

The new Dutch “flex” BV: re-inventing the bicycle

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Changes at first sight

Before:



- Minimal paid-up capital 18,000 Euro, confirmation of bank
- Approval Ministry of Justice
- Restriction on purchase of own shares
- Auditor confirmation for contributions in kind
- Shareholders jointly appoint directors
- Annual Meeting of Shareholders before 1 June of next year

After:



- No minimum paid-up capital
- At least one voting share must be owned by a parent
- No approval from Ministry of Justice
- In-kind contributions to be confirmed by management only
- Every class of shareholders can appoint their own director
- Annual Meeting once per year

“Drive safely”!

- Managers are liable for correct valuation of contributed assets
- When paying out (interim) dividend, only profit is not enough: check liquidity as well
- Managers AND shareholders can be held liable for paying out too much interim dividend
- Shareholders can be made liable to finance the company

Tax aspects of flex BV

- If dividend is reversed, dividend tax will not be refunded!
- Participation exemption applies if parent owns at least 5% in nominal paid-up capital
- Redemption of **nominal** share capital is not taxed, redemption of share premium may be considered a dividend distribution if there are profit reserves (“trapped cash”)

The Joint-Venture Vehicle

- Shareholder Agreements: contractual obligation between specific parties
- Result of violation: breach of contract
- Succeeding shareholder is not bound
- Shareholder obligations in JV Articles are “hardwired”
- Violation “impossible”
- Articles are public



What to agree on before hitting the road?



- Discretionary powers of management, shareholder reserved matters and voting
- Financing of joint venture
- Accounting and reporting
- Contribution and licensing of assets to JV
- Services and supplies to JV by partners or their affiliates
- Exit: good/ bad leaver, piggy back right, termination

Thank you!



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