

## **Limitation of liquidation and cessation loss rules for corporate income tax purposes (October 2019 update)**

As we [previously reported](#), the government intends to amend the liquidation and cessation loss rules for corporate income tax purposes as of 2021, in order to prevent improper use and to widen the tax base. In elaborating this proposal, the government intends to use the draft private members' bill, which was presented by some of the Opposition parties and opened for public consultation in April/May 2019, as starting point as much as possible. More information about this proposal can be found in our [previous memorandum](#) about this.

It is important to note here that the initiators, in the person of Mr. Snels (GroenLinks parliamentary party), submitted a final version of the draft bill to the Deputy Minister of Finance on October 2, 2019. This bill has recently become available. The final draft bill includes a number of changes ensuing from the responses to the consultation and a round table discussion on May 29, 2019. In addition, the reasoning behind the choices has been elaborated upon in more detail and a number of clarifications have been made. We will briefly address the final draft bill below.

### *Final draft bill*

Under the draft bill, a liquidation loss on a participation will still in principle only be deductible if:

- a. the participation is established in an EU/EEA state (*territorial limitation*); and
- b. the Dutch taxpayer holds a qualifying interest in the subsidiary (*quantitative limitation*).

Originally, however, there was a qualifying interest if there was (i) a holding of more than a quarter of the nominal paid-in capital and/or (ii) an interest with a decisive influence on the decision-making with regard to the subsidiary's activities. In the final draft bill, only the category mentioned under (ii) remains. As illustration, the explanatory memorandum refers to an example with an interest of more than 50% and the situation in which an interest entitles the holder to more than half of the voting rights. In contrast to the bill that was opened for public consultation, the interest held by entities affiliated to the taxpayer can now also be included when determining whether there is a qualifying interest.

Additional conditions for deducting the liquidation loss still also apply. For example, the loss must be attributable to the period in which the conditions under a) and b) were met without interruption. In addition, the draft bill discourages lengthy deferrals of the moment when the liquidation loss can be recognized for tax purposes (*temporal limitation*). In that respect it has been proposed to only take a liquidation loss into account if the settlement of the assets of the liquidated entity is ultimately completed in – put briefly – the third calendar year following the calendar year in which the subsidiary's business ceased operations or the calendar year in which a decision thereto was taken.

For the situation that there are latent losses on the intended effective date of January 1, 2021, transitional rules are still proposed with regard to the temporal limitation. There

is also an efficiency threshold, which means, for example, that a liquidation loss in respect of a non-qualifying interest of a maximum of EUR 5 million per participation is nevertheless deductible. The bill that was opened for public consultation included an efficiency threshold of EUR 1 million.

Similar changes are proposed for the cessation loss rules for corporate income tax purposes.

*Deputy Minister's response*

In his response to the submission of the final draft bill, the Deputy Minister indicated that the government agrees with the initiators' assertion that some elements of the rules in question are too broad and that it is desirable to limit their scope. The Deputy Minister once again commented that the government will use the draft bill as a starting point for further elaboration as much as possible.

*Meijburg & Co comments*

By tightening the qualifying interest – based on the draft bill – it will in many cases only be possible to claim a liquidation loss if there is an interest of more than 50%. Good news and of particular practical significance is the fact that the efficiency threshold has been raised considerably as a result of the consultation responses. We would also like to stress that, although the Deputy Minister indicated that the draft bill will be used as a starting point, it remains to be seen which aspects will and will not be adopted. It is clear, however, that a limitation of the liquidation and cessation loss rules can currently count on a majority in the Lower House of Parliament and that a change along the lines of the final draft bill could have a major impact on Dutch companies with foreign investments. Especially relevant is that interests of 50% or less and interests in third countries would be excluded from the liquidation and cessation loss rules as of 2021, unless the efficiency threshold of EUR 5 million applies.

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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