

The Temporal Ringfencing Reserve Act

May 2015

The Temporal Ringfencing Reserve Act applies with retroactive effect to June 14, 2013. The Act has a substantive retroactive effect that dates back even further.

Creation of the reserve

The rules on the temporal ringfencing reserve (compartimenteringsreserve; "CR") are part of the corporate income tax participation exemption. The legal rules cover the following two situations:

- There is a shareholding to which the participation exemption did not apply, but to which it will apply at a given moment: a taxable temporal ringfencing reserve (belaste compartimenteringsreserve; "BCR") is created for this exemption transition.
- There is a shareholding to which the participation exemption applied, but to which it will no longer apply at a given moment: an untaxed temporal ringfencing reserve (onbelaste compartimenteringsreserve; "OCR") is created for this exemption transition.

An exemption transition can occur both as a result of a change in the facts as well as a legislative amendment.

The CR is the difference between the fair market value and the carrying amount of the shareholding immediately preceding the exemption transition. The shareholding is revalued to the fair market value. The creation of a CR is, in principle, not taxed.

Benefit derived from the shareholding

If at any time after the exemption transition a benefit is derived from the shareholding, dividend for example, and this benefit is attributable to the period before the exemption transition, this will in general result in:

- the carrying amount of the shareholding being reduced by the amount of the benefit;
- adding the BCR up to the amount of the benefit to the profit;
- the reduction of the OCR by the amount of the benefit, not resulting in an addition to the profit.

Disposal and suchlike

The settlement of a CR ultimately takes place once the shareholding no longer, directly or indirectly, forms part of the taxpayer's assets. This is the case, for example, when the shareholding is disposed of or merged, or when the taxpayer is merged or split, with the taxpayer ceasing to exist. A CR will also be settled upon the liquidation of the shareholding or the taxpayer. In addition, a CR is settled if the taxpayer, at any given moment, enters into a fiscal unity with a shareholding for which the CR was created.

The taxable settlement of a BCR may, for example in the case of a merger of the shareholding, be dispensed with, insofar as the acquired shareholding replaces the original shareholding.

Retroactive effect/transitional law

The Act has formal retroactive effect to June 14, 2013, but its substantive retroactive effect is, in principle, unlimited, i.e. the legislation applies or will also become applicable to all exemption transitions before June 14, 2013. If such an exemption transition has taken place and a benefit has been derived after June 13, 2013 (for example a dividend distribution), then a CR must be created as at the date immediately preceding the receipt of this benefit and then settled according to the rules described above.

During the parliamentary debates, the Deputy Minister gave an undertaking that the substantive retroactive effect could, upon request, be limited to January 1, 2007 in certain situations.

Other points for consideration

In addition to the observations made above, the following points may also be relevant:

- how the CR is reported in the corporate income tax return;
- a potential conflict with the EU Parent-Subsidiary Directive;
- continuance of the temporal ringfencing (doorcompartimenteren);
- pre-acquisition dividends (meegekocht dividend);
- overlap with the earn-out rules.

Contact

If you would like more information on this issue or would like to speak with one of our advisors, please contact us on (088) 909 10 00 or go to www.meijburg.com.

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