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How new and existing Dutch tax measures can help mitigate financial impact of coronavirus

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The coronavirus has prompted governments around the world to launch emergency relief packages. We summarise those introduced in the Netherlands below. Besides checking whether you can benefit from these measures, it is also worthwhile to look at existing tax facilities that can provide liquidity relief during the crisis. And we also recommend paying closer attention to secondary tax liability issues that typically become more prevalent in times of financial turmoil.

Dutch emergency relief package – tax aspects

The main tax aspects of the emergency relief package issued by the Dutch government include:

- an unconditional three-month extension for corporate income tax, VAT, wage tax and individual income tax owed by businesses that experience liquidity shortages as a result of the coronavirus. Further extensions are possible subject to documentary evidence of the liquidity shortage including, possibly, a statement by a third party, such as an accountant.
- a reduction in the late-payment interest rate to 0.01%. (It was previously 8% for CIT and 4% for all other taxes).
- a waiver of administrative penalties for the late payment of tax.

It is recommended to keep close track of any further relief measures that may be announced and, where applicable, to monetise these so that they improve liquidity quickly.

2020 corporate income tax (CIT)

Companies should revisit their estimated taxable profit for 2020, and:

- take into account the possibility to write off capital assets, including capitalised goodwill, to lower the going-concern value
- consider whether any inventory can be written off
- review trade debtors with a view to claiming a bad debt deduction
- investigate opportunities to form tax-deductible provisions (for example, for reorganisations).

They could also request a reduction in the 2020 preliminary CIT assessment. The Dutch government has announced that as part of the emergency relief package, these requests will be granted (i.e., no delays due to substantive review). If the tax already paid exceeds the revised preliminary assessment , the excess amount paid will be refunded.

And finally, companies should effectuate a 2020 loss as quickly as possible. If there is a tax loss, companies should file the 2020 CIT return as soon as possible and request a preliminary loss carry-back to 2019 (a carry-back of 80% of the loss will be granted). Unlike the 2008 financial crisis, the Dutch government has not created the possibility to ask for a preliminary loss carry-back decision before the tax return in the loss year is filed or before the final assessment of the profit year is issued. This may still be introduced later this year.

VAT timing issues

Companies should avoid having to pay VAT while their invoices remain outstanding. If you know that your invoices will not be paid, consider not sending them at this time, or not until you know that the likelihood of them being paid has increased significantly.

If possible, companies should avoid invoicing shortly before the end of a VAT period. Invoicing in the next VAT period means that the payment of VAT will be deferred until the end of that period (one month or one quarter). Reclaiming VAT on non-recoverable invoices should be considered where, for example, a customer goes bankrupt. Invoices are deemed to be non-recoverable one year after the final payment date.

Companies in financial distress – avoiding director liability

Unless the tax authorities are timely notified, directors of entities that are subject to corporate income tax are personally liable for unpaid wage tax, VAT, and certain excise and environmental taxes. It is not certain whether a notification is required if a taxpayer requests an extension of payment of VAT and wage tax as provided for under the Dutch emergency relief package; a cautionary notification may be recommendable.

If distressed transactions prove unavoidable, companies should seek to optimise the use and allocation of any actual or contingent tax losses and other tax attributes, and deal with related costs and expenses in order to maximise net proceeds.

Using employment agencies – VAT and wage tax liability

Businesses that hire temporary staff through employment agencies can be held liable for wage tax and VAT that those agencies fail to pay. This could occur if the agency goes bankrupt. Using a blocked account (*G-rekening*) protects against these liabilities. Ask for a declaration on payment behaviour from the agencies with which you work; such a declaration can be obtained by the agency from the Dutch tax authorities.