ACCOUNTANCY, TAX & LEGAL

Tax and administrative considerations when establishing a spin-off

Doing business involves various legal and tax considerations from the moment of incorporation. Below, we briefly set out the most important points.

Team

- **Customary wage scheme within the structure**
  Shareholders are often required to pay themselves a mandatory salary. The amount depends on the situation and phase of the company. It is essential to properly justify the this salary and align it with the other remunerations within the structure. Consult the decision tree for more information on determining the mandatory salary.
- **Employee participations**
  By giving employees the opportunity to acquire a minority interest, they share in the growth of the company for which they work every day. This is an effective way to increase engagement and build a strong team. There are various ways in which employees can participate.
- **Option schemes**
  In line with employee participations, an option scheme can further stimulate the engagement of existing minority participants. The options give the participant the opportunity to expand their interest in the company in the future, often linked to conditions relating to individual performance or the company's performance.
- **Internal agreements**
  Clear agreements are essential for a properly structured company. These are preferably recorded in written agreements, which contributes to evidence towards the parties involved. Within a legal structure with multiple legal entities, these agreements are set out in internal agreements, such as shareholders' agreements, employment agreements, management agreements, loan agreements and current-account agreements.

Incorporation

- **Legal form**
  University spin-offs are required to conduct their business through a BV structure. This offers various advantages in the areas of liability, continuity, risk spreading and tax facilities.
- **Choice of financial year**
  By default, a financial year runs parallel to the calendar year. Since incorporation often does not take place on 1 January, a choice must be made between a long or a short financial year. This choice affects administrative obligations, tax returns and the use of tax facilities, such as a fiscal unity.
- **Number of shares**
  The capital of a BV is divided into shares. Upon incorporation, it is determined how many shares are issued and what value they represent. A share gives entitlement to profit and control in the company. The chosen share capital should not form an obstacle to future choices, such as changes in interests or the introduction of option schemes.
- **Capital contribution**
  Upon incorporation, a value is paid up on the shares: the nominal value. This amounts to at least € 0.01 per share. The capital that shareholders contribute to the BV above the nominal share capital constitutes share premium. Share capital and share premium each have their own rules and together form the contributed capital. It is important that sufficient capital is contributed by the shareholders to operate the business.
- **Business bank account**
  Every BV is required to open a business bank account. Directors of a BV can open this account, which allows them to easily pay up the issued shares.
- **SBI code**
  Upon registration with the Chamber of Commerce, each company receives an SBI code, which reflects the company's principal activities. This code is relevant, among other things, for permits, subsidies and insurance, and must therefore be correct.

Structure

- **Operating company**
  This is the company in which the existing shareholders each hold a shareholding, directly or indirectly. The business activities take place in this company.

- **Personal holding**
  Where the operating company provides the possibility to do business jointly, the personal holding provides the possibility to act independently of one another, also at the corporate level. Consult the publication "Personal holding" for more information.
- **Intermediate holding company**
  An intermediate holding company is an additional company within the legal structure that offers various advantages. One of these is that valuable assets can be safely housed in a separate legal layer, while they are jointly held and used for the benefit of the business. Examples include real estate or, as is often the case with spin-offs, intellectual property.
- **STAK advisory services**
  With the help of a STAK, the profit entitlement attached to a share can be separated from control. This separation may be desirable in certain situations, for example in employee or family participations. Although a STAK offers many possibilities, it is not desirable in every situation.
- **Collaborations with third parties**
  There are various ways to enter into collaborations. Depending on the scope, duration and intensity of the collaboration, an appropriate form can be chosen. Is it a short-term collaboration with clear frameworks, or does it concern larger projects with an uncertain duration? Such factors play a role in the choice of collaboration form. In all cases, it is important that the chosen legal structure offers sufficient flexibility.

Tax

- **Personal income tax**
  Private income is subject to personal income tax. This includes various income components, such as income from work, home ownership, business profits, profits distributed privately from a BV and income from assets.
- **Payroll tax**
  The wages of employees are subject to payroll tax. This tax functions as a prepayment of personal income tax, as the payroll tax withheld is offset against the personal income tax ultimately due.
- **Corporate income tax**
  A BV is an independent legal entity whose profits are taxed separately with corporate income tax. This tax includes various tax facilities that do not apply within personal income tax.
- **Value added tax (VAT)**
  On balance, an entrepreneur pays VAT on the added value, the "VAT profit", which is remitted periodically through the VAT return. VAT legislation can have complex consequences, for example in the case of imports from Asia or supplies within Europe.

Compliance

- **Administration**
  A accurate, complete and timely administration is the basis for managing the business and complying with compliance obligations.
- **Annual accounts**
  The annual accounts provide insight into the financial position and results of a company over a financial year. They usually consist of a balance sheet, a profit and loss account and explanatory notes. For BVs, preparing, adopting and timely filing the annual accounts with the Chamber of Commerce is legally required. The size and content of the annual accounts depend on the size of the company.
- **Corporate income tax returns**
  The profit realised by a BV is included annually in this return and forms the basis for the corporate income tax to be paid. By default, the return must be filed with the Dutch Tax Authorities within five months after the end of the financial year. At BDO, the return is automatically included in the extension scheme, making more time available.
- **VAT returns**
  If a BV qualifies as an entrepreneur for VAT purposes, it must declare the VAT on its purchases and sales through the periodic VAT return. Most entrepreneurs file returns quarterly. Even when no VAT is due on balance, the obligation to file VAT returns remains.

MORE INFORMATION
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