

Transition regime for liquidation boni remains (more or less) in place

SME's will in the future be able to reserve a part of their profit against an anticipative tax rate of 10%. In case of a future distribution at the occasion of the liquidation of the company, withholding tax is no longer due. Herewith the transition regime which was applicable until 1 October 2014, under which companies could block their reserves, becomes a permanent regime for SME's. The practical application of the new rules differs however from the transition regime.

History

The increase of the withholding tax on liquidation boni from 10% to 25% as from 1 October 2014 lead to quite some turmoil. Many entrepreneurs believed that they could liquidate their company against the favorable rate of 10%. In order to meet this, a transition regime was introduced under which companies could block their taxed reserves at 10% tax rate, in order to distribute them later without taxation. The transition regime was applicable until 1 October 2014.

For SME's these transition rules now become a permanent regime, be it with some different modalities.

Beneficial regime only for SME's

The first difference with the transition regime is that the new regime only applies to SME's (small companies as defined in article 15 of the Belgian Companies Code). The company should be 'small' at the time the reserves are laid down. When the company becomes 'big' afterwards, this does not change the existing reserves which keep their status as 'liquidation reserves'.

Creation of 'liquidation reserves'

In the new system SME's will be able to create liquidation reserves. This is a part of the profit after taxation, which SME's can lay down as reserves. At the time of laying the reserves down an anticipative withholding tax of 10% is withheld. On the later distribution at the occasion of a liquidation no additional taxes are due. So the bottom line is that SME's still can benefit from a 10% taxation on liquidation boni, be it that the tax is levied at the creation of the reserves and not at the time of distribution.

The creation of the reserve is performed by transferring the accounting profit of the company after taxes wholly or partly into one or more separate liability accounts.

Note that the 10% taxation comes at the expense of the company (when creating the reserves), while under the previous regime the withholding tax on liquidation boni was at the expense of the shareholder (at the time of distribution).

Only for distribution at liquidation

In case the created reserves are distributed at another time (than liquidation), an additional taxation is due. The distribution of the liquidation reserves during the life of the company is after all treated as the normal distribution of dividends. And higher withholding tax is due.

The amount of the additional taxation depends on the time of distribution of the reserves in an other form than liquidation boni:

COMPTAFID-Benelux BV/SA
Dusseldorf

Bild. F. Imme. Kuchenh. 1301107
D-1000 Dusseldorf
Tel: +32 (0)2 710 71 71
www.comptafid.be

COMPTAFID-Benelux BV/SA
Antwerp

Senlijpelaan 45
D-2000 Antwerp (Schoten)
Tel: +32 (0)3 908 88 00
www.comptafid.be

COMPTAFID (Schweiz) AG
Zurich

Postfach 191 Postfach
CH-8002 Zurich
Tel: +41 79 200 0828
www.comptafid.ch

- when less than five years has expired between creation and distribution: 15% taxation
- when more than five years has expired: 5% taxation.

A distribution during the first five year after creation: 10% at the time of creation + 15% additional taxation gives as result a taxation of 25%, which equals the rate for normal distributed dividends.

Distributions are made following the FIFO-system (first in, first out). That is in the advantage of the tax payer. At the occasion of distribution the oldest created liquidation reserve is deemed the be distributed first.

If you are prepared to pay the additional cost of 5% and you have patience (at least five years), your SME can still distribute dividends at 15% (instead of 25%). Moreover, this is also still the case for capital increases introduced after 1 July 2013 (also these dividends are beneficially taxed).

COMPTAFID-Belgium BV SA
Dusseldorf

Bld. F. In der Kucheng. 130100
D-1000 Dusseldorf
Tel: +32 (0)2 710 21 70
www.comptafid.be

COMPTAFID-Belgium BV SA
Antwerp

Senjiparklaan 45
D-2000 Antwerp (Schoten)
Tel: +32 (0)3 908 88 00
www.comptafid.be

COMPTAFID (Schweiz) AG
Zurich

Reichenmattenstr. 19 Postfach
CH-8002 Zurich
Tel: +41 79 200 0828
www.comptafid.ch