As from now the liquidation bonus is subject to 25% withholding tax

The liquidation bonus which is obtained by a full distribution of the authorized capital of your company will as from 1 October 2014 be subject to a general withholding tax rate of 25%. It may seem still a long time to go, but you can now anticipate to these changes and - under certain conditions - distribute taxed reserves against 10% withholding tax. As a consequence you can during eight year perform no capital decrease nor change your dividend policy.

Withholding tax increasing to 25% as from 1 October 2014

During the last budget discussions the government decided to increase the withholding tax to 25%. This rate change applies as from 1 October 2014 (it will still take more than one year).

For the time being the rate of 10% applies to liquidation bonuses. While other dividends are subject to the standard rate of 25%.

What exactly is a liquidation bonus?

The liquidation bonus is the amount of money shareholders receive at the occasion of the liquidation of a company (this applies also to mergers, change of legal form, ..). The distributed amount is what is left after the sale of all assets, receiving all debts and repayments of debts. The positive difference between the amount distributed and the revalorised value of the capital is considered as dividend. Therefore you should pay taxes (withholding tax) on this amount. What is distributed at the occasion of a liquidation as capital, is not considered as dividend and is not taxed.

Can you do something now? Distribute taxed reserves as from 1 July

As from 1 July 2013 you can distribute taxed reserves of your company at 1% withholding tax. Attention: only taxed reserves definitively defined by the general shareholders meeting at the latest on 31 March 2013 qualify. For a lot of companies closing their annual accounts on 31 December 2013, the general shareholders did not define the taxed reserves at that date. This means that for such companies only the taxed reserves as defined on 31 December 2011 qualify. The increase of the reserves in 2012 will then have no effect.

Next to this their is the condition that these dividends are used immediately to increase the capital. Consequently the taxed reserves become capital.

But do not perform a capital decrease, in such case you still have to pay

Nevertheless for this part of the capital (which consists out of the transferred taxed reserves) a special treatment applies. The first eight years after the transfer of the reserves into capital no capital decrease can be made. If you still perform a capital decrease and consequently distribute money to the shareholders, this decrease is firstly credited to the transferred reserves. In other words when the capital decrease leads to the distribution of transferred reserves to the shareholders, this distribution is still considered as a distribution of dividend. You will have to pay withholding tax.

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Which rate will be applicable, depends on the time of the distribution/capital decrease:

- during the first four years following the investment: 15% surcharge (in total you have paid the normal rate of 25%, 10% when transferring the reserves and 15% when decreasing the capital);
- during the fifth and the sixth year following the investment: 10%;
- during the seventh and the eighth year following the investment: 5%.

Do not change your dividend policy, or you will be punished

The Program Law also introduces a new specific anti-abuse measure.

Companies cannot change their dividend policy. The government does not want companies to stop distributing normal dividends in order to distribute more money as capital. This would lead to the fact that the taxation of dividends of 25% would be changed by the taxation of 10% for the incorporation into the capital. The Treasury will loose then 15% withholding tax.

Therefore a separate taxation is introduced which is due when the company obtains a positive accounting result during the taxable period in which the transfer of reserves into capital took place. Next to this dividends should have been attributed or distributed in one of the five taxable periods prior to the period of the incorporation.

The taxation amounts to 15% on the positive difference between the actual dividend and the normal dividend as expected based on the dividend policy of the prior years. This difference will be calculated based on a formula, that will not be elaborated further.

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