

## **eRecognition mandatory for businesses filing their own tax returns**

The bill on the Digital Government Act (*Wet digitale overheid*) (file no. 34 972) was submitted in mid-2018 and ensues from the 'Confidence in the Future (2017-2021)' coalition agreement. It emphasizes that the adaptation of public authorities to the digital society is not only necessary, but also offers opportunities for better service provision.

### **Background**

The bill lays the foundations for further digitization, including the regulation of digital government and, more specifically, facilities within the governmental generic digital infrastructure (GDI).

The bill contains the most urgent regulatory issues, including the power to make certain standards mandatory in the government's electronic traffic, setting rules for information security, responsibility for the management of facilities and services within the GDI and digital access to public services for citizens (natural persons) and enterprises (legal entities and companies).

### **Tax practice**

As of January 1, 2020, these developments also affect the tax practice. As of this date, businesses filing their own tax returns must make use of eRecognition (*eHerkenning*) (level 3) in order to log on to the Dutch tax authorities' tax return portal. Initially, this only applies to payroll tax returns (returns for January 2020 and subsequent periods) and corporate income tax returns (as of the 2019 tax year). No transitional deadline has been determined for VAT yet. Sole proprietors can continue to use DigiD. In addition, eRecognition does not apply to businesses that outsource their tax returns or file them via professional tax return software.

eRecognition currently provides the highest level of login reliability and enables government bodies to reliably determine the identity of businesses and legal entities digitally. This guarantees the secure exchange of confidential information, such as that which is personal and sensitive.

### **Obstacles**

In December 2019 Parliamentary questions were asked about this change in the communication with the Dutch tax authorities, which gave rise to a number of issues and obstacles.

The first of these is the fact that eRecognition can be purchased from commercial parties for a fee of between EUR 30 and EUR 45 per annum. This is criticized because it means that taxpayers have to pay in order to be able to file tax returns. The Minister of the Interior and Kingdom Relations, also on behalf of the Deputy Minister of Finance (together 'the Minister'), defends the charging of such costs by arguing that eRecognition has a much broader operation than merely communicating with the Dutch tax authorities. This is the better service provided by the government referred to in the aforementioned coalition agreement.

A second obstacle is the capacity of the commercial parties providing eRecognition. At the end of 2019, there was a flood of applications and the waiting time sometimes increased to a few weeks rather than a few days. This means that businesses at other peak moments (for example shortly before March 1, 2020 when the payroll tax returns for January 2020 have to be filed) will not be able to file these returns on time due to the long application processing time.

A third, very fundamental obstacle is that certain businesses are currently refused eRecognition. These are businesses that are not registered in the Trade Register of the Chamber of Commerce (*Kamer van Koophandel*), while a Chamber of Commerce number is a requirement for the granting of eRecognition. This can apply, for example, to professional partnerships (*maatschappen*), general partnerships (*vennootschappen onder firma*) and open mutual funds (*open fondsen voor gemene rekening*). It is therefore impossible for these businesses to file returns in the prescribed manner. The Minister has promised to report to the Lower House of Parliament about this as soon as possible, but no later than March 1, 2020.

### **Undertaking**

In his answers, the Minister indicated that the late filing of returns will be dealt with leniently if businesses are confronted with one of the situations referred to above. Businesses that do not expect to be able to obtain eRecognition in time to comply with their obligation to file tax returns will, however, have to request a deferral for the filing of the return in question. According to the Minister, this deferral will be granted, so that no penalty will be imposed.

### **Advice**

If you file your own payroll tax or corporate income tax returns via the portal of the Dutch tax authorities, we recommend that you apply for eRecognition in good time. If you are unsuccessful – in a practical sense or because the problem with the Chamber of Commerce number has not been resolved – then the following is important.

The above undertaking by the Minister concerns the filing of tax returns. For this undertaking to apply, a written request must be made before the deadline for filing a tax return has expired, with explicit reference to the problem with eRecognition and preferably also referring to the Minister's undertaking. This undertaking was made in the letter from the Minister of the Interior and Kingdom Relations dated December 17, 2019, no. 2019-0000665073.

For remittance-based taxes, such as payroll tax, taxpayers are not only obliged to file the tax returns on time, but must also pay the tax due on time. This payment obligation is not covered by the Minister's undertaking. Only in the situation where the request for a deferral for filing the tax return has been granted before the payment deadline has expired, i.e. before March 1, 2020, does the granted deferral also apply to the payment of the payroll tax due. In all other situations, the payroll tax must be paid before March 1, 2020. You can make this payment with reference to the tax return that has not (yet) been filed.

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