

Fiscal Unity Emergency Repair Act adopted by Upper House

On April 23, 2019, the Fiscal Unity Emergency Repair Act (*Wet spoedreparatie fiscale eenheid*) was adopted by the Upper House. We had previously explained the bill in our memoranda dated [June 7, 2018](#), [November 8, 2018](#) and [February 13, 2019](#). The emergency repair measures mean that some Sections of the Corporate Income Tax Act and the Dividend Withholding Tax Act (having consideration for all associated rules) must be applied as if there is no fiscal unity. More background information on this can be found in the aforementioned memoranda. Some general aspects that were addressed during the parliamentary debates in the Upper House are discussed below. We have omitted the more technical questions and answers.

Retroactive effect

No further limitation

Most aspects of the Act have retroactive effect to January 1, 2018. In the Upper House, the CDA parliamentary party again explicitly drew attention to the need to substantiate this and the implications for taxpayers and the Dutch tax authorities. The Deputy Minister was asked to consider limiting the retroactive effect for Section 10a Corporate Income Tax Act (anti-profit shifting) to January 1, 2019 and to not have the emergency repair measure apply to Section 13I Corporate Income Tax Act (the interest deduction for excessive participation interest). However, the Deputy Minister remained of the opinion that this retroactive effect is necessary to prevent the undesired erosion of the tax base in combination with the loss of tax revenue. He also considered that taxpayers were sufficiently aware of this measure on October 25, 2017, the date on which the emergency repair measures were announced.

No choice in the event of split financial years

In light of the retroactive effect, taxpayers with a financial year corresponding to a calendar year will in principle be confronted with the emergency repair as of the 2018 financial year. Taxpayers with a split financial year will have to apply a 'cut'. During the parliamentary debates in the Lower House, the Deputy Minister had indicated that he was open to the idea to further extend – upon request – the retroactive effect in such cases 'to the past'. However, during the parliamentary debates in the Upper House, the Deputy Minister indicated that the legislative text made this impossible. Taxpayers with a split financial year will thus have to apply a cut in such cases.

Motion

During the parliamentary debates in the Upper House, the CDA parliamentary party filed a motion asking the government to prepare a policy memorandum containing clear criteria for assessing tax measures that are introduced with retroactive effect. This motion was however rejected by the Upper House also on April 23, 2019.

Our comments and future developments

As the Act has been adopted by the Upper House and the retroactive effect – despite what we consider very relevant arguments for its further limitation – has been kept at January 1, 2018, it is particularly the 2018 corporate income tax returns, where the financial year corresponds to the calendar year, that will have to be filed with due

observance of the emergency repair measure. Please note that the adoption of the Act by the Upper House may have consequences for the tax position in the financial statements, in which case the retroactive effect included in the Act will in particular have to be taken into account.

New group regime for tax purposes

It is also important to note that the government intends to introduce a future-proof group regime soon as a follow-up to the emergency repair measures. A kick-off meeting about this was organized by the Ministry of Finance on February 14, 2019, during which representatives of the business sector, interest groups and academics presented their views on the preferred new group regime.

The new group regime was not explicitly addressed during the parliamentary debates in the Upper House. We are currently waiting for an options document, which could be presented to the Lower House before the summer recess. The business sector, interest parties and academics will then be able to give their initial response during and after the summer. In-depth discussions and a framework letter outlining the results achieved thus far will then follow after the summer. We will, of course, keep you informed of developments.

Please feel free to contact your Meijburg advisor if you have any questions or would like to discuss the above matters.

Meijburg & Co
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