



Nil Rate for Registration Duties on Contributions and Capital Increases

In its negotiations with the European Commission regarding its “BCC^{bis}” regime, Belgium’s government announced that the 0.5% *ad valorem* registration duties on capital increases and capital contributions were to be lowered to 0.3% or even 0.25% for all Belgian companies.

However, on 4 March, the government decided that, in furtherance of the introduction into Belgian tax law of a notional interest deduction, the 0.5% *ad valorem* registration duties for capital increases and capital contributions would be abolished as of 1 January 2006. These capital contributions and increase should consequently only attract a fixed duty of EUR 25.

Hitherto, the duty on contributions was due in the case of a contribution of capital to an undertaking or in the case of an increase in capital. Only in limited cases is collection of the duty waived. Such is the case, for instance, in the case of what is referred to as a “share for share” merger, whereby the law accords an exemption from *ad valorem* duty if the following conditions are fulfilled:

- subsequent to the contribution, the company to which it is made must possess at least 75% of the share capital of the company whose shares or participation certificates are contributed;
- both the recipient company and the company whose shares are contributed must have the “seat of their effective management” or their registered offices in a member state of the European Union;
- the consideration for the contribution must comprise exclusively shares in the recipient company. A limited cash contribution is permissible, but the cash payment may not be more than one-tenth of the par value of the shares or participation certificates allotted.

It was also possible to contribute a line of business or make a universal transfer of business assets under an exemption from *ad valorem* registration duties. The term “line of business” can be defined as an ensemble of items that are invested in a division of an undertaking and that, from a technical viewpoint, allow of independent operation. In other words, an ensemble that is able to work with its own funds. A universal transfer of business assets is where the contribution concerns all assets and liabilities. However, the exemption is only applicable provided the following conditions are met:

- the company making the contribution has to have the “seat of its effective management” or its registered office within the European Union;
- the consideration for the contribution must comprise exclusively shares in the recipient company. A limited

cash remuneration is permissible, but the cash payment may not be more than one-tenth of the par value of the shares or participation certificates allotted.

This situation is now to change. Whereas an exemption from *ad valorem* registration duties was previously the exception, this will now become the general rule. Only in the case of a contribution of, say, a residential property by a private individual to the capital of a company will registration duties still be due, at the rate of 10% in the Flemish Region and 12.5% elsewhere.

Note that, in the case of a so-called mixed contribution (i.e. where part of the consideration is in shares and part, say, in assumption of a debt), to the extent that shares are allotted, the exemption from registration duties will apply whilst, for the portion that is not compensated in shares, registration duties will be charged as on agreements for valuable consideration whose subject-matter is property of the same nature as the property contributed (e.g. 12.5% or 10% for immoveables).

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