

Tax Newsletter

May 2025

Also available in French and Dutch

Visit: www.taxsquare.be



Also a company in liquidation can record a liquidation reserve

- A company (BelCo) qualifying as a small or medium-sized company can record a liquidation reserve at a 10% corporate tax cost up to maximum its current-year after-tax profit. If so, BelCo can distribute this liquidation reserve to its shareholder being a natural person at a 5% (soon 6,5%?) personal tax cost after 5 (soon 3?) years, hence resulting in a total 13,64% (soon 15%?) tax cost. Moreover, if the liquidation reserve is only distributed upon liquidation of BelCo no additional personal tax cost is even due.
- As of 01.07.2025 you will likely have the choice to distribute '(3 years) old' liquidation reserves at 6,5%, or at 5% if you decide to respect the running 5 years waiting period.
- However, the question arises whether BelCo can also book a liquidation reserve relating to its profit earned as of its most recent year-end date until the closing of BelCo's liquidation process?
- In practice, there has been some doubt on this point based on the answer of the Finance Minister to the Parliamentary Question n° 3356 dated 01.04.2015 of Senator Wouters. Indeed, the Minister did not exclude the possibility to record a liquidation reserve, but also warned for the application of the general anti-abuse of tax rule (art. 344, §1 of the Belgian Income Tax Code).
- Fortunately, recently the Ruling Commission has demystified this matter (Decision 2024.0658 dated 03.12.2024). In that ruling case, a natural person being shareholder of BelCo wanted to retire. However, during its financial year of liquidation BelCo had realized a significant capital gain on real estate and wanted to allocate the after-tax amount to a liquidation reserve.
- Specifically, the Ruling Commission confirmed that BelCo could record a liquidation reserve and even referred to the answer of the Finance Minister to the aforesaid Parliamentary Question. The Ruling Commission also emphasized that this does not give rise to 'abuse' as it meets the objective of Belgian legislation governing liquidation reserves, i.e. allowing entrepreneurs to distribute reserves, built up through BelCo in the form of liquidation reserves, to shareholders being natural persons without tax cost upon the definitive ending of its business activities (*Parl. St. Kamer*, 2024-2015, n° 54-672/001, 13).
- Note that the Ruling Commission had already clarified before what should be understood by the 'definitive ending of its business activities': that is, a shareholder should not put his company into liquidation to subsequently restart its core business under the same circumstances by incorporating a new company (Annual Report of Ruling Commission, 2021).