

Tax Newsletter



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Partial demerger followed by a share sale: “tax abuse?”

It is common for a company (“BelCo”) to first carry out a tax-neutral partial demerger, after which the shareholder sells the shares of one of the companies remaining after the partial demerger to a 3rd party purchaser on a tax-free basis.

- Can this be regarded as “tax abuse”? For example, could the tax authorities argue that BelCo actually sold a business activity (as a taxable asset deal) at fair market value to a company affiliated with the purchaser?
- Through a partial demerger, a company carrying out various activities transfers at least one business unit to a new or existing company. The shareholders of the partially demerged company then receive shares in the company receiving the business unit. As a result, sister companies are created.
- The Belgian Ruling Commission generally does not consider this to constitute “tax abuse” where the taxpayer reinvests the entire sale proceeds from the transferred shares into an economic activity generating taxable income.
- On 3.2.2026, the Antwerp Court of Appeal also confirmed that such a transaction does not constitute “tax abuse”, based on evidence of the following non-tax motives: (i) the transaction formed part of an overall group reorganization; (ii) by selling shares (rather than real estate), ongoing contracts did not need to be renegotiated, (iii) the purchaser intended to launch renovation projects; and (iv) thanks to the share sale proceeds, the seller was able to obtain bank financing more easily for another project.
- The Antwerp Court also reaffirmed its view that share transfers are common market practice in the real estate sector (see also Antwerp, 12.2.2019).
- Attention should be paid to the fact that, where real estate is partially demerged, 12% transfer tax may be due in Flanders if debt is attached to the real estate or if the property has a residential function. No proportional registration tax is due only if the real estate qualifies as a “branch of activities” capable of operating autonomously. However, the Flemish Tax Authority (VLABEL) applies a very strict interpretation in this respect; ideally, following the partial demerger, the real estate should be leased to 3rd parties (see inter alia Decision 25108 of 17.11.2025).