

Second update of policy statement on corona crisis tax measures

There is a rapid succession of government tax measures being announced as a result of the corona crisis. We previously informed you about these measures in, for example, our memoranda dated [March 18, 2020](#), [March 20, 2020](#) and [April 3, 2020](#). By policy statement dated April 14, 2020 the Deputy Minister of Finance subsequently announced a number of specific approvals as a result of the corona crisis (see [our memorandum dated April 17, 2020](#)). That policy statement was replaced by the policy statement of April 22, 2020, which contained new approvals, including with regard to deferral of payment, payment default penalties and the notification of inability to pay (see [our memorandum of April 29, 2020](#)). That policy statement has now been replaced by the policy statement of May 6, 2020, in which the approvals in the previous updated policy statement are supplemented with new approvals, including with regard to the corona tax reserve, the normative salary and the work-related costs rules (see also [our memorandum of April 24, 2020](#)). The policy statement took effect as of May 9, 2020 and, unless indicated otherwise, has retroactive effect to March 12, 2020.

The new approvals are discussed below.

1 Corona reserve for corporate income taxpayers

The corona crisis means that companies may incur a tax loss in 2020. Because this can only result in a (provisional) loss set-off after the tax return for 2020 has been filed, approval has been given for corporate income taxpayers (not personal income taxpayers) to create a tax reserve (corona reserve) when determining the tax profit for the 2019 financial year. The corona reserve may be created for all or part of the 'corona-related loss' that is expected to be incurred for the 2020 financial year.

The corona reserve means that the expected loss for 2020 may be used immediately to arrive at a lower (provisional) assessment for 2019, thus resulting in a liquidity benefit.

Conditions

The following five conditions apply to the corona reserve:

- a. There is an expected 'corona-related tax loss' in the 2020 financial year. This is, for example, the case insofar as there is a loss resulting from lost turnover due to the corona measures taken by the government.
- b. The expected corona-related loss must not exceed the total tax loss that the taxpayer expects to incur for the 2020 financial year. It is thus not possible to create a corona reserve if a tax profit is expected for the 2020 financial year. The

taxpayer itself estimates as best as possible the expected size of the corona-related loss.

- c. The addition to the corona reserve in the 2019 financial year amounts to a maximum of the profit for the 2019 financial year that would apply if this reserve had not been created.
- d. The reserve is fully included in the profit no later than the 2020 financial year. When including the corona reserve in the profit, the same conditions should apply with regard to the determination of the profit as those applying when this reserve was created in the preceding financial year.
- e. The addition to the corona reserve is reported in the 2019 corporate income tax return under the heading *Miscellaneous tax reserves*. The release in the 2020 financial year will be included as a withdrawal under this heading in the 2020 corporate income tax return.

The policy statement states that where fraud, abuse and evident improper use is found, they will be combated as much as possible.

Invoking an approval

The corona reserve can lead to a lower provisional assessment for the 2019 tax year. The initial corporate income tax payable for the 2019 financial year can be reduced by submitting a request to revise the provisional assessment or by filing the tax return. If the corporate income tax return for the 2019 financial year has already been filed, the taxpayer can file a supplement to the tax return by way of filing a new tax return.

Split financial years

Taxpayers with a split financial year may create a corona tax reserve in the last financial year that ends in the period January 1, 2019 through March 31, 2020. In that case, the reserve will be fully included in the profit no later than the following financial year. The abovementioned conditions apply accordingly.

2 Normative salary

Director-major shareholders (DMSs) must receive at least a normative salary. Approval has been given for the normative salary for 2020 to be determined at a lower amount if there is a decline in turnover as a result of the corona crisis. The normative salary for 2020 may then be set – without consultation with the tax inspector – at the amount of the normative salary for 2019 multiplied by the fraction (turnover first four months of 2020 / turnover first four months of 2019). Three conditions apply to this approval.

- a. The current account overdrafts or the dividend does not increase as a result of the lower normative salary.
- b. If the DMS actually receives more salary than follows from the above calculations, then that higher salary applies. This can occur if a private limited liability company (*besloten vennootschap*; BV) uses the Temporary emergency bridging measure to retain jobs (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW) for the DMS. Any payments received under the Temporary emergency bridging measure for self-employed persons (*Tijdelijke overbruggingsregeling zelfstandig ondernemers*; TOZO) are not salary from employment and thus do not affect the normative salary.
- c. This approval does not apply insofar as the turnover for the year 2019 or 2020 is affected by other special circumstances, such as incorporation, cessation, merger, division and extraordinary results.

The approval means that the normative salary could be less than EUR 46,000, 75% of the salary of the most comparable employment or the salary of the highest-earning employee.

In special situations, a customized solution can be found in consultation with the tax inspector. For example, the above approval may result in a lower normative salary if the company is in a loss situation. In the case of additional circumstances, it may be possible to set an (even) lower normative salary.

3 Increase of fixed exemption in the work-related costs rules

Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions. By [letter dated April 24, 2020](#) sent to the Lower House of Parliament, the Deputy Minister announced that in 2020 the fixed exemption will be increased from 1.7% to 3% for the first EUR 400,000 of the payroll for each employer; this will be a one-off and temporary increase. Consequently, the fixed exemption for 2020 will be increased from EUR 6,800 to EUR 12,000.

4 Easing of hours criterion

An entrepreneur who is subject to personal income tax is only entitled to certain entrepreneur tax relief, such as the self-employed persons deduction, the working partner's abatement and the retirement reserve, if they spend at least 1,225 hours per calendar year on their business. It is however conceivable that the corona crisis could cause entrepreneurs to perform less or no activities for their business, which means they could lose the entrepreneur tax relief. In the policy statement, the Deputy Minister has therefore approved that when assessing whether the hours criterion has been met,

entrepreneurs are deemed to have spent at least 24 hours per week on their business during the period March 1, 2020 through May 31, 2020. With regard to entrepreneurs who usually work peak hours during the period March 1 through May 31 because they perform seasonal work, approval has been given to regard them as having spent the same number of hours during the same period in 2020 as the number of hours spent during the period March 1, 2019 through May 31, 2019.

A similar methodology applies to the reduced hours criterion of 800 hours for the purposes of the business start-up allowance in the event of occupational disability. These entrepreneurs are deemed to have spent at least 16 hours per week on their business during the period March 1, 2020 through May 31, 2020. This is different for entrepreneurs who normally work peak hours during this period; in that case the above approval for entrepreneurs who perform seasonal work applies accordingly.

5 Mortgage interest

As a result of the corona crisis, it may temporarily not be possible to make mortgage interest payments and mortgage repayments. If a payment break for repayments is agreed with the lender, this could lead to the mortgage interest deduction being lost, because the repayment requirement has not been met.

The conditions under which a payment break will not lead to the mortgage interest deduction being lost have been set out in a separate extensive policy statement.

The policy statement covers payment breaks that meet the following three conditions:

- the payment break may not be longer than six months;
- the taxpayer must have reported their payment problems to the lender before June 30, 2020; and
- the payment break takes effect no later than July 1, 2020.

Additional strict requirements apply if the loan was borrowed from the own private limited liability company (*besloten vennootschap*; BV) or from a family member, including a decline in income from work (profit, salary and result from other activities) of at least 20% during a period of three consecutive months during the period March 1 through July 1.

With regard to repayment breaks, the arrears must be able to be made up during (at most) the remaining term of the loan.

With regard to interest breaks, if the interest becomes payable later, it can, in principle, only be deducted if the interest is actually paid in the future. If, however, the interest is

payable, but – in short – an interest-free deferral of payment has been granted for this interest, then the interest can be deducted immediately.

6 Deadline for submitting refund requests for energy tax and the surcharge for sustainable energy (*Opslag Duurzame Energie- en klimaattransitie*; ODE)

We previously [informed](#) you that the Deputy Minister had approved – subject to conditions – that in two situations the energy tax and ODE on supplies of natural gas and electricity during the period April - June 2020, and the VAT on this, will become payable on the date on which the additional invoice is issued (in October 2020 at the latest). Applying this approval may have consequences for energy tax and ODE refund requests. It has been determined that these refund requests must be submitted within 13 weeks of the end of the energy use period. The application of these approvals may mean that the energy tax and ODE on supplies of natural gas and electricity in the second quarter of 2020, and the VAT on this, will not yet have been charged within this deadline, and thus it will not be possible to submit a refund request on time.

To overcome this unintended effect, the Deputy Minister has approved that these refund requests may be submitted within 13 weeks of October 31, 2020. This approval applies to supplies of natural gas and electricity in the second quarter of 2020, whereby the energy tax and ODE, and the VAT on this, is charged in an additional invoice and that invoice is forwarded along with the refund request.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you minimize the tax and financial consequences of the corona crisis. We will of course keep you informed of any additional tax measures.

Meijburg & Co
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The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.