

## Last news

The Law of 22 June 2005 published in the Moniteur Belge of 30 June 2005 is important not only in introducing a new “deduction for risk capital” in the corporate tax structure and an abolition of registration duties on contributions in the share capital, but also in foreseeing the neutralisation of the new deduction by budgetary compensatory measures.

The new deduction, as with the compensations, will be applicable only as from the assessment year 2007 (financial statements ended at the earliest on 31 December 2006 or, for companies ending their financial statements at a different date than on 31 December, in 2007, before the 31 December).

The abolition of registration duties of 0,5% on contributions will be applicable as from 1<sup>st</sup> of January 2006. It is in the interest of an existing company, ending its financial statements on 31 December 2005, and envisaging an increase of capital, to wait till January 2006.

The “deduction for risk capital” is conceived as a percentage of the equity of companies, equal to the interest rate of Belgian State obligations reimbursable after 10 years. This percentage represents the financial cost of risk funds; it is a “notional” interest which is considered as if the company had been charged interest on its equity.

*Example:* let us assume that the rate for the assessment year 2007 will be 3,5%. A company with an equity of 1.000.000,00 € and a base of assessment of 100.000,00 € will be able to deduct 35.000,00 € so that it will be taxed only on 65.000,00 €. Given a tax rate of 33,99%, the saving will be in this case 11.896,50 € (provided that none of the cases of exclusion applies, some of them are listed here below).

There are three compensatory measures.

- *New definition of a capital gain:* the legislation provides that the realisation costs will be deducted from the sale price, which is compared with the purchase price, in order to determine the capital gain. The realised capital gains on shares are totally exempted in the corporate tax. The case law was uncertain. Some Courts judged that the realisation costs had to be deducted, so that the exempted capital gain was only the net gain; other Courts accepted the idea of an exemption of the gross gain, with a separate deduction of the costs.

The new definition is also applicable to other capital gains in general, such as the realised gains which are taxable, spread out over the depreciation period of new fixed assets, or on capital gains on the termination of the activity of an individual.

The realisation costs are the costs which are involved in a sale, such as advertisement, notary costs, brokerage, taxes and insurances, bank costs, etc.)

- *“Disactivation” of the deduction for new acquisitions*

Presently only those companies resident in Belgium, more than the half of whose shares are held by individuals, may benefit from the ordinary deduction for new

acquisitions. Companies with less than 20 workers benefit from the enhanced depreciation period deduction.

For all companies, the rates of these deductions are reduced to zero as from the assessment year 2007. This “disactivation” is not applicable to individuals or to spread out deduction having begun before the assessment year 2007.

- *Suppression of the tax credit*

At present, a tax credit of 7,5 % is granted to companies, with a maximum of 19.850,00 EUR, on the positive difference between the capital paid up in cash at the end of the period, and the higher amount of the same capital at the end of any of the previous period for which the tax credit had been granted, or at the end of any of the three previous periods.

This tax credit will be suppressed.

Also abolished is the possible carry forward of the tax credit on the tax of the next three periods, in case no tax or insufficient tax is paid for the period.

Some exclusions from the base of computation of the deduction for risk capital are as follows:

- the net fiscal value at the end of the previous assessment period of treasury shares and financial holdings ;
- the net book value of tangible fixed assets or of a part of them, in so far as the costs which relate to them are unreasonably beyond the needs of the profession;
- the book value of items held as investments and which, by their nature, are not meant to produce an income;
- the book value of immovable properties of companies, whose directors and family have the use of them.

Also excluded are those companies having set up, during the period of assessment or the two previous periods, an exempted reserve for new acquisitions.

*Example:* if a reserve for new acquisition has been set up for the assessment year 2005, the deduction for risk capital may be set up for the first time at the earliest for the assessment year 2008.

Let us mention that a condition of booking and maintaining in the books under the caption “exempted reserve” has to be respected, and that in case of losses or insufficient profits, the non applied deduction may be carried over and set off against the profits of the next seven years.