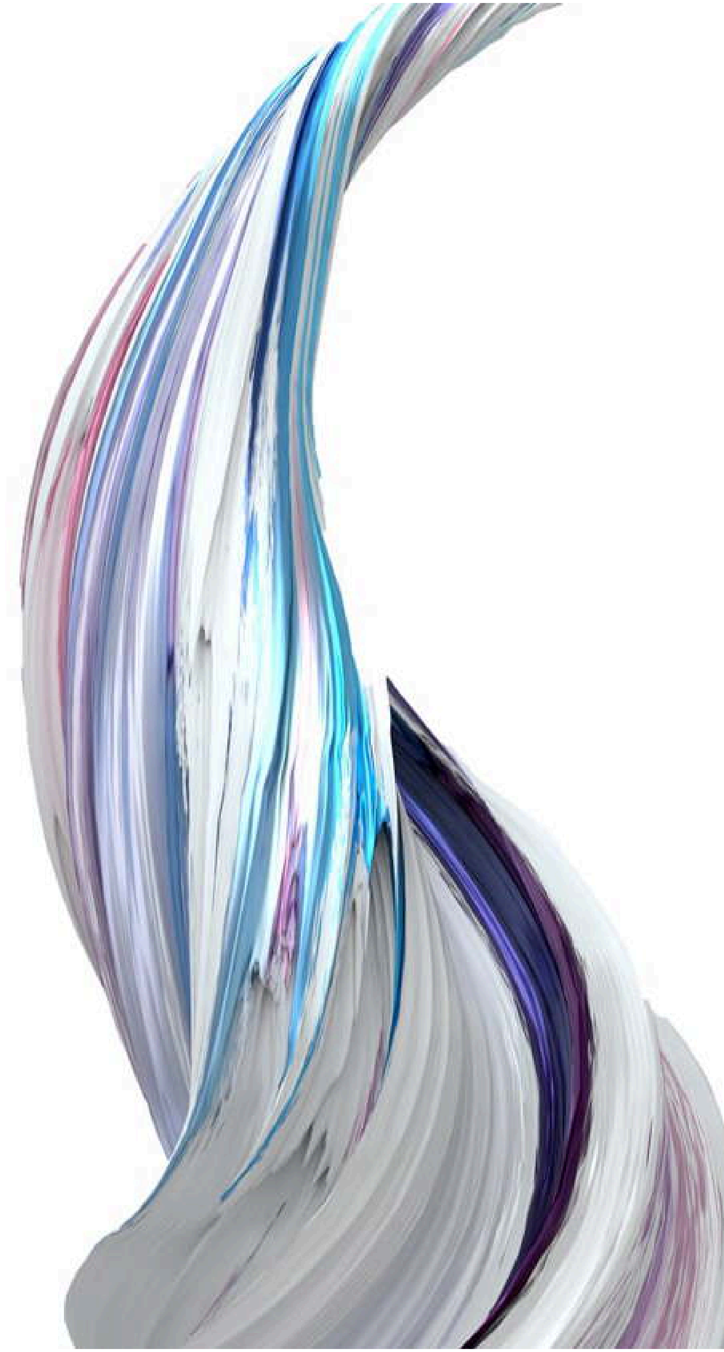
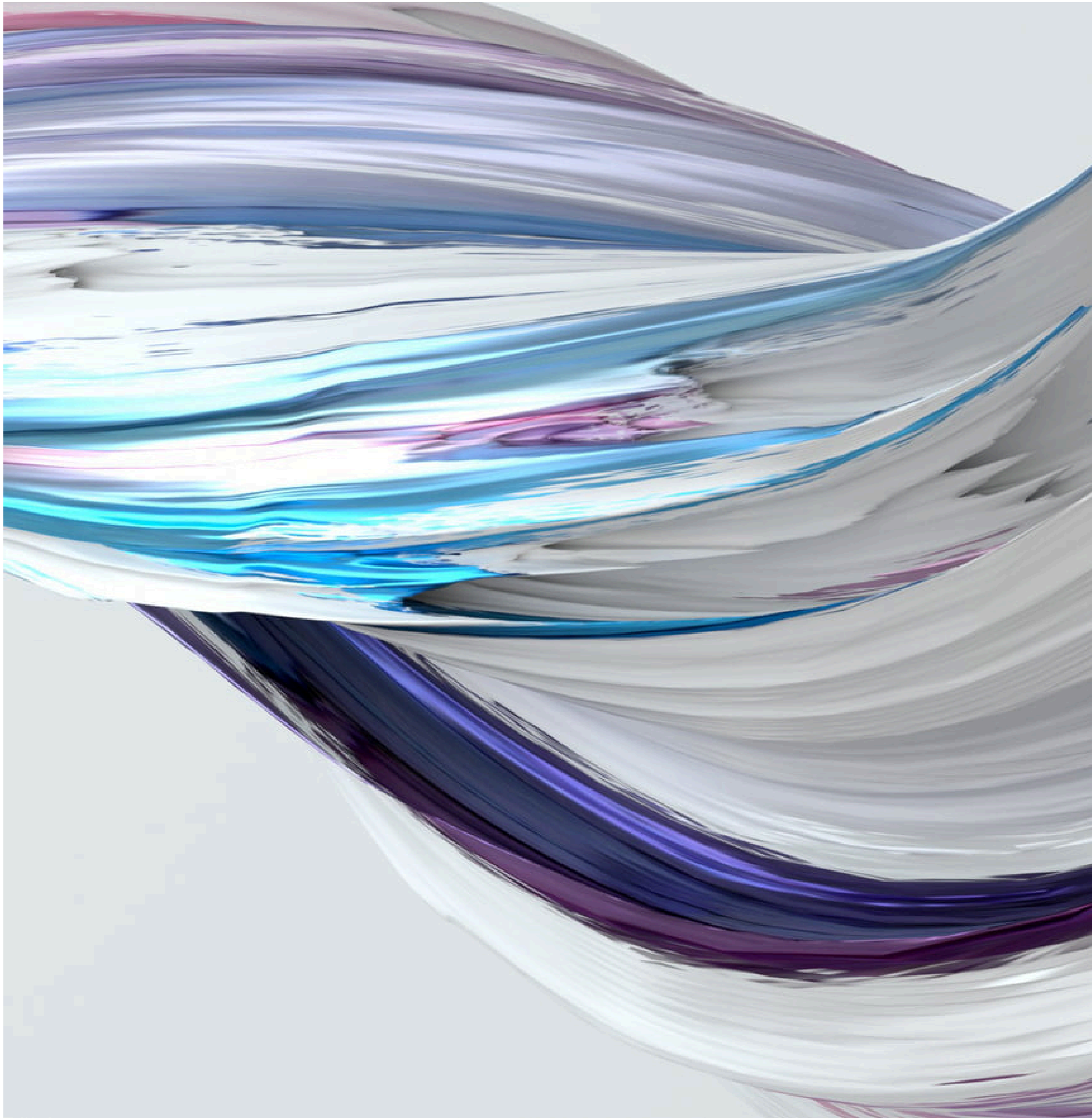


Brexit results in tightening of Swiss Lex Koller Rule for UK citizens, though limited grandfathering applies



With Brexit becoming effective on 31 December 2020, UK citizens no longer benefit from the preferential treatment of EU citizens with respect to the acquisition of Swiss residential real estate. UK citizens now need a Swiss permanent residence permit to purchase Swiss residential real estate properties without a permit. However, a grandfathering applies: UK citizens legally and effectively residing in Switzerland prior to 1 January 2021 remain exempt from that tightening, provided they maintain their legal and effective place of residence in Switzerland. Any Swiss residential real estate legally acquired by UK citizens before 1 January 2021 also remains grandfathered.

Background

The so-called Swiss "Lex Koller Rule" prohibits the acquisition of Swiss real estate by foreigners unless the foreign buyer holds a permit. Due to the exemption of commercial real estate from the Lex Koller Rule, its main application lies with Swiss residential real estate.

Thanks to the bilateral treaties between Switzerland and the EU, the Lex Koller Rule exempts EU-foreigners from the permit requirement as soon as they have their legal and factual residence in Switzerland. Foreigners from non-EU countries do not benefit from that exemption and thus require a Swiss permanent residence permit in order to be allowed to acquire Swiss real estate without a permit.

Buying Swiss residential real estate with a permit is very much limited and permits are applied restrictively. Certain (touristic) cantons have a quota for permits to be allowed to buy holiday homes for self-use.

With Brexit, UK becomes a non-EU country.

According to the international treaty between Switzerland and the UK of 25 February 2019, which was approved by Swiss parliament on 25 September 2020, the transition with respect to Swiss real estate is governed as follows:

- Any real estate property legally acquired by a UK citizen in Switzerland prior to 1 January 2021 remains unaffected by Brexit.

- Any UK citizen with legal and factual residence in Switzerland on 1 January 2021 remain allowed to acquire Swiss residential real estate without permit, provided they retained their legal and factual residence until the acquisition of the Swiss real estate.

- Any UK citizen with a Swiss commuter status on 1 January 2021 and who have retained that status will be allowed to benefit from the exemption under the Lex Koller Rule and acquire a secondary home in the region of their Swiss workplace.

- The approval of the Swiss-UK Treaty remains subject to a facultative referendum, which is very unlikely. If there will be no referendum by 14 January 2021, the Swiss-UK Treaty will formally enter into force on 1 March 2021. In the meantime, the Swiss-UK Treaty has already been applied on a pro-forma basis since 1 January 2021.

Options for UK Citizens to acquire Swiss residential real estate from 1 January 2021

UK citizens without legal and factual residence in Switzerland on 1 January 2021:

- In order to acquire Swiss residential real estate a Swiss permanent residence permit is required.

- Prior to obtaining a Swiss permanent residence permit holiday homes can be acquired in certain cantons subject to receipt of a specific permit, as well as the private residence at the location of the legal and factual place of residence in Switzerland.

- UK citizens with legal and factual residence in Switzerland on 1 January 2021:

- These UK citizens are grandfathered and remain allowed to acquire Swiss residential real estate without a permit.

- However, it is imperative that these UK citizens maintain their legal and factual residence in Switzerland, at least until the future acquisition of Swiss residential real estate. Any de-registration or shift of the factual residence from Switzerland after 1 January 2021 will result in the loss of the grandfathering.

Further exemptions

Pre-Brexit ownership in Swiss real estate

UK citizens who have legally acquired Swiss residential real estate before 1 January 2021 retain the right to own that property. Brexit has no effect on the legal situation regarding their Swiss residential real estate.

Pre-Brexit cross-border commuters

UK citizens who were cross-border commuters into Switzerland on 1 January 2021 and who have retained this status thereafter keep, for the purpose of acquiring Swiss residential property, their status after Brexit. They continue to benefit from the exception under the Lex Koller Rule, which allows cross-border commuters to acquire a secondary home in the region of their Swiss workplace.

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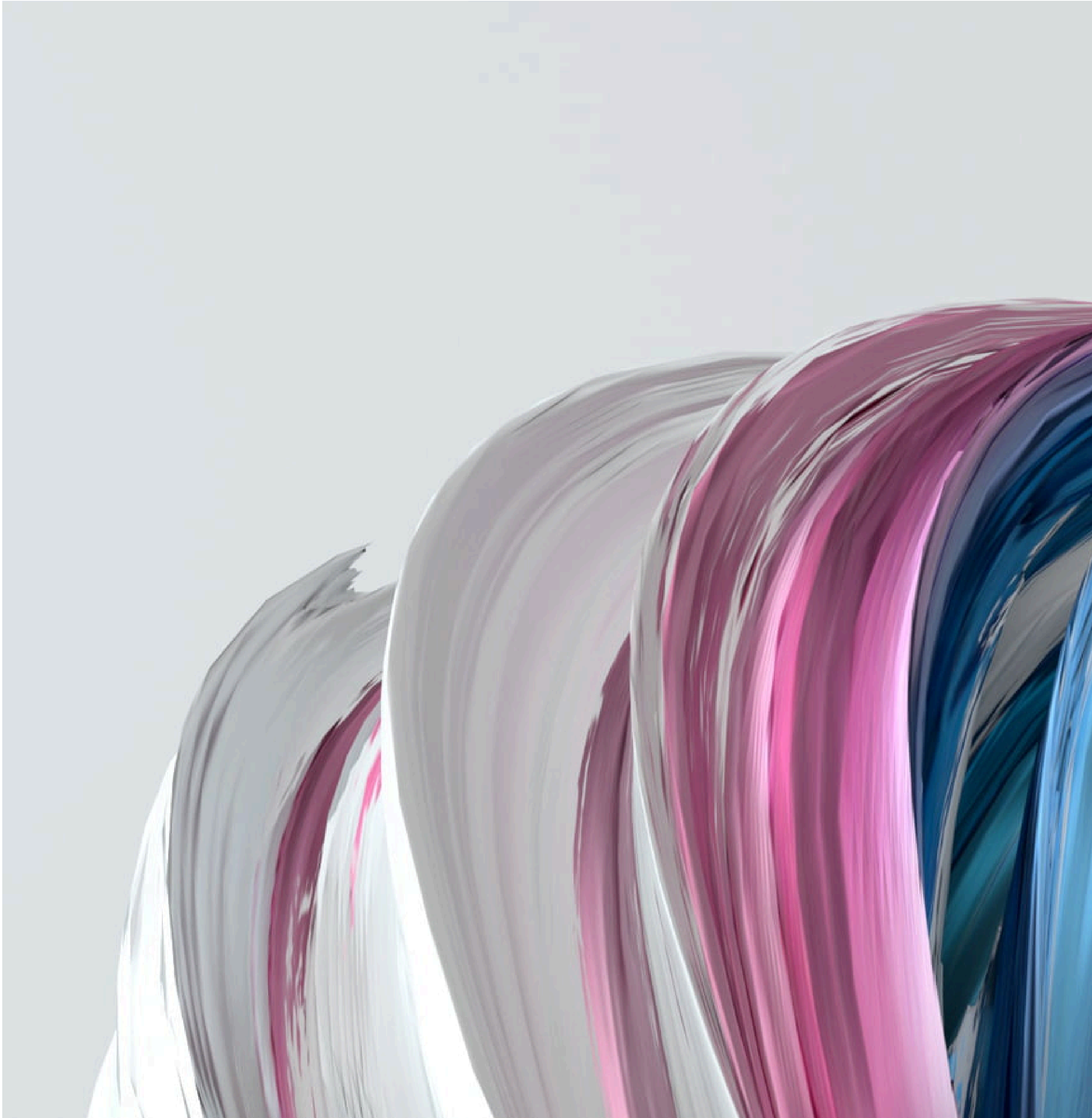
Second Circuit holds that collective entity doctrine applies to trusts



> In its recent ruling, the Second Circuit held that a trust has a separate legal existence from its trustees and, therefore, may not invoke the Fifth Amendment when responding to Internal Revenue Service (IRS) subpoenas[1]. This decision followed rulings on the same issue in other circuits.

The case arose out of an IRS investigation into the use of offshore bank accounts to conceal taxable income. In 2008, the IRS began an investigation into Natalio Fridman's ("Fridman") tax returns. During this investigation, the IRS found numerous offshore bank accounts belonging to Fridman, to companies controlled by or associated with Fridman, as well as a number of foreign and domestic trusts controlled by Fridman.[2]

The IRS sent a summons to Fridman, in his capacity as the trustee of the domestic trust in question, requesting banking information regarding this trust.[3] Fridman brought a suit in the district court, asserting his Fifth Amendment privilege and refusing to produce the requested documents.[4] Since the Fifth Amendment privilege only protects natural persons, collective entities — as well as individual custodians holding a collective entity's records — may not invoke this privilege in order to evade document requests.[5]

The district court's analysis on the application of the collective entity doctrine, hinged on whether the organization had an institutional identity separate from that of its individual members. After reviewing the evidence, the district court held that the collective entity doctrine applied, and thus Fridman could not assert the Fifth Amendment protection. Fridman appealed this decision to the Second Circuit, which, for the first time, had to address the issue of the application of the collective entity doctrine to trusts.

Numerous circuits[6] have already faced this issue, all holding that the collective entity doctrine, with respect to trusts, applies for the purposes of the Fifth Amendment. The Second Circuit looked to one of the critical hallmarks of the collective entity doctrine and determined that a trust, including a traditional common law trust, has a separate legal existence from the trustee. In making this determination, the court reasoned that despite a trustee's resignation or removal, a trust can continue, evidencing the trust's existence as a separate legal entity. Further, a trust represents a formal institutional arrangement that is well organized and structured, much like other collective entities that have already been recognized by Supreme Court precedent as meeting the collective entity exception.

Last, the Second Circuit recognized that the decision to create a trust is freely made and generates benefits, such as limited liability, and burdens, such as the need to respond to subpoenas for records.[7] The court agreed with the Eighth Circuit's reasoning that it would be inequitable to allow individuals to create a separate entity, such as a trust, and enjoy its favorable treatment yet deny the entity's separate existence in relation to subpoena purposes.[8]

Fridman argued that since a trustee can be held personally liable, a trust is more akin to a sole proprietorship, thus failing to meet the definition of a collective entity. However, this argument held little weight, since a trustee may be entitled to be reimbursed or indemnified from trust assets when acting on behalf of the trust.[9] Although in some instances, state and federal law do not treat trusts as distinct entities for all purposes, because trusts bear enough of the indicia of legal entities they meet the definition of a collective entity for the purposes of the Fifth Amendment.[10] Therefore, it is now settled in the Second Circuit that a trust has a separate legal existence from its trustee, which prevents a trustee from invoking the Fifth Amendment in response to an IRS summons for trust documents.

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1. US v. Fridman, 974 F.3d 163, 2020-2 USTC P 50,173.

2. Fridman, 974 F.3d at 2020-5987.

3. Id. at 2020-88. For example, some of the records the IRS requested include: the Trust Agreement for any trust for which Fridman is trustee or beneficiary; all records pertaining to the property in which the domestic trust has interest; all correspondences between Fridman and any other individual associated with the trust.

4. Id.

5. See, e.g., Braswell v. United States, 487 U.S. 99, 102 [62 AFTR 2d 88-5724], 104-08 (1988); Bellis v. United States, 417 U.S. 85, 88-89 [39 AFTR 2d 77-815], 93-101 (1974).

6. See In re Grand Jury Subpoena, 973 F.2d 45, 48 (1st Cir. 1992); Watson v. Comm'r of Internal Revenue, 690 F.2d 429, 431 [50 AFTR 2d 82-6042] (5th Cir. 1982); United States v. Harrison, 653 F.2d 359, 361-62 [48 AFTR 2d 81-5704] (8th Cir. 1981); In re Grand Jury Proceedings, 633 F.2d 754, 757 (9th Cir. 1980).

7. See In re Grand Jury Subpoena Issued June 18, 2009 , 593 F.3d at 159; Fridman, 974 F.3d at 2020-94.

8. See Harrison, 653 F.2d at 361-62.

9. Fridman, 974 F.3d at 2020-94 106 N.Y. Jur. 2d Trusts § 356.

10. Fridman, 974 F.3d at 2020-94-95.

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Federal Tax Authority Regulation on Contribution of Great Fortunes published

The Federal Tax Authority (FTA) General Resolution No. 4930/2021 ("Resolution") was published in the Official Gazette on 8 February 2021, regulating the procedure to assess and pay the Solidarity and Extraordinary Contribution to Help Mitigate the Effects of the Pandemic created by Law No. 27,605 ("Contribution"), as well as certain clarifications related to information regimes related to the Contribution.

The Contribution

Published on 18 December 2020 in the Official Bulletin, Law No. 27,605 establishes the Contribution, which taxes assets that exceed ARS 200 million (approximately USD 2,127,000), with rates that vary from 2% to 5.25%.

Who must pay the Contribution?

- Individuals and undivided estates considered Argentine tax residents, for all of their assets in the country and abroad, must pay the Contribution. The taxable basis includes contributions to trusts, private interest foundations and other similar structures, participation in companies, other entities of any type without legal personality for tax purposes and direct or indirect participation in companies or other entities of any type, existing at the date of the entry into force of the law.

- Individuals of Argentine nationality whose domicile or residence is in "non-cooperating jurisdictions" or "jurisdictions with low or no taxation" will be considered Argentine tax residents for the purposes of the Contribution and, therefore, they will be subject to the Contribution for the total assets located in the country and abroad. The taxable basis includes contributions to trusts, private interest foundations and other similar structures, participation in companies, other entities of any type without legal personality for tax purposes and direct or indirect participation in companies or other entities of any type, existing at the date of the entry into force of the law.

- Individuals not included in point 2 and undivided estates, both with tax residence abroad, for all of their assets in Argentina on the date of the entry into force of the law must pay the Contribution.

What assets are subject to the Contribution?

Individuals and undivided estates are exempt from the Contribution when the value of all their assets does not exceed ARS 200 million approximately USD 2.5 million. When the aforementioned amount is exceeded, all the assets will be taxed by the Contribution.

What are the applicable tax rates?

Assets located in Argentina are subject to rates between 2% and 3.5% for values of ARS 3,000,000,00 or more.

Assets located abroad that are not repatriated are subject to rates between 3% and 5.25% for values of ARS 3,000,000,00 or more.

What is meant by repatriation?

Repatriation is understood as the entrance to Argentina, within 60 days, inclusive, counted from the entry into force of the law, of: (i) holdings of foreign currency abroad; and (ii) the amounts generated as a result of the realization of financial assets abroad, which represent at least 30% of the total value of said assets. The Executive Branch may extend the aforementioned term by 60 additional days.

Once the repatriation is made, the funds must remain, until 31 December 2021, deposited in an account opened in the name of its holder in Argentine financial entities included in the regime of Law No. 21,526 and its modifications, or affected to any of the destinations to be established by the Executive Branch.

What FTA powers stand out within those contemplated by the Argentine tax regime?

When the FTA presumes that an operation constitutes an evasive scheme or that it is intended to evade the payment of the tax as a result of variations operated in the assets subject to the Contribution, during 180 immediate days prior to the date of entry into force of this law, unless proven otherwise, said organism may order that those assets are computed for the purposes of the tax audit.

Reporting regimes

Article 9 of Decree No. 42/21 establishes that the FTA will have to implement reporting regimes to collect relevant data for the timely detection of transactions that could be deemed as an evasion of the Contribution.

In this sense, the Resolution establishes that the following parties will have to report, as a sworn statement, their assets owned as of 20 March 2020:

a. parties subject to the payment of the Contribution

b. parties not subject to the payment of the Contribution whose assets as of 31 December 2019 were valued, according to the personal assets tax returns applicable to such fiscal year, at an amount equal to or higher than ARS 130 million

c. parties not subject to the payment of the Contribution whose assets as of 31 December 2018 were valued, according to the personal assets tax return applicable to such fiscal year, at an amount equal to or higher than ARS 80 million

Additionally, the parties mentioned in b. and c. will have to report assets owned as of 18 December 2020.

The filing of the reporting regimes will have to be done between 22 March 2021 and 30 April 2021, inclusive.

The Resolution is applicable as of 8 February 2021.

Deadline to pay the contribution

The Resolution establishes that the filing of the tax return and the payment of the outstanding balance will have to be made up to 30 March 2021, inclusive. Nevertheless, the Resolution establishes additional mechanisms for the valuation of assets, the procedure to repatriate them, and the methods to pay the Contribution.

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Are changes ahead for US-connected private clients?

With the US elections (and runoffs) complete, the degree to which US tax and regulatory policy will depart from the priorities of the past administration remains to be seen. However, the developments in November 2020 and January 2021 present the Democratic Party with a surprising if narrow opportunity to enact legislation.

The balance of power could set the table for President Biden to enact much of his campaign proposals (USD 15 minimum wage, repeal of the "step-up" in basis, decrease of the estate tax exemption, prioritization of American production, immigration reform, etc.), though negotiations within his own party have already proven difficult. And, for private business owners, US expats and dual citizens, and non-US investors, the coming changes were expected to be swift, far reaching, and possibly even retroactive. More than two months into 2021, the most notable change from a US tax and regulatory perspective for private clients, wealth owners and financial institutions has been a law passed on a bi-partisan basis over then-President Trump's final veto.

Proposed policies

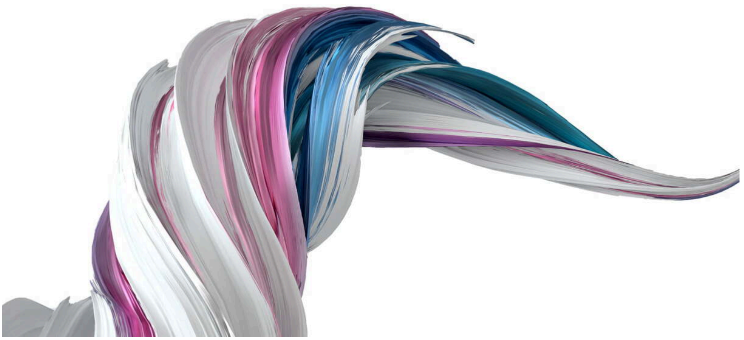
Whether President Biden and his administration will enact their campaign proposals is impossible to predict. Key aspects of his campaign target high-income earners and multinationals for increased tax burdens while offering incentives to prioritize domestic production.

1. Increase income and capital gains tax rates

Biden's tax plan includes raising the top individual income tax rate from 37% to 39.6% for taxable income above USD 400,000. In addition, he has proposed to tax capital gains and qualified dividends at ordinary income tax rates on income above USD 1 million (i.e., 39.6%). Currently, long-term capital gains and qualified dividends are taxed at preferential rates (20% plus 3.8% net investment income tax, if applicable). If the capital gains rate is increased, taxpayers may prefer to postpone selling assets during their lifetime. However, any plan to hold assets until death should be considered with the possibility that the assets may no longer receive a step-up in basis at death and if the US federal estate tax exemption is substantially decreased under other Biden proposals (see discussion below).

2. Elimination of basis step-up

Under the current US federal tax rules, inherited assets receive a step-up in basis equal to the fair market value of the asset as of the decedent's date of death. The basis step-up minimizes capital gains tax on the disposition of appreciated assets by heirs. Biden as a candidate proposed to eliminate basis step-up for inherited assets. If this tax-savings provision is no longer available, taxpayers may consider selling highly appreciated assets during their lifetime, as opposed to holding onto such assets until their death. The elimination of the basis step-up at death would impact global families with US beneficiaries who have held low-base assets for very long periods, particularly where it is difficult to trace back historical basis information.



3. Reduce estate exemption

The current US federal estate tax exemption amount is USD 11.7 million for 2021 (USD 23.4 for a married couple). Biden's campaign proposal mention reducing the US federal estate tax exemption to its "historic" norm (while it is unclear what the historic norm, a reduction to USD 3.5 million or USD 5 million, subject to inflation adjustments, both seem plausible). Further, Biden proposes to increase the estate tax rate from 40% to 45%. If such proposals are enacted, taxpayers may consider making large gifts soon, if they have not done so already, to count towards the current exemption, which is expected to sunset in 2025, or potentially earlier if accelerated.

4. Raise corporate income tax rates and GILTI

Biden's tax plan would increase the corporate federal income tax rate from 21% to 28% (the TCJA reduced the corporate tax rate to 21%) and impose a 15% minimum tax on corporations with book income of USD 100 million or more. It is expected that the 15% minimum tax would be structured as an alternative minimum tax to ensure that all corporations pay some amount of federal income tax. This means that a corporation would pay the higher of: (i) its federal income tax liability, or (ii) the 15% tax. Increasing the corporate income tax rate to pre-TCJA levels may affect a taxpayer's decision to hold assets through a corporation or pass-through entity. However, this may be negated by the potential increase in individual income tax rates.

Further, Biden proposes to double the global intangible low tax income (GILTI) to 21% and assess GILTI on a country-by-country basis. Increasing the GILTI tax rate may prompt restructuring within corporate groups, as an entity may no longer benefit from the GILTI high-tax kick-out in a relevant jurisdiction given the proposed increase in the corresponding US tax rate.

Reporting

While enacted before President Biden's swearing in, the **Corporate Transparency Act**[11] aligns more closely with the traditional policy goals of a Democratic president.

The act requires "reporting companies" (i.e., LLCs, corporations and other similar entities) to report their 25% or more beneficial owners to FinCEN.[12] The required reporting includes the following information of the beneficial owners: full legal name, date of birth, current residential or business address, identifying number from an acceptable identification document (e.g., a valid passport) or FinCEN identifier.

The act leaves open significant questions, such as the determination of beneficial ownership when trusts are involved and the definition of "other similar entity." As such, the treasury secretary is required to issue regulations prescribing the procedures and standards governing the required reports and the FinCEN identifiers by 1 January 2022. The law does, however, make clear that the beneficial ownership information is confidential and may be only disclosed upon the receipt of a valid request from another US governmental agency; as part of a request from a foreign law enforcement agency, under an international treaty, agreement or convention; or to a US financial institution with the consent of the reporting company.

Unlike the European trend, the US beneficial ownership register is not expected to be accessible to the public. It appears that foreign governments will be able to make exchange of information requests under tax treaties and tax information exchange agreements with respect to the beneficial ownership information of specific entities where such entities are under investigation.

However, the fact that the treasury will have the information of foreign beneficial owners makes the future exchange of this information more likely. This greater beneficial ownership transparency will likely deter, at least to some extent, foreign tax evaders from holding undeclared assets in the US.

From the perspective of the US financial institution, this development has the potential to simplify their compliance burden if the due diligence requirements are revised in the future in the manner described in the Corporate Transparency Act.

Trade

Trade is a critical area to watch unfold as the Biden administration proceeds. Facing a prolonged economic downturn, President Biden could focus on restoring manufacturing jobs and addressing supply chain vulnerabilities exposed

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11 A full discussion of the Corporate Transparency Act can be found in Beneficial Ownership Reporting Coming to America.

12 The Corporate Transparency Act refers to §§ 6401-03 of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388.

during the COVID-19 pandemic. President Biden has signaled his support for revitalizing American manufacturing, increasing spending on R&D and raising wages and benefits for workers.

Wealth owners will watch carefully as President Biden's trade policy unfolds. The COVID-19 pandemic has slowed acquisition and expansion in some sectors over the last 12 months. As the economic recovery takes shape, there may be an increase in acquisition and expansion activity and made-in-America production incentives could increase investment in the US and even wealth owner immigration. A key area to watch is how the Biden administration engages with China on trade issues.

Enforcement

While enacting legislation may be more difficult than expected, tightening enforcement and investigative activity whether from the IRS, FinCEN or the SEC is a tool likely to be deployed by the new administration. From a tax perspective, this would be a continuation of existing prioritization and reprioritization of IRS resources via "campaigns" targeting particular issues. Recent campaigns of note for individuals and international taxpayers include a focus on high-net-worth individuals, FATCA reporting accuracy, non-US person real estate ownership, cryptocurrencies and ownership and transactions with foreign trusts. Continued and enhanced focus on these and other areas is a near certainty. IRS funding will likely be another priority and would allow further campaigns and increased audits, particularly more complex multi-faceted audits involving higher income taxpayers.

Looking ahead

The tax and planning environment for private clients under the Biden administration could become more complicated. Biden's tax proposals if enacted could increase the tax burden on high-net-worth families. Given the close balance of power in the Senate, it remains to be seen how much of Biden's agenda for taxes will be enacted. Biden's enforcement priorities could push forward faster as enforcement is more readily achievable through the executive branch acting alone.

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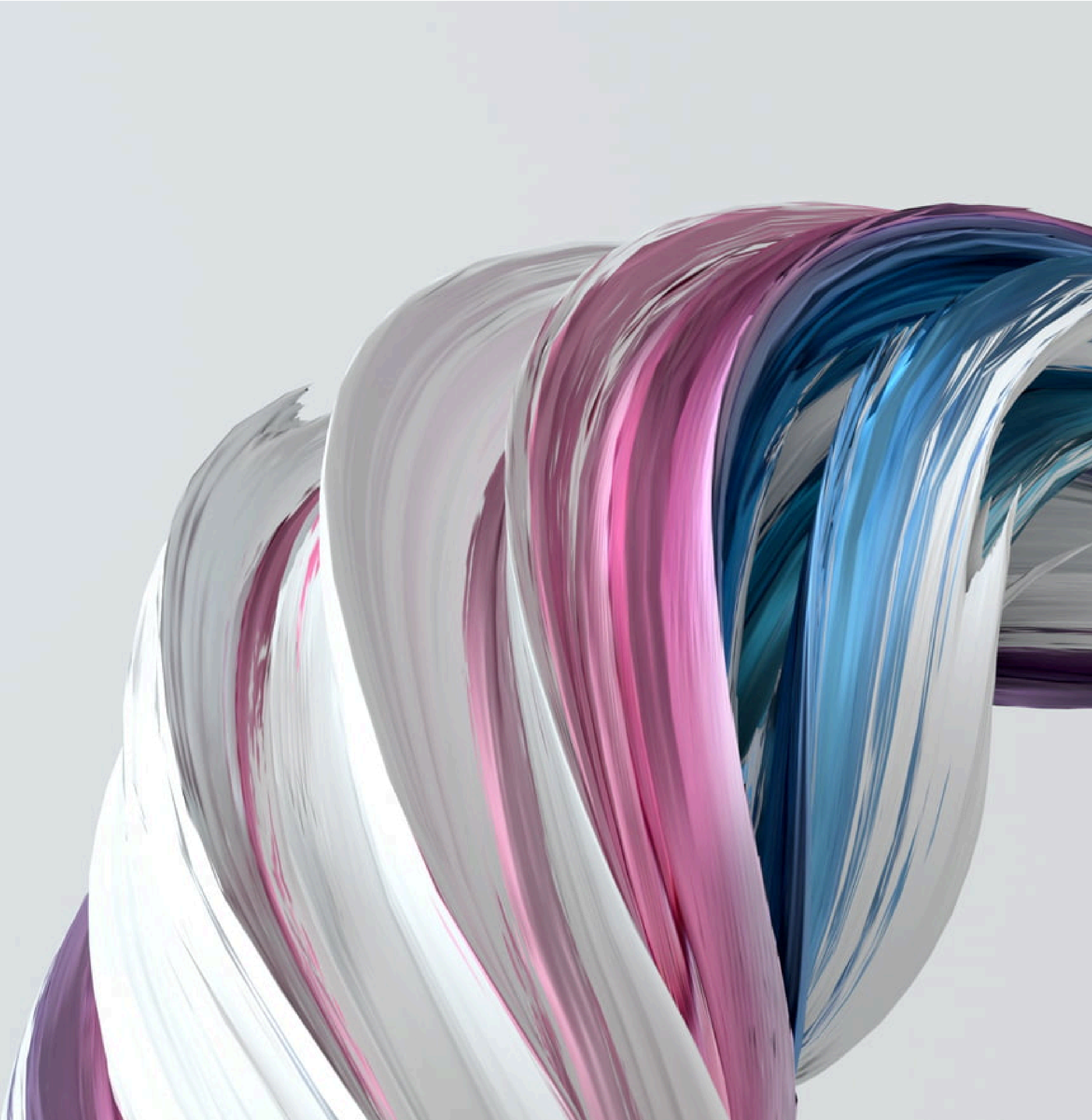
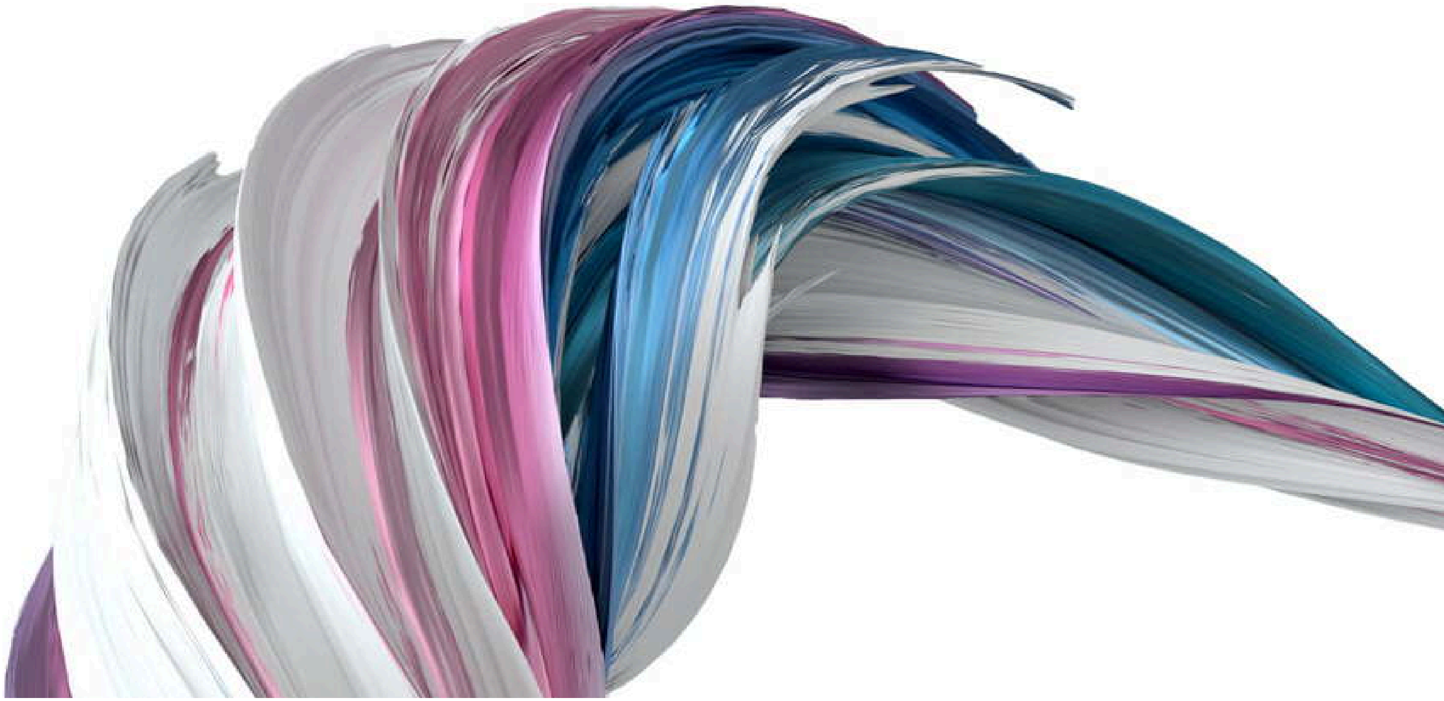
New securities account tax in force



Following the outbreak of the COVID-19 pandemic, the Belgian Government has been looking into ways to restore the state's budget that took a blow as a result of the many COVID-19 relief measures taken during the past year. One new measure that has recently been introduced is a new and significantly extended version of the Securities Account Tax (also branded the "solidarity contribution" in an attempt to avoid the connotation with the securities account tax 1.0, which was annulled by the constitutional court in 2019). This new measure was introduced by the Law of 17 February 2021, published in the Belgian Official Journal on 25 February ("Law"). The estimated budgetary impact is approximately EUR 420 million on an annual basis.

The new Securities Account Tax is an annual tax of 0.15% on securities accounts that exceed EUR 1 million in average value and is purported to be a mere budgetary measure. The tax will first be due for the reference period starting on 26 February 2021 and ending on 30 September 2021. Resident taxpayers (which include individuals, companies, legal entities, permanent establishments, and non-profit organizations) will be subject to the tax with respect to their securities accounts held with domestic and foreign financial institutions, whereas non-resident taxpayers will be subject to the tax with respect to their securities accounts held with Belgian financial institutions. The tax is also applicable in the hands of settlors of so-called legal constructions in the framework of the Belgian Cayman tax with respect to the average value in the securities accounts held by such legal construction.



Key takeaways

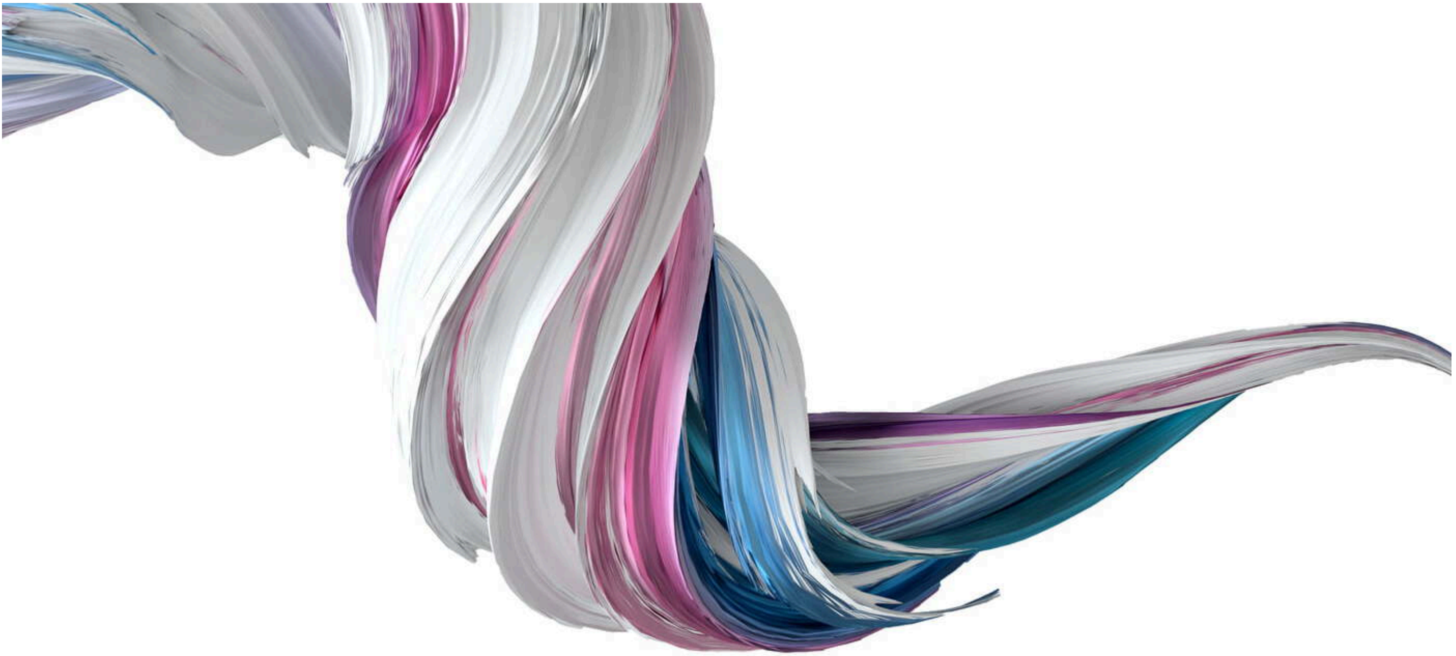
- A new and extended Securities Account Tax was introduced by the Law of 17 February 2021 and entered into force on 26 February. The tax will first be due for the reference period starting on 26 February 2021 and ending on 30 September 2021.

- A 0.15% tax will be levied on the average value held in securities accounts (including the cash balance). The tax is only due if such average value in the account exceeds the threshold of EUR 1 million. A specific and a general anti-abuse measure was introduced to tackle avoidance of the Securities Account Tax (with retroactive effect).

- The tax will be due by resident taxpayers with respect to their securities accounts regardless of whether these are held with a Belgian or a foreign financial institution. Non-resident taxpayers are also targeted but only with respect to their securities accounts held with Belgian financial institutions. The Law targets individual as well as corporate taxpayers (and not-for-profit). Importantly, settlors of so-called legal constructions in the framework of the Cayman tax will also be subject to the securities tax with respect to the securities accounts held by such legal constructions. However, the Law states with respect to Belgian establishments of a foreign company that, provided that the securities account is allocated to the Belgian establishment (i.e., if it is part of the establishment's business assets), the tax will be due regardless of whether the account is held with a Belgian or a foreign financial institution. It will have to be seen however, whether Belgium is entitled to tax if a Belgian establishment (which is a domestic notion and also includes a mere office or stock of goods) is not considered to be a permanent establishment under the applicable double tax treaty.

- For securities accounts held with Belgian financial institutions, the Belgian intermediary will have to withhold and pay the securities tax to the Belgian State and file the tax return. For securities accounts held with foreign financial institutions, the foreign intermediary will have the option to appoint a tax representative in Belgium that will pay the tax and carry out the relevant formalities. In the absence of such a tax representative, the account holder will need to file the return and pay the tax to the Belgian State directly.

- As the Council of State already indicated in its advice upon review of the draft bill, there are some inconsistencies in the relevant legal provisions, which raise the question as to whether this tax will pass the constitutionality test or whether it will suffer the same fate as the securities account tax 1.0 (i.e., annulment by the constitutional court).



In-depth - The new annual tax on securities accounts

1. The new tax in a nutshell

Tax on average value in securities accounts — The new Securities Account Tax is an annual tax of 0.15% calculated on the value held in a securities account (i.e., any account on which financial instruments can be debited/credited). The taxable base is the average value of all financial instruments held in the securities account. This includes securities such as shares, depositary receipts, bonds and investment fund units (e.g., trackers/ETFs), but also targets derivatives such as options, turbos, speeders and sprinters. Importantly, the cash balance held on the account is also included in the taxable value. Financial instruments not held in a securities account, such as registered shares, are not subject to the tax.

Reference period — The average value in the securities account is calculated taking into account a reference period of 12 months, which, as a rule, starts on 1 October and ends on 30 September. The first reference period started on 26 February 2021 (first day after publication of the Law in the Belgian Official Journal) and ends on 30 September 2021. The reference period will end sooner for particular taxpayers in certain cases, e.g., on the day the account is closed or on the day the only or last account holder moves to a state with which Belgium has concluded a double tax treaty on the basis of which Belgium no longer has the taxing powers with respect to the securities account.

A reference period generally contains four reference points, i.e., 31 December, 31 March, 30 June and 30 September. The taxable value in the securities account on each of these four reference points will be added together and divided by four to obtain the average taxable value. If a securities account is opened or closed during the reference period, the average value will be calculated taking into account only the reference points during which the securities account existed.

Threshold of EUR 1 million – The tax of 0.15% will only be due provided that the average taxable value in the securities account exceeds EUR 1 million (the tax will then be due on the total average value including the EUR 1 million). This threshold is applied with respect to the securities account and not with respect to the account holder. For example, the Securities Account Tax will be due in case two account holders hold a securities account with an average value of EUR 1,600,000, whereas an account holder holding two securities accounts with an average value of each EUR 800,000 will not be liable for the Securities Account Tax.

The tax due is in any case limited to 10% of the difference between the taxable base and EUR 1 million. This limitation was included to avoid the value of the account dropping below the threshold of EUR 1 million as a result of the securities tax due. For example, the Securities Account Tax due for a securities account with an average value of EUR 1,000,100.00 would be EUR 1,500.15 (if it were not for the limitation) so that the value of the account would drop below EUR 1 million to EUR 998,599.85. As a result of the limitation, the Securities Account Tax due is 10% of EUR 100 (i.e., the difference of EUR 1,000,100.00 and EUR 1 million), or EUR 10 instead, keeping the value of the account above the threshold.

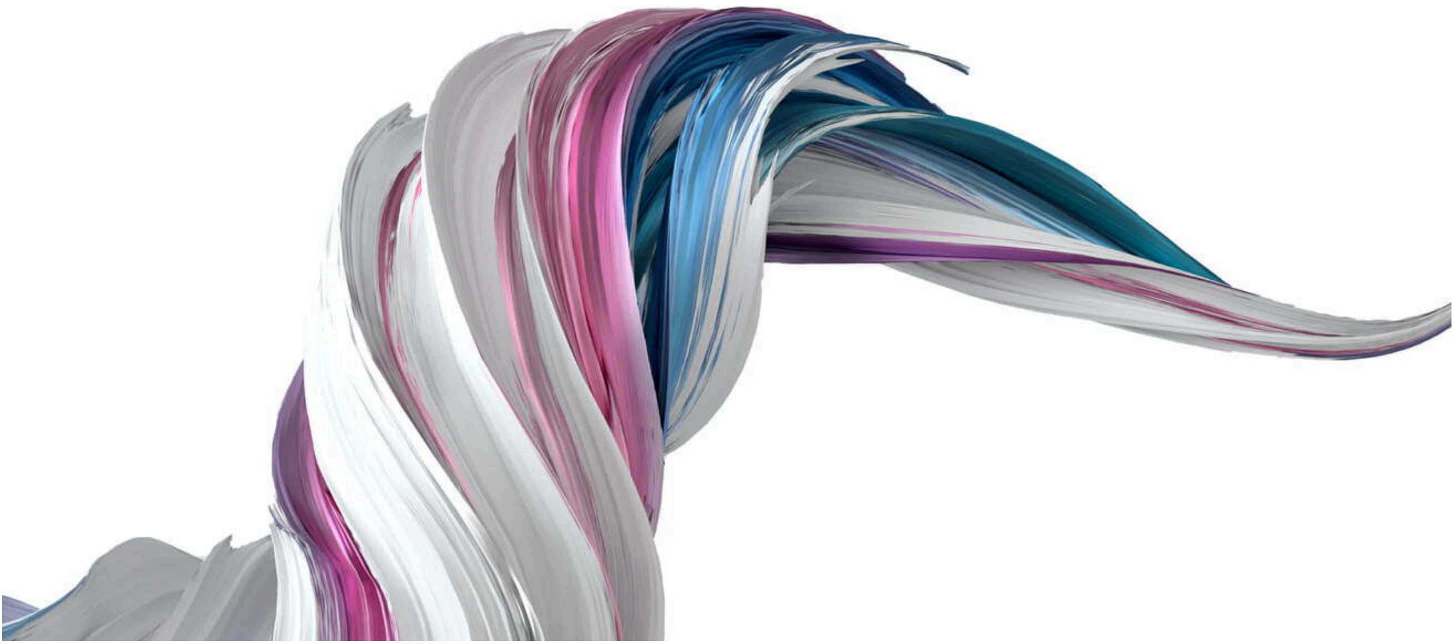
2. Relevance for resident and non-resident, individual and corporate taxpayers

Subscription tax — Contrary to the securities account tax 1.0, the new Law emphasizes the indirect nature of the Securities Account Tax, in the sense that it is levied on securities accounts as a subscription tax (instead of being levied on the account holder). The tax hence targets any securities account with an average value of above EUR 1 million, regardless of the number of account holders and regardless of the division of rights between account holders. For example, a Securities Account Tax of EUR 15,000 will be due with respect to a securities account with an average value of EUR 10 million, regardless of whether the account is held by one or ten account holders. Moreover, the tax will be due irrespective of the nature/identity of the account holder. The tax therefore concerns individual taxpayers, as well as corporate taxpayers and other legal entities subject to the legal entities tax (e.g., not-for-profit organizations). Note that the tax is non-deductible.

Liability for resident and non-resident taxpayers — The Securities Account Tax applies to resident account holders, both with respect to their Belgian and foreign securities accounts (i.e., accounts held with Belgian-based financial institutions and accounts held with foreign financial institutions).

In addition, non-resident account holders are also targeted, with respect to their securities accounts held with Belgian financial institutions (the Belgian State cannot assert taxation rights with respect to any foreign securities accounts held by non-residents, as there is no Belgian nexus). One should in the latter case consider whether the relevant double tax treaty covers taxes on capital and allocates taxing power to the resident state, in which case Belgium would be prevented from levying the new tax (this is the case in the double tax treaty between Belgium and the Netherlands, for example). However, with respect to Belgian establishments of foreign companies, which are considered non-resident taxpayers for income tax purposes, the Law states that the tax is due if the securities account is allocated to the Belgian establishment (i.e., if it is part of the establishment's business assets) and this is irrespective of whether the account is held with a Belgian or a foreign financial institution. It will have to be seen however, whether Belgium is entitled to tax if a Belgian establishment is not considered to be a permanent establishment under the applicable double tax treaty. After all, the notion of a 'Belgian establishment' is a purely domestic notion with a wider scope than the notion of a permanent establishment under the treaty and also includes a mere office or stock of goods for example.

Including settlors of legal constructions — Importantly, settlors of 'legal constructions' for the purposes of the Belgian Cayman tax (e.g., trusts and companies established in tax havens) will also be considered to be an account holder with respect to the securities accounts held by such legal constructions for purposes of the Securities Account Tax.



Exemption for financial intermediaries' accounts — An exemption is, amongst others, made for securities accounts that are held by financial intermediaries provided that there are no third parties that have a direct or indirect claim with respect to the value in the securities account.

Branch 23-insurance contracts — The preparatory works to the Law state that securities accounts related to branch-23 (unit linked) insurance contracts are in scope of the Securities Account Tax as such accounts are not held by the insurance company for its own account but are held for the account of the policyholder that subscribed the branch-23 insurance policy. Indeed, while the units in the underlying investment funds to which the branch-23 are linked are legally owned by the insurance company, the policyholder has a receivable owed by the insurance company for the value of such units. Taking into account that the insurance company's overall securities account will be subject to the tax, regardless of the value of the respective underlying insurance contracts, and that the insurance companies will probably recharge the cost of the tax to the policyholders based on the value of the units of the relevant policyholders, this will imply that policyholders of branch-23 insurance contracts with a value below EUR 1 million will probably indirectly suffer the tax. Since this is against the intent of the legislator, the insurance sector has heavily criticized such result.

Practical uncertainties — Considering the above and notably the fact that a securities account might be held by liable and non-liable account holders at the same time, certain situations will give rise to practical application problems:

- For example, what will be the Securities Account Tax due if a foreign securities account is held by a non-resident taxpayer and a resident taxpayer (50%/50%) with an average value of EUR 1.8 million? The non-resident account holder cannot be held liable for the Securities Account Tax with respect to the foreign securities account, but how will it be determined whether the resident taxpayer will be held liable? Should one allocate the EUR 1.8 million to the two account holders (in proportion to their rights with respect to the account), in which case the resident taxpayer will not be held liable for the tax, or should one only look at the total average value in the securities account, in which case the resident taxpayer will be held liable?

- A similar problem will arise in situations where a liable account holder holds the bare ownership of the securities account and a non-liable account holder holds a right of usufruct on such securities account.

3. Filing and payment obligations

Securities accounts held with a Belgian intermediary — The way in which the Securities Account Tax will be levied is very similar to the Belgian tax on stock exchange transactions, in that the tax return will be filed and the tax will be withheld and paid by the financial intermediary. This will need to be done at the latest on the 20th day of the third month following the end of the reference period (as a rule, on 20 December). In case the Belgian intermediary fails to do the necessary filing of the return or payment of the tax, the account holder(s) remains liable and will need to file the return and pay the tax (see also below with respect to securities accounts held with a foreign intermediary). The Belgian intermediary will also be under a legal obligation, as is the case with the tax on the stock exchange transactions, to issue an overview to account holders, which includes all relevant facts to determine the taxable base, at the latest on the last day of the month that follows the reference period.

Securities accounts held with a foreign intermediary — For securities accounts held with foreign intermediaries, the account holder will need to file the tax return and pay the tax, unless it can be demonstrated that another intermediary already filed the return and carried out withholding and payment of the tax. The foreign intermediary will have the option to appoint a tax representative in Belgium that is jointly liable for filing the tax return and paying the tax, but is under no obligation to do so. The tax return will need to be filed by the same deadline as determined for the electronic filing of the personal income tax return. The tax will have to be paid by 31 August of the year following the end of the reference period (i.e., by 31 August 2022 with respect to the first reference period).

Multiple account holders — In case of multiple account holders, each account holder is jointly and severally liable to make sure the tax return is filed and the tax is paid with respect to the total average value in the securities account. Each account holder can take the necessary action in terms of payment and filing obligations for the other account holders, but concertation between account holders will be necessary in order to avoid multiple reporting. It is not yet clear how the reporting will need to be done in such cases. More clarification is expected, either by Royal Decree or by administrative guidance.

Penalties and late payment interest — Penalties will apply in case of late, incomplete or lack of filing of the tax return or in case of a late or non-payment of the tax. The penalties will range between 10% and 200% of the tax due. The Law states that penalties will not be due in case of good faith. In case of late or non-payment of the tax, late payment interest will be due (in principle 7% on an annual basis).

New investigation powers — The tax authorities will be allowed to request from the account holder any information that they deem relevant to ensure that the tax is duly levied. A failure to comply with such information request or the submission of incorrect information can trigger a fine that ranges between EUR 750 and EUR 1,250 (unless in case of good faith).

Refund request — In case the amount of tax paid is higher than the amount of tax legally due, a refund request can be submitted to obtain reimbursement of the excess tax, including interest. The refund procedure will be determined by Royal Decree but the Law already provides that the request will need to be filed within a maximum of two years after the tax became due.

4. Anti-abuse measures

General anti-abuse measure in the code of miscellaneous duties and taxes — A new general anti-abuse measure is introduced in the

code of miscellaneous duties and taxes (similar to the anti-abuse measure that is applicable in for example the Income Tax Code). This anti-abuse measure will not only apply in the context of the new Securities Account Tax but also in the context of any other taxes/duties in this code (e.g., the tax on stock exchange transactions and insurance premium taxes). Following the new anti-abuse measure, a legal act or series of legal acts will not be binding upon the tax authorities if they are able to demonstrate, through presumptions or otherwise, that tax abuse is present. Such tax abuse is present if the taxpayer or the person liable for the tax carries out any of the following transactions:

- a transaction by way of which it places itself outside of the scope of application of a legal provision, in breach of the purpose of such provision

- a transaction by way of which a tax benefit is claimed and the grant of such benefit would be contrary to the purpose of the legal provision

If the tax authorities are able to demonstrate the presence of such tax abuse, the taxpayer/person liable for the tax can still provide counterproof and demonstrate that other non-tax related objectives are present. If the taxpayer/person liable for the tax is not able to do so, the tax will be due as if the tax abuse had not taken place.

The preparatory works indicate that the general anti-abuse measure is applicable not only in so-called 'top-down' situations (where the average value on the account is purposely reduced below EUR 1 million to reduce or avoid the Securities Account Tax), but also in so-called 'bottom-up' situations, where the value of the securities account is purposely not increased in order to avoid the threshold of EUR 1 million being exceeded.

We expect that many discussions will arise (particularly with respect to the Securities Account Tax) if this anti-abuse measure is introduced in the way it is currently phrased (taking into account the very generic purpose of the Securities Account Tax). In any case, documenting the non-tax objectives of certain investment decisions will be crucial in order to avoid future disputes in this context as much as possible.

Specific anti-abuse measure — A specific and non-rebuttable anti-abuse measure is introduced that targets the most obvious acts that could aim at avoiding the Securities Account Tax. This measure will apply when (i) the value of a securities account is transferred to two or more securities accounts held with the same financial intermediary; and (ii) taxable securities are converted into registered financial securities (e.g., registered shares). In such cases, the transactions will not be binding upon the tax authorities without the possibility for the taxpayer/the person liable to the tax to offer counterproof. It remains to be seen whether this is considered reasonable. After all, a taxpayer may have valid non-tax related reasons to split up a securities account (e.g., preparation of inheritance planning, different investment and risk strategies, etc.).

5. Entry into force

Entry into force — The Law entered into force the first day after publication of the Law in the Belgian Official Journal (i.e., on 26 February 2021). One exception hereto is the entry into force of the above-mentioned anti-abuse provisions, which is determined to be 30 October 2020. The preparatory works to the Law refer to the notice that was published in the Belgian Official Journal on 4 November 2020 indicating the entry into force of the anti-abuse measure on 30 October 2020 (insofar as the annual Securities Account Tax is concerned) as a justification for the retroactive effect of the anti-abuse measure.

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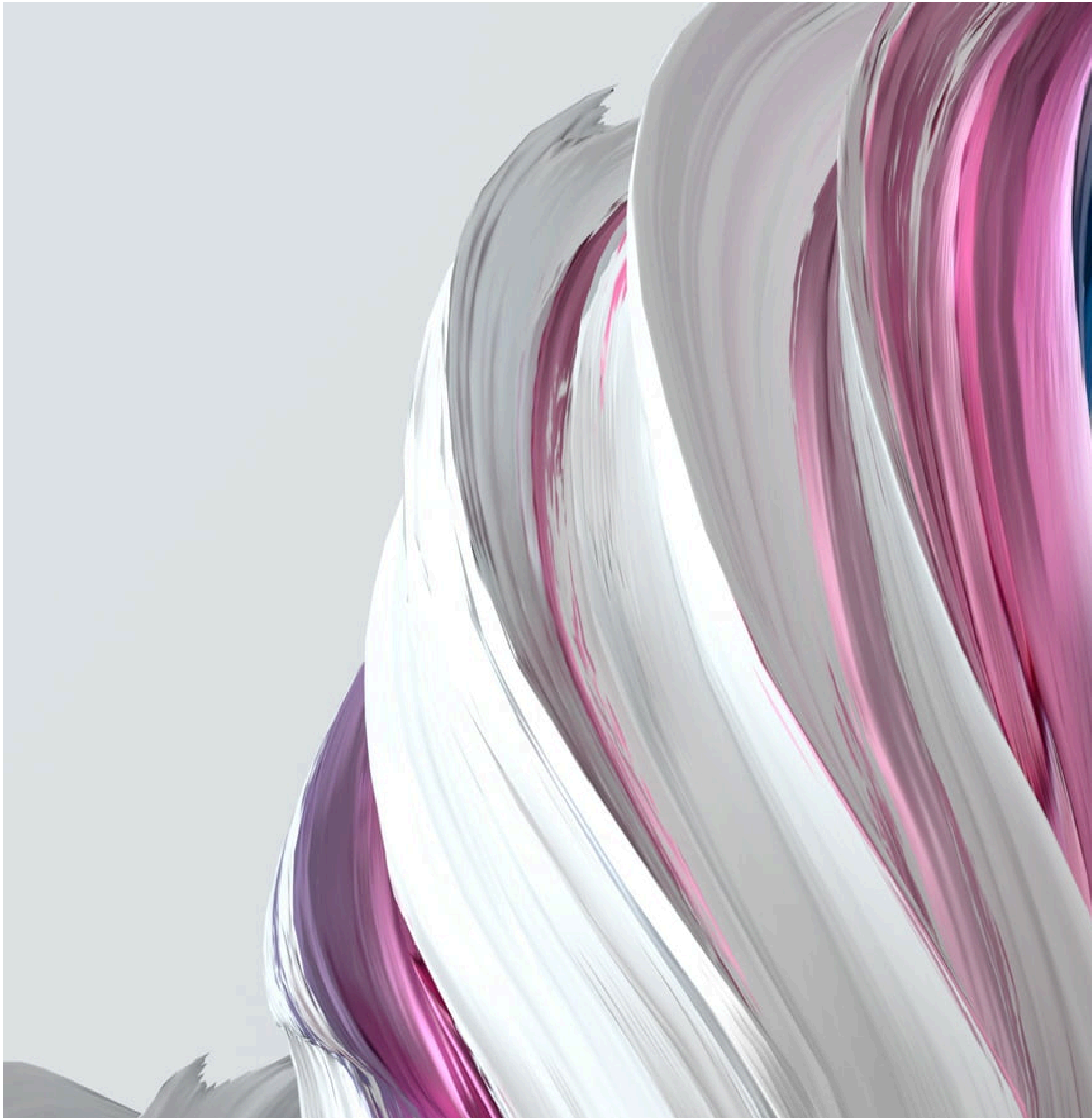

APAC

Hong Kong

An overview of the Hong Kong Tax concession for carried interest: The Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 ("Bill") was gazetted on 29 January 2021. The long-awaited Bill sets forth the legislative framework for granting concessionary tax treatment to carried interest received by or accrued to fund managers and their employees.
Read more.

Author(s): *Jason Ng, Partner; Steven Sieker, Partner; Pierre Chan, Partner; Edwin Wong, Registered Foreign Lawyer; Carrie Lui, Special Counsel*

Stamp duty update: Following the abolition of the doubled ad valorem stamp duty on non-residential property transaction in November 2020, the Hong Kong Government has just announced in its 2021/22 budget delivered on 24 February 2021 another updated stamp duty measure, which may be of relevance to the wealth management industry. Read more.

Author(s): *Lisa Ma, Associate*

Japan

New Japanese invoicing requirements for consumption tax: On or after 1 October 2023, a Japanese value added tax(JCT) taxpayer will be required to maintain qualified invoices issued by registered invoice issuers to be eligible for the input JCT credit. The necessity of the qualified invoice methods is generally supported by the multiple JCT rates such as 8% or 10%, which were introduced on or after 1 October 2019. Read more.

Author(s): *Shinichi Kobayashi, Partner; Edwin Whatley, Partner*

Malaysia

Penalty for failure to furnish transfer pricing documentation: Effective 1 January 2021, taxpayers who fail to furnish transfer pricing documentation upon the Malaysian Inland Revenue Board's request will be subject to a fine ranging from RM 20,000 to RM 100,000 and / or imprisonment. Read more.

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Americas

Argentina

The Federal Tax Authority modifies the definition of final beneficiary: On 26 January 2021, General Resolution No. 4912/2021 was published in the Official Gazette. This resolution introduces modifications to the definition of final beneficiary of General Resolution No. 3312/2012 regarding the reporting of trusts constituted in Argentina and abroad.
Read more.

Author(s): *Martin Barreiro, Partner; Juan Pablo Menna, Partner*

The Federal Tax Authority implemented a new Tax Planning Information Regime: On 20 October 2020, the Federal Tax Authority published in the Official Gazette General Resolution No. 4838/2020, by which a new Tax Planning Information Regime was implemented.
Read more.

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Brazil

The tax rate of the Tax on Financial Transactions (IOF) was reduced to zero on credit transactions: The Brazilian Federal Government has once again reduced the tax rate of the Tax on Financial Transactions levied on credit operations contracted between 15 and 31 December 2020 to zero.
Read more.

Author(s): *Reinaldo Ravelli Neto, Partner*

Canada

Proposed changes to Canada's stock option rules: In its 30 November 2020 Fiscal Update, the Canadian federal government introduced modified proposals to amend Canada's employee stock option rules.
Read more.

Author(s): *Stephanie Dewey, Partner*

Government proposing to increase GST/HST registration & collection requirements for non-residents: On 30 November 2020, Canada's Minister of Finance announced, as part of the government's Fiscal Update (available here), proposals to both increase Goods and Services Tax/Harmonized Sales Tax registration and collection obligations for non-resident suppliers and introduce a Digital Services Tax.
Read more.

Author(s): *Bryan Horrigan, Associate*

Mexico

A dive into 2021 Mexican Tax Reform: Both the lower and upper chambers of the Mexican Congress approved the 2021 Tax Bill. The tax reform of 2021, was officially published on 8 December 2020, and entered into force on 1 January 2021. The main amendments relate to the Income Tax Law, the Value Added Tax Law and the Federal Tax Code.
Read more.

Author(s): *Jorge Narvaez Hasfura, Partner*

United States

Things are looking up for downward attribution: On 22 September 2020, the Treasury issued final regulations and proposed regulations that addressed the ownership attribution rules under Code Section 958 applicable to cases of "downward attribution" whereby a US corporate subsidiary of a foreign parent corporation could cause a related foreign subsidiary to be classified as a "Controlled Foreign Corporation".
Read more.

Author(s): *Richard Fink, Associate; Blake Martin, Associate*

More enforcement, centralized compliance effort required for expatriation provisions (Code Section 887A): On 28 September 2020, the Treasury Inspector General for Tax Administration published the Final Audit Report ("Report"). The Report was originally initiated to determine the effectiveness of the IRS efforts in ensuring compliance with the expatriation tax provisions under sections 887 and 877A, and related efforts to reduce taxpayer's burden.
Read more.

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Final regulations issued on new TCJA rules for S Corps converting to C Corps: As part of the Tax Cuts and Jobs Act (TCJA), P.L. 115-97 and with the lowering of the corporate income tax rate to 21% (along with other changes), Congress anticipated that many S corporations would consider converting to C corporations. To make it "easier" on S corporations making such a conversion, Congress provided two major provisions as part of the TCJA that provide relief in this area.
Read more.

Author(s): *Michael Melrose, Partner*

EMEA

Europe

European Member States reach consensus on reporting obligation for digital platform ("DAC7"): On 21 November 2020, the European Member States reached consensus on a proposal for the seventh Directive on Administrative Cooperation ("DAC7"). The updated Directive is a part of a package, which was published by the European Commission earlier this year to promote fair and simple taxation. It is expected that DAC7 will be officially adopted on short notice.
Read more.

Author(s): *Harald van Dobbenburgh, Partner; Megan Ruigrok, Partner*

Application of the parent-subsidiary directive to Gibraltar companies - new guidance released by the Luxembourg tax authorities: On 1 December 2020, the Luxembourg tax authorities issued Circular L.I.R. n° 147/2, 166/2 et Eval. n° 63 regarding non-eligibility of Gibraltar companies for the provisions of Directive 2011/96/EU (parent-subsidiary directive).
Read more.

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Luxembourg

Law on the denial of deductibility of interest and royalty payments: On 28 January 2021, the Luxembourg Parliament (Chambre des Députés) adopted bill of law 7547 on the non-deductibility of interest and royalty payments made to related parties in non-cooperative jurisdictions.
Read more.

Author(s): *Amar Hamouche, Tax Director; Diogo Duarte De Oliveira, Tax Principal; Antonio Weffer, Tax Principal; Elodie Schmidt, Tax KM Manager*

Incentive scheme for hiring highly skilled employees an update of the regime: On 14 October 2020, Luxembourg announced new provisions with respect to incentive for highly skilled and qualified workers (i.e., "impatriates") as part of the 2021 budget bill. Read more.

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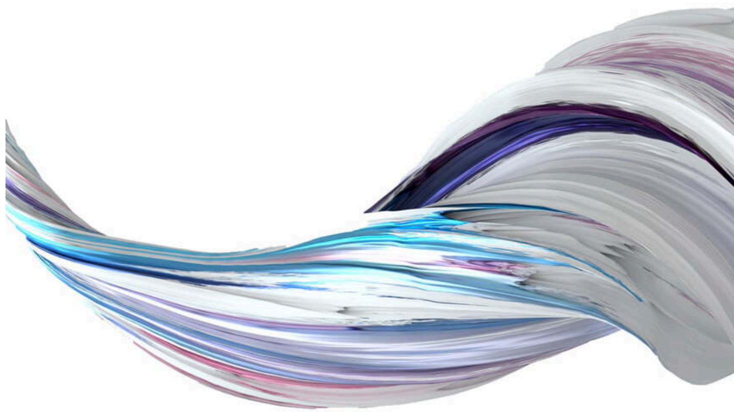

US FinCEN intends to require US persons to report interests in non-US crypto accounts: The US Financial Crimes Enforcement Network released a notice on 31 December 2020 stating that it will propose amendments to regulations of the Bank Secrecy Act bearing on non-US account holdings of virtual currency.
Read more.

Author(s): *Christopher Murrer, Associate*

Luxembourg

The Brexit action-list clarified for asset managers: On 7 December 2020, the Commission de Surveillance du Secteur Financiaer (CSSF) issued a new press release 20/26 in the context of Brexit that provides clarification on several aspects and actions to be taken by funds and/or managers prior to (or by) 31 December 2020 (end of the a time-limited transitional period and lapse of the current passporting rights under applicable EU legislation).
Read more.

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Switzerland

Swiss Tax Authority releases updated guidance for the implementation of AEOI/CRS: On 11 January 2021, the Swiss Federal Tax Administration (SFTA) released updated guidance regarding the implementation of Automatic Exchange of Information pursuant to the OECD Common Reporting Standard ("CRS") by Swiss financial institutions and other relevant third parties such as the SFTA ("Guidance").
Read more.

Author(s): *Gregory Walsh, Partner; Lyubomir Georgiev, Partner; John Cacharani, Associate*

Russia

Raise in individual income tax for high earners to 15% as of 2021: As of 1 January 2021, a 15% individual income tax rate will apply to the annual income of Russian individual tax residents in excess of a threshold of RUB 5 million.
Read more.

Author(s): *Sergei Zhestkov, Partner; Arseny Seidov, Partner; Artem Toropov, Associate*

United Kingdom

UK to repeal DAC6 reporting rules: Following the signing of the EU–UK Trade and Cooperation Agreement on 30 December 2020, the UK Government announced that it would cease to participate in the EU mandatory disclosure regime known as DAC6, for which reporting was due to commence from January 2021.
Read more.

Author(s): *Patrick O'Gara, Partner; Oliver Pendred, Senior Tax Adviser*

Bitcoin hits all-time high while FCA establishes temporary regime for crypto-business in UK: On 16 December 2020, the Financial Conduct Authority (FCA) announced that cryptocurrency businesses that have filed to register with the FCA may continue operating under a temporary licensing regime for six months as the regulator deals with a backlog of applications.
Read more.

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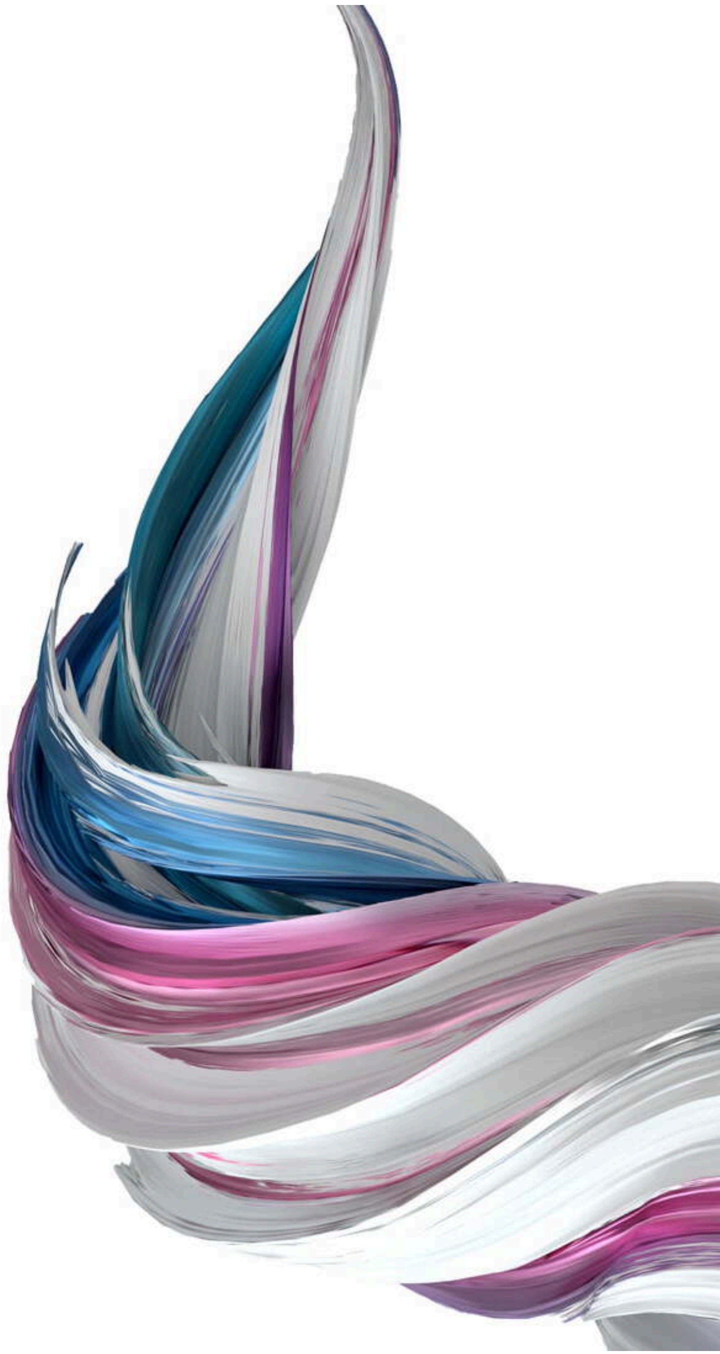
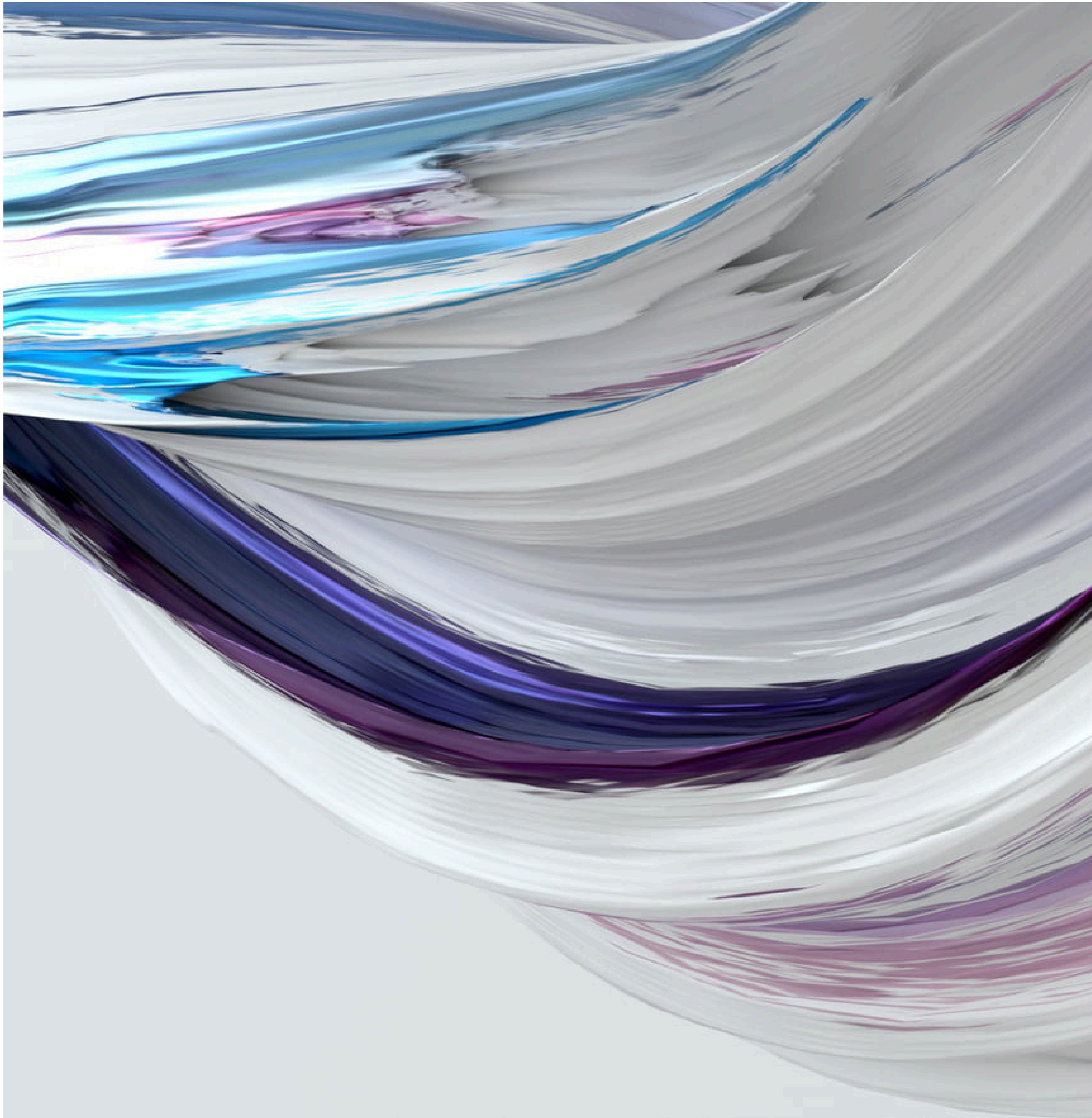


Wealth management regional contacts



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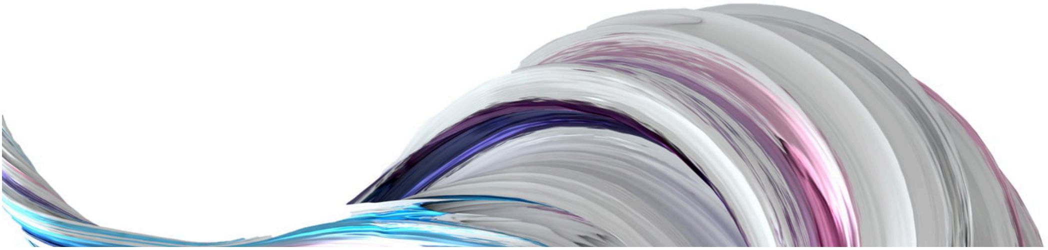

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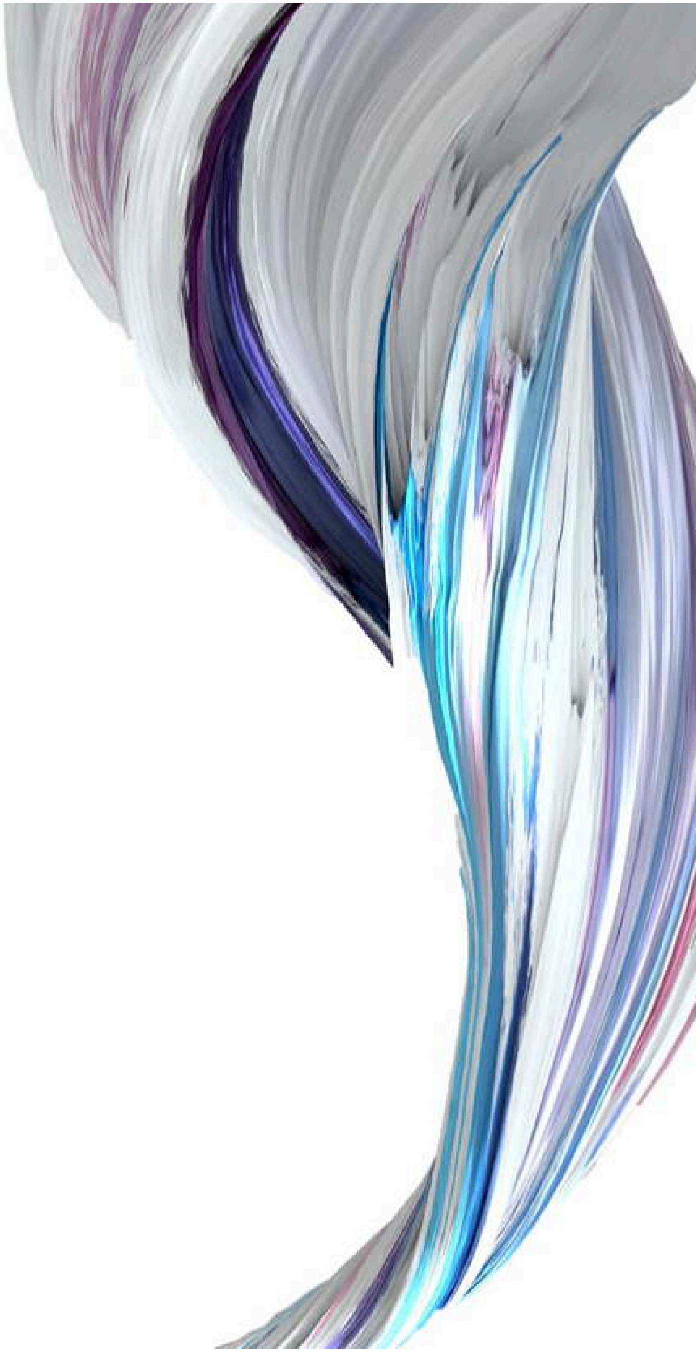

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Thank you for reading

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