Investing in sme's: dividends still at 15%

The general withholding tax rate is 25%. Although it is the intention of the government to apply this rate to all investment income, derogations still apply. Moreover, in order to promote investments in sme's, a new derogation was introduced. When you invest in sme's, you pay only 20% or 15% on the dividend received, depending the moment of distribution. The new regime applies to shares distributed for a capital increase or establishment as from 1 July 2013.

Conditions

The company in which you invest (through establishment or capital increase) should be a sme at the time of the investment. A minimal capital of 18.550€ should be formed.
The investment cannot be in kind, but should be in cash. The invested cash cannot derive from distributed taxed reserves which can now thanks to the transitional regime (of the liquidation bonus) temporarily be transferred into tax free capital at a 10% rate.

In exchange for the investment shares should be distributed, which:

- are not preferred;
- should be kept in full property from the moment of issuance until the moment of distribution of the dividend. Some exceptions apply, e.g. for tax free reorganizations and some family planning techniques (donation of shares to children or spouse).

Tax rate depends on the timing of distribution

The applicable tax rate is determined by the timing of distribution: dividend distributed in the second accounting year after the investment (20% withholding tax); dividend distributed as from the third year after the investment (15% withholding tax).

Anti tax avoidance rule: no capital decrease followed by capital increase

Capital increases do not qualify to the extent that (1) they are preceded by a capital decrease after 1 May 2013 or (2) they are financed by capital decreases of affiliated companies as from 1 May 2013.

The tax authorities can also invoke the general anti tax avoidance rule of article 344 §1 of the Income Tax Code. This is the case when you make a construction which is qualified as 'tax avoidance' by the tax authorities and you do not have any non-tax motives for this transaction: e.g. you make an investment in cash in your sme and immediately after that you sell an immovable property to your company, instead of making an investment in kind.