

## Granting a loan to your company? Watch out!

If your company requires new means you can of course look for new investors or invest again as a partner and perform a capital increase against the issuance of shares. Or you can look for credit with a financial institution. But you can also grant a loan to your company. Granting a loan to your company may have some specific tax consequences.

### Interest is deductible expenditure

The interest paid by the company is a deductible expenditure. You as lender will be taxed : 25% withholding tax for interest granted as from 1 January 2013.

### But sometimes interest becomes dividend

The tax authorities have several possibilities to qualify the 'income' of a tax payer otherwise than he does himself (in fact to re-qualify). The tax authorities can 're-qualify' the income from letting immovable property by a director to his company as professional income. In a similar way the tax authorities can under certain circumstances re-qualify the interest a director receives from his company as dividend.

### Which loans? Interest on advances

Not all interest can be re-qualified. The law speaks about 'interest on advances'. In fact all forms of money loans are concerned (whether or not represented by securities).

Moreover only money loans are considered when they are granted by:

- a natural person which is partner or shareholder of the company;
- a natural or legal person who acts as director, manager, liquidator or who holds a similar function in the company;
- the husband or spouse or non-emancipated children of these persons.

### When re-qualification? Two thresholds

This does not mean that every loan granted by a director to its company will be treated as dividend. The tax authorities will after all only tackle exaggerated interest payments.

Therefore two legal thresholds are foreseen. If one of the thresholds is exceeded, the interest is re-qualified. Additionally, the re-qualification only applies 'to the extent' that the threshold is exceeded.

#### **First threshold: market interest rate**

If the company pays an exaggerated interest rate (an interest rate which is higher than the market interest rate: this is the rate which would be applied between two independent parties).

*Example*

Mr Vandebossche has granted a loan to nv X, where he is a director, for 100.000€. The nv X pays him 13.000€ interest (13%) per year, while the market interest rate is 10%. The nv X consequently pays an exaggerated interest.

Only this 'exaggerated' part is re-qualified:

$$100.000 \times (13\% - 10\%) = 3.000\text{€}$$

This 3.000€ will be treated as dividend. The rest (10.000€) is in conformity with the market and will remain interest for tax purposes.

**Second threshold: an exaggerated advance**

When a partner, shareholder, director, ... grants an exaggerated amount as an advance, the tax authorities will also re-qualify. The maximum amount directors (together) can lend to their company equals the sum of the taxable reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period. This threshold does not apply per director.

*Example*

The nv X has on 1 January 2012 (beginning of taxable period) taxable reserves for 40.000; on 31 December 2012 (end of taxable period) the paid-up capital amounts to 85.000€. Total: 125.000€ = the total amount that the company can obtain as an advance from its directors.

Two partners granted a loan of respectively 90.000€ and 70.000€. Total of the advances obtained: 160.000€. The company pays a market conform interest rate of 10%.

Exaggerated advances:  $160.000 - 125.000 = 35.000\text{€}$ .

The interest paid on this 35.000€ (10% = 3.500€), will be treated as dividend. The rest of the interest, 12.500€ (10% of the allowed maximum of 125.000€) remains interest for tax purposes.

**Consequences?**

The part of the interest which is re-qualified as dividend is for the company not deductible as professional expenditure, but is added to the profit according to the company income tax regulations.