Capital gains on shares: four hypotheses

If your company realizes capital gains on shares, these capital gains can be taxed under different regimes. Depending on the regime the capital gain is exempt or taxed at another rate (e.g. 0,4% or 25%). Which regime is applicable depends amongst others whether it is a big or small company, how long you keep the shares, ...

Shares in this case has to be understood as all shares from which the dividends are considered as income. It does not only concerns shares representing the capital of the company. Also capital gains on profit shares fall within the scope of the rules we describe here. It does not apply to: subscription rights, warrants, convertible bonds and stock options.

Hypotheses (1): exemption when complied with taxation condition

Capital gains on shares are tax exempt when the income from these shares (e.g. dividends) qualified for the DTI-deduction (definitely taxed income). In order to know the exemption conditions, we should know the application conditions for the DTI-deduction. Only the *taxation condition* of the DTI-deduction should be fulfilled. This means that the distributed dividends are taxed in the hands of the distributing company. In other words: the exemption does not apply for shares of companies established in countries where they are not taxed or with a tax regime which is considerably more favorable than in Belgium.

Whether this condition is fulfilled should be considered at the time of the realization of the capital gains (= alienation of the shares).

Hypotheses (2): 25% if the shares are kept in full property for less than one year

In order to benefit from the exemption the company should hold the shares uninterruptedly during at least one year in full property. Keeping shares in usufruct is not sufficient.

If the holding period is not respected, the capital gains are taxed at 25% (increased with 3% additional crises tax this is 25,75%).

For shares acquired through a tax neutral transaction, the date when the company making the contribution or the acquired company obtained the shares is taken into consideration in order to determine the holding period.

Example

Company A bought shares X on 12 March 2013. On 11 October 2013 A is taken over by company B. On 13 March 2014 B sells the shares X. In order to determine whether B has respected the holding period of one year, not 11 October 2013 (date of take-over) is considered, but 12 March 2013 (date on which the initial company has acquired the shares). The holding period has after all been respected.

Hypotheses (3): 0,4% tax when it is a 'big' company

Even when the conditions of hypotheses (1) and (2) are complied with, capital gains on shares are still taxed when the realizing company is not considered 'small' in the sense of article 15 of the Belgian Companies Code. Criteria of total balance sheet amount, turnover and number of employees apply.

The tax rate for capital gains on shares for 'big companies' amounts to 0,4% (increased with 3% additional crises tax this is 0,412%).

Hypotheses (4): standard rate when the income does not qualify for DTI-deduction

When the shares do not qualify for DTI-deduction, the capital gains are taxed at the rate against which other gains of the company are taxed (normally 33,99% company income tax).

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