

## Capital reductions in 2018

One of the most important elements in the company tax reform is the way how capital reductions are treated. Previously the company had a free choice. For capital reductions as from 2018 the freedom of choice is abolished. As from now the reduction is to be accounted for pro rata on the company's paid-up capital and on the reserves of the company. As a consequence part of the repayment becomes a distribution of dividends. Which is taxable.

### Classical rule: freedom of choice for the company

Previously it was simple: at the occasion of a capital reduction the company could freely choose on which part of the share capital a capital reduction was charged.

### Why is that so important?

This choice has important tax consequences. Repayment of paid-up capital is tax exempt. But when the capital reduction is charged to the reserves, it is qualified for tax purposes as the distribution of dividends. And therefore, withholding tax is due.

To be complete, the tax-exempt repayment of paid-up capital is possible when (i) the repayment follows from a correct decision to reduce the capital taken by the general shareholders meeting and (ii) comes from (a part of) the actual statutory paid-up capital by the shareholders. In fact, the shareholders receive back (part of) their initial contribution.

### As from 1 January 2018: pro rata

As from 1 January 2018 there is no more freedom of choice. The capital reduction will as from that date partly be charged automatically on the present taxed reserves in the paid-up capital and the taxed reserves out of the paid-up capital. As a consequence, at least a part of the repaid capital will be taxable as distributed dividends. The company will have to withhold 30% withholding tax on that part.

### How will the pro rata be calculated?

The pro rata charging will be calculated as a fraction:

- in the counter of the fraction: the paid-up capital, share premiums and the profit participation certificates which are deemed to be paid-up capital;
- in the denominator of the fraction: the taxes reserves, the exempt reserves incorporated in the capital + the amount in the counter.

The following elements are not taken into consideration: (i) negative taxed reserves, other than losses carried-forward, (ii) not in the capital incorporated exempt reserves, (iii) revaluation surpluses, to the extent they cannot be distributed, (iv) underestimations of assets/overestimations of liabilities, (v) liquidation reserve and special liquidation reserve and (iv) legal reserve to the extent of the legal minimum.

The clicked reserves which were incorporated into the capital at the occasion of the transition period for liquidation bonuses (at the increase of 10% to 25%) remain subject to their beneficial regime. No withholding tax will be due at the time of distribution, when the holding period of four years (SME's) or eight years (large companies) is respected.

### What is meant with 'as from 1 January 2018'?

The new rules apply 'as from 1 January 2018'. This seems clear. However, it is not. At the occasion of a capital reduction two moments can be relevant. The first moment is when the general shareholders meeting decides to reduce the capital. The second moment is the time when the repayment actually takes place. This second moment can occur at the soonest two months after the announcement of the decision to reduce the capital, because debtors of the company can still exercise their rights.

Does the date of 1 January 2018 relate to the first or the second moment? The first moment is the reference date. The new rules apply to all decisions to reduce the capital taken as from 1 January 2018. A decision taken in December 2017, effectuated after 1 January 2018 will be treated according to the old rules.

So if you have decided to do a capital reduction at the end of 2017, the new rules do not apply. There is however a risk of requalification in distributed dividends in case the tax authorities can prove abuse (e.g. when previous to the capital reduction a contribution of shares was made).

#### COMPTAFID-Benelux NV SA Brussels

Bld. Edmond Machtensl. 180/100  
B-1080 Brussels  
Tel: +32 (0)2 410 75 75  
[www.comptafid.be](http://www.comptafid.be)

#### COMPTAFID-Benelux NV SA Antwerp

Schijnparklaan 45  
B-2900 Antwerp (Schoten)  
Tel: +32 (0)3 658 89 02  
[www.comptafid.be](http://www.comptafid.be)

#### COMPTAFID (Schweiz) AG Zürich

Seefeldstrasse 19 – Postfach  
CH-8032 Zürich  
Tel.: +41 44 250 2929  
[www.comptafid.ch](http://www.comptafid.ch)