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Tax Bulletin

Capital Contribution Principle – New Tax-Saving Potential

In line with the Corporate Taxation Reform II, the change from the nominal value to the capital contribution principle came into effect from 1 January 2011. The introduction of the capital contribution principle allows tax free repayment of capital contribution reserves to shareholders holding their ownership rights privately.

Under the nominal value principle which was in force until the end of 2010, all distributions from corporations to their shareholder were subject to income and withholding tax with the exception of repayments out of the nominal capital.

Under the new capital contribution principle, a general distinction must be made between tax free repayable **capital contribution reserves** and the repayment of **other reserves** which will continue to be subject to income and withholding tax.

Capital Contribution Reserves

All kind of capital contributions which were directly made by shareholders with equity rights after 31 December 1996 and recorded and disclosed in the balance sheet of the receiving corporation or cooperative (disclosed capital contribution), qualify as capital contribution reserves. In addition, each movement on this reserve must be reported to the Federal Tax Administration (FTA).

Information shown in the Annual Financial Statements

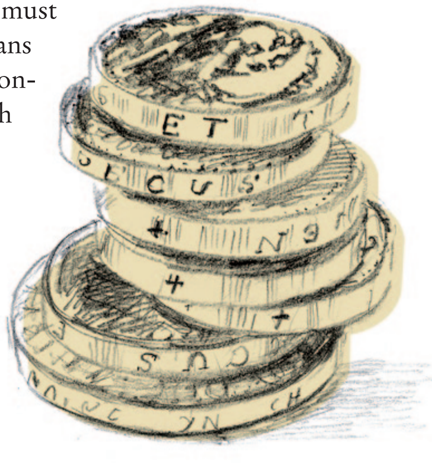
Capital contribution reserves are to be reported separately in the balance sheet of the business year which ends in calendar year 2011. A disclosure at a later date will not be accepted for tax purposes.

Declaration for Direct Federal Tax purposes

Corporations and cooperatives must separately report the existence of capital contribution reserves at the end of the tax period or their tax liability in the tax return.

Reporting for Withholding Tax purposes

Disclosed capital contributions executed after 31 December 1996 and before the coming into effect of the capital contribution principle as per 1 January 2011, must be reported to the FTA from 1 January 2011 at the earliest, but no later than 30 days after approval of the 2011 financial statements (**first declaration**). Contributions and repayments of capital contribution reserves must be declared on form 170. In addition, a detailed disclosure of the commercially relevant equity must be filed per e-mail by means of the excel file "capital contribution principle" which is provided by the FTA.



In the event of **repayments between 1 January 2011 and the ordinary first declaration** within the 2011 financial statements, all changes in the period from 1 January 2011 until the repayment must be reported on form 170 (inclusive excel file "capital contribution principle") within 30 days after the resolution of the general assembly but at the latest within 30 days after repayment.

After the first declaration for withholding tax purposes has been made, each change regarding capital contributions or repayments of capital contribution reserves must be reported unrequested to the FTA on form 170 within 30 days after approval of the annual financial statements **(ordinary declaration after effected first declaration)**.

The determination of augmented capital contribution reserves in the past is anticipated to be only possible once. This means that in future years, no resubmission regarding the declaration of privileged reserves can be conducted.

Due to the fact that the tax privilege affects all reserves from 1 January 1997, past reorganisations, mergers or demergers might result in tax savings.

The reported capital contribution reserves will be reviewed by the FTA. The agreed capital contribution reserves will subsequently be communicated to the submitting company.

Dividend Distributions

When distributing dividends after 1 January 2011, the general assembly can choose whether the dividends shall be debited to the capital contribution reserves or to the other reserves. In order to be able to repay the capital contributions tax free, a detailed resolution regarding the profit allocation by the general assembly is required. Such distributions must be executed by means of a separate coupon whereas the agreed dividend segmentation into capital contribution reserves and other reserves must be applied to all shareholders. In case no detailed resolution by the general assembly exists, it is assumed that the dividend distribution is out of the other reserves and therefore correspondingly be subject to tax.

Need for Action

In line with the capital contribution principle, the capital contributions made from 1 January 1997 must be processed and reported on a separate account by means of the final balance sheet relating to the 2011 business year. Furthermore, the reporting obligation for tax purposes must be fulfilled. A supplementary declaration at a later date will not be possible.

In order to ensure the declaration as well as the processing and determination of the tax privileged capital contribution reserves to be carried out in due time, it is advisable to start straight away with the processing of the reserves.

We will gladly assist you in determining the capital contribution reserves, in identifying the tax-saving potential and in preparing a correct declaration to the FTA.

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