



## **New rules make Private Privak more attractive as an investment company**

### **The Private Privak**

The Private Privak was introduced fifteen years ago (Law of 22 April 2003) with the aim of providing an investment vehicle that, for the benefit of private shareholders and others, could invest in unquoted companies in a tax-friendly manner. To this end, the Private Privak combined the benefits of tax transparency with legal personality. This legal personality was intended to enable a professional and collective management of the invested funds.

However, in practice, the Private Privak proved to lack the necessary flexibility and has not been very successful.

Taking into account the specific wishes and needs expressed by professional investors and by the Private Equity sector, the legislator has recently made the regulatory and tax status of the Private Privak more attractive (Law of 26 March 2018 and Royal Decree of 8 May 2018). These changes aim to grant the Private Privak a similar legal status and tax benefits as those enjoyed by foreign investment funds.

The most important new measures can be summarized as follows:

### **Increased regulatory flexibility**

An important new measure consists of the fact that the Private Privak is no longer prohibited from exercising control over the companies in which it invests. The removal of this restriction should give the Private Privak a new boost, given the fact that the formerly existing restriction was considered to be very cumbersome by the Private Equity sector.

Also, the maximum term of existence of the Private Privak has been modified and has become more flexible: in principle and as before, the maximum term of the Privak's corporate existence remains twelve years, but under the new rules the shareholders can extend the term twice, each time for a period of up to 3 years. The articles of association of the Private Privak however need to provide for such extension(s).

The number of investors required to participate in a Private Privak remains the same as before, so that a Private Privak still needs to have at least six shareholders or investors. However, the shareholders are given more freedom to conclude shareholders' agreements.

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Lastly, the minimum investment of an investor in the Private Privak has been reduced from EUR 100,000 to EUR 25,000.

### **Various and additional tax benefits**

#### **° Tax credit**

In the personal income tax system, a tax credit is granted for capital losses incurred on shares that an individual investor suffers. This tax credit applies in the case of a complete liquidation and distribution of the corporate assets of the Private Privak incorporated as of 1 January 2018. Such capital losses are eligible for a tax credit of up to EUR 25,000 per taxable period. The tax credit amounts to 25% of the qualifying capital losses. This capital loss amounts to the positive difference between, on the one hand, the paid-up capital by the individual investor and, on the other hand, the amount distributed to the individual investor as a result of the liquidation of the Privak and the distribution of its assets, and increased with the dividends previously distributed by the Private Privak to the individual investor.

#### **° No withholding tax / reduced withholding tax on distributed dividends**

No withholding tax is due on dividends distributed by the Private Privak in cases where these dividends stem from capital gains on shares.

Under the new rules, a reduced withholding tax applies to other dividends, as the Private Privak can now benefit from a withholding tax regime similar to the VVPRbis-system. By applying this favourable regime, dividends are subject to a withholding tax of 20% or 15%, depending on the moment of the profit distribution. These reduced withholding tax rates apply if and in so far as the dividends distributed by the Private Privak stem from dividends received by the Private Privak that can benefit from the VVPRbis-regime themselves. The purpose of this new rule is to eliminate any disadvantage between a direct investment by an individual investor in shares qualifying for the VVPRbis-regime, and by an individual investor in such shares through an indirect investment via a Private Privak.

#### **° Advantageous favourable tax regime of the Private Privak confirmed**

As before, the Private Privak continues to benefit from the advantageous tax regime provided for by article 185bis, § 1 BITC. The latter implies that the Private Privak is – as a general principle - subject to the normal corporate income tax regime, but at the same time will only be taxed on a very limited taxable base.

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Indeed, the Private Privak is only taxable on so-called “abnormal or gratuitous” advantages and on certain so-called “disallowed expenses”. In order to benefit from this favourable tax regime, the Private Privak should comply with various regulatory rules.

In the past, non-compliance with these regulatory rules in principle caused a final loss by the Private Privak of its favourable tax status, with obviously severe consequences for the Private Privak and its investors. The new rules now stipulate that the favourable tax regime applies per tax year. As a consequence, in a situation where the Private Privak no longer complies with the regulatory conditions, it risks losing its favourable tax status for that specific tax year, but can regain it for subsequent tax years. From now on, the Private Privak can regularize its infringements or violations towards the future.

### Conclusion

The less stringent regulatory framework and the more favourable tax regime applying to the Private Privak and its investors should encourage an increased use of Private Privaks by Belgian and foreign investors. In this respect, one should also consider that the Private Privak can benefit from the important network of tax treaties concluded by Belgium, as a result of which the Private Privak is also an opportunity for wealthy foreign investors.

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