

Small companies: derogative tax rules (update)

For small companies, several derogative tax rules apply in Belgian law. Since new rules apply as of January in order to determine whether a company is 'small', it seemed a good opportunity to take a look at these derogative rules. After all a list with special rules has been extended during the last years.

Small companies are not subject to ...

In first instance there are a number of taxes which do not apply to small companies.

They fall outside the scope of the fairness tax: a tax only imposed on big multinational companies which (possibly) don't pay taxes since they apply the notional interest deduction.

They also escape, at least partially, from the capital gains tax. Big companies still pay at least 0,4% if they realise capital gains on shares (irrespective how long they held the shares). As it is the case for big companies, small companies are also subject to a 25% taxation if they realise capital gains on shares they have held for less than a year in full ownership.

Small companies benefit from other rules for depreciations

Also with respect to (tax wise accepted) depreciations other rules apply to small companies. They have the choice to depreciate costs related to a purchase as they wish.

Next to this they should not split up their first annuity. Other companies acquiring assets during the year can only depreciate these partially.

Example

A company bought a machine on 1 July 2015 for 50.000€, which in principle can be depreciated over a five year period = 10.000€ per year. 'Normal' companies should split the first depreciation and can only depreciate 184/365 (n° of days in the year as from 1 July) of 10.000€. They should limit their first depreciation to 5.041€. Small companies can depreciate a first part of 10.000€ in 2015.

Investment reserve and investment deduction

Small companies can build reserves which are tax exempt.

Moreover some special investment deductions apply for small companies: (i) a special investment deduction for investment in security and digital investments and (ii) a normal investment deduction of 4% for investments made in 2014 and 2015. (8% in 2016 ...).

Other advantages

Additionally, they have the following advantageous rules:

- they can deduct 120% of security expenditure;
- they benefit from a higher percentage of notional interest deduction (0,5% more than other companies);
- the first three years after their establishment they do not have to pay a tax increase in case of insufficient prepayments;
- they benefit from a higher exemption for the payment of professional withholding tax and the possibility to be recognised as Young Innovative Company, which includes the exemption of payment of professional withholding tax;
- by 'clicking' the reserves they are only obliged to a shorter holding period before they can distribute dividends (four years instead of eight years) + they can build a liquidation reserve (permanent continuation of the 'clicking regime' for sme's).

Also investments in small companies are treated more favourable

Distributed dividends of contributions in small companies can still benefit of a lower withholding tax, provided that it concerns (i) a contribution (ii) after 1 July 2013, (iii) in cash (iv) against new shares. Moreover it is not allowed that immediately after the contribution dividends are distributed. For a distribution in the second accounting year after the contribution 20% tax is due and for a distribution as from the third accounting year after the contribution a 15% rate applies. The standard withholding tax rate amounts to 27% since the start of 2016.

Next to this two new tax advantages have been introduced last year in order to encourage investments in small 'starters'. The advantage depends on 'how' is invested:

- the person investing in the capital of a starter in exchange for shares obtains a tax reduction for personal income tax;
- the person investing by giving a loan through a recognised crowdfunding platform does not pay tax on the first part of the interest received for the loan.

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