

Legal Alert

Abolition of bearer securities – new tax measures

The budget measures proposed by the new government trigger a number of tax consequences that are less prominent but that could nonetheless enhance an important cost. One of these measures concerns the introduction of a tax on the **conversion of bearer securities** into dematerialised or registered securities. The tax rate would be 1% for conversions taking place in 2012, 2% for conversions taking place in 2013 and 3% for conversions by law at the end of the conversion period (end of 2013). The tax rate will be applied on the trading value of listed securities. The tax basis for non-listed companies has however not been determined yet. This might be based on the value of the securities used during a recent transaction or on the net equity value of the company. Consequently, only conversions still taking place before 1 January 2012 would escape this new taxation.

General principles

The abolition of bearer securities was preconceived by the law of 14 December 2005, where the legislator has intended to restrict the abuse that would be caused by the anonymity of such securities. These instruments would encourage financial crime as well as the financing of terrorism. Additionally, they would give cause to fraud or could damage the heritage rights of certain inheritors if for instance certain children in a family would be granted shares whereas others would not.

The law on the abolition of bearer securities has a large field of application and hits all bearer securities issued by Belgian entities, including shares, profit shares, bonds, warrants and other certificates. In addition, all securities governed by Belgian law and issued by an individual, need to be converted. Medium-term notes, treasury certificates, deposit notes as well as real estate certificates are hereby mainly affected.

The process of abolition of bearer securities was planned between 1 January 2008 and 31 December 2013. Such “gradual” conversion was intended to enable the affected companies and their investors to adapt themselves to the new legislation and to evaluate the consequences of the various alternatives. The introduction of the new taxation on the conversion of bearer securities, however, puts an abrupt end to these intentions and requires a prompt and accurate action if one wishes to avoid this new tax, definitely if the securities represent a substantial value.

Procedure

The procedure for the conversion of bearer securities differs depending on the current provisions in the articles of association. In principle no modification of the by-laws is required unless these would only provide in the issuance of bearer securities. The request for the conversion into registered securities is to be addressed to the company’s registered seat. The company’s management should

within 5 working days take care of the registration of the securities in the share ledger. Certificates are then issued to the owners of the securities.

Fixed date

In order to avoid discussions with the tax authorities as to the exact date of the conversion in case no change of the by-laws is required, it is advisable to provide a fixed date to the conversion of the bearer securities. This should allow proving that the securities were

converted in 2011 and that therefore the transaction is not subject to the new taxation. Providing a fixed date could be achieved by sending a registered letter to the company's management. In order to deliver proof of the number of certificates one possesses, it can also be considered to have the number of securities as well as the date of conversion fixed by a bailiff. The latter can then at the same time witness the destruction of the bearer securities.

Contact

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