SPACS – A HIGH LEVEL SUMMARY

The popularity of a special purpose acquisition company (SPAC) has significantly risen recently, originating from the United States and now more frequently in Europe and especially in the Netherlands. A SPAC is a relatively inexpensive and quicker way to get listed compared to the traditional initial public offering (IPO). A SPAC is a company starting with no business that raises capital by means of an IPO for the purpose of acquiring an existing operating company. Subsequently, that operating company can merge with (or be acquired by) the publicly traded SPAC and become the listed company in lieu of arranging its own IPO. Below is a high-level summary of the basic features of SPACs.

SPACs in a nutshell

The incorporators of a SPAC are referred to as 'sponsors'. Investors will have to be convinced to entrust their assets to a SPAC based on the sponsors' reputation, experience and intended acquisition strategy. Sponsors will typically have specific industry expertise or private equity experience and the identity of the sponsor is therefore key to attracting investors in the SPAC. The sponsors will have to meet the expectations of investors by creating a business combination (BC), which they will generally have to do within a period of 24 months, subject to a possible extension of 6 months. The proposed BC requires shareholder approval. After approval of the BC by the shareholders of the SPAC, the BC will be effected via (for example) a share transfer or a merger, with the ultimate goal that the target (de facto) obtains a stock exchange listing.

Investment

The investors generally receive a combination of shares and warrants, which are often bundled in units. If the stock price rises after the BC has been established, the warrants can be converted into shares. The proceeds from the IPO are placed in an escrow account. This ensures that investors will for all intents and purposes get their investment back; if no BC is formed within the envisaged timeframe, the SPAC will be liquidated and the escrow amount be distributed. Furthermore, the investors are offered the opportunity to exercise their redemption right if they do not agree to the BC. If investors exercise their redemption rights, the SPAC will have to repurchase the relevant shares (not the warrants). This repayment is deducted from the balance of the escrow account and thus from the amount that is available for the BC.

Thus, the redemption right gives investors the opportunity to exit the SPAC. In the past, this right only accrued to shareholders that had voted against the proposed BC. Recently we have seen a broadening of the redemption right in the Netherlands. It accrues to all investors, regardless of how they voted in relation to the BC.

SPACs are said to offer an investment opportunity that involves a relatively low risk, though this is not entirely the case; as they are putting their funds into an empty shell, investors heavily rely on the competence and skills of SPAC management to seek an appropriate BC and to effectuate it.

Corporate Governance

There is no specific EU or Dutch law or regulation for the format of "SPAC. SPAC are considered normal listed companies and must comply with the stock exchange listing requirements applicable to all public companies and are subject to securities' laws and regulations in the country of issue. For the IPO, a prospectus must be published. There is a standard set of contracts and documents entered into in connection with the formation of the SPAC and the IPO. Some are similar to traditional IPOs of operating companies, while others are unique to SPACs (for example the trust agreement).

Following the admission to listing, SPACs will have to meet various ongoing obligations. Examples are: publication of annual and half-yearly financial reporting and filing of the annual accounts with the Dutch Authority for the Financial Markets (AFM), periodic and incidental notifications regarding the issued capital and voting rights and disclosure of inside information (in respect of market abuse). SPAC shareholders are obliged to disclose major interests in capital and voting rights (starting at >3%) to the AFM.

Tax

When incorporating or relocating a SPAC, the sponsors should take carefully into consideration the place of residence and the jurisdiction wherein the SPAC is subject to taxation. The Netherlands has recently become the gateway into Europe and is a favourable jurisdiction to incorporate or relocate and list a SPAC. If the sponsors incorporate a Dutch SPAC or relocate the place of effective management of a SPAC to the Netherlands this will have certain tax consequences.

In principle a SPAC is or will become subject to Dutch corporate income tax (CIT) at a rate of 16.5% / 25.8% and Dutch dividend withholding tax (WHT) at a rate of 15% (if and insofar any distributions are made). The aforesaid has in principle a minor impact since a SPAC is in principle a shell company with no actual business activities in its period of existence prior to e.g. a merger with a target company or if no suitable target company is spotted its dissolvement and liquidation. Also, in light of the purpose of a SPAC no (dividend) distributions will be made in its period of existence, hence the Dutch WHT consequences are limited.

Furthermore, a Dutch SPAC has access to favourable EU Directives and regulations e.g. Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 which simplifies cross-border conversions, mergers and divisions within the European Union. When a target company is established within the European Union the application of the cross-border Directive simplifies the merger between the to European member states.

Usually, when the SPAC is listed the assets acquired from the IPO and the sponsors will be transferred to a separate escrow account. In case the SPAC is not successful in acquiring a target company, the assets held in the escrow account will be transferred to the investors and sponsors. It should be carefully taken into consideration that in case different currencies are used FX results could have adverse cash flow or Dutch WHT consequences. In order to cover any potential adverse FX results consequences a tax insurance could be concluded.

Not to be forgotten are the sponsors who are – generally spoken – are also appointed as directors of the SPAC and their tax treatment regarding (the conversion of) warrants and any income or distributions to be received. Dutch tax law does not include any specific provisions regarding SPAC and therefore the income or distributions received by the sponsors/directors are subject to the common Dutch tax law provisions. Any income or distributions received by a sponsor/director could be subject to Dutch wage tax or personal income tax (e.g. lucrative interest regime or substantial interest). Furthermore, if sponsor/directors are non-Dutch tax residents the application of bilateral tax treaties for the avoidance of double taxation should be taken into consideration.

Whether a SPAC could also be considered as a value added tax (VAT) entrepreneur (taxable person) in the Netherlands is not clear however, there are arguments to substantiate a VAT status if and insofar certain specific circumstances and conditions are met.

In closing, when sponsors envisage to incorporate or relocate a SPAC in or to the Netherlands it is important to effectively structure (e.g. holdco's and cash pooling vehicles) and strengthen the tax position of the SPAC in the Netherlands. In addition, the income or distributions to be received by sponsors/directors should carefully taken into consideration.

Our legal and tax specialists would be happy to assist the sponsors/directors with the incorporation of relocation of the SPAC in or to the Netherlands. If you have any questions regarding the above, please do not hesitate to contact us.

Key contact

Cees-Frans Greeven
Partner | Lawyer
E c.greeven@burenlegal.com
T +31 20 333 8390

Lous Vervuurt
Counsel | Lawyer
E l.vervuurt@burenlegal.com
T +31 70 318 4299

Martijn van Emden
Tax lawyer
E m.vanemden@burenlegal.com
T +31 70 318 4200

Tatev Avetian
Lawyer
E t.avetian@burenlegal.com
T +31 70 318 4200