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Global Tax Alert

Dutch Government announces tax and legislative measures in response to COVID-19

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Executive summary

The corona virus (COVID-19) is spreading quickly around the world. In various countries different kinds of measures are being imposed to avoid or slow down the further spread of the virus. Businesses are severely impacted by the spreading of the virus.

This Alert provides a (non-exhaustive) overview of attention points from a general tax perspective. Subsequently it provides an overview of the tax and economic measures currently taken by the Dutch Government to combat and mitigate adverse consequences of COVID-19.

Detailed discussion

Potential attention points from a tax perspective

Less public events and holiday trips

Many public events, domestic and abroad, are being cancelled. Preparations in this regard have already been made and substantial amounts of costs may have been incurred in organizing such events. Furthermore, booked holiday trips are being cancelled because people are no longer allowed to travel to certain jurisdictions or because airline companies have postponed fights to certain destinations. The hospitality and travel industries are being impacted

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severely by these consequences as their revenues will decline. Moreover, these industries may still incur substantial costs if hotels and flights, among others, have already been purchased in advance. This may very well lead to substantial losses for operators in these industries.

Taxpayers should consider if there are possibilities to form provisions for corporate income tax purposes for such anticipated losses.

Taxpayers should also consider if cancellations may require an adjustment of filed Value-Added Tax (VAT)-returns (e.g., requests for refund of previously remitted VAT).

Purchase price/inventory issues as a result of declined production volumes abroad

As a result of COVID-19, many production facilities are being closed or are operating with reduced capacity. This may lead to increased purchase prices for products and/or a decline of available stock and inventory. This may impact (taxable) profits and may very well result in tax losses. Taxpayers may consider forming provisions for corporate income tax purposes in anticipation of these losses.

The above may also lead to a situation where goods must be purchased from different jurisdictions.

If goods were previously purchased from an affected country and are now purchased elsewhere, the correct proofs of origin must be available upon customs clearance of the goods. Absence of the correct documents may result in the goods being held at the border, because of the presumption that the goods originate from the affected country. Upon onward delivery of goods that are held as stock outside of the affected country, it should be reviewed whether these goods can be exported from that country and cleared in the country of destination. In addition, the country of origin is relevant for determining the rate of the import duties.

It cannot be excluded that as a result of inventory purchase issues the production and/or sales comes to a complete stop. It should then be investigated if provisions may be formed for corporate income tax purposes in anticipation of expected losses.

Should demand for certain products decline because of COVID-19, entrepreneurs may end up with excess stock. In these cases it should be considered if it is possible to amortize or revalue stocks against lower business values for corporate income tax purposes. Unsold stocks may also have VAT consequences.

Building up inventory

An entrepreneur may choose to build up inventory in anticipation of an increase in demand. This requires sufficient storage space in the Netherlands or somewhere else in the European Union (EU). The question arises whether the goods should be stored under customs control.

Decline in sales as a result of decreased demand

A decrease or total stop of demand may lead to lower profits or even losses for group companies. It should be determined which entity within a group should bear these consequences from a transfer pricing perspective.

Production relocation

As a result of COVID-19, production may (temporarily) be relocated. This may have an impact on the operating model and transfer pricing. An adjustment of transfer prices may impact the customs value of the imported goods (and as such the taxable base for determining the import duties and the import VAT).

Foreign group entities or divisions may only be able to continue production against higher costs. This may also affect transfer prices.

Issues with transport of goods across the border

It is possible that certain goods purchased abroad are stalled at the border and will not arrive in time. This could lead to extra costs, especially for perishable goods that as a result can no longer be sold. This may have customs and VAT consequences.

In the alternative, it is also possible that goods that have been sold internationally, are stalled at the border. This may result in a compensation due for not meeting the agreed delivery date. It should be reviewed whether these compensations paid can be deducted from the taxable profit, and whether any received compensation is taxable. For VAT purposes, it is also important to review whether these compensations are subject to VAT.

Financial issues

Domestic and foreign group entities or divisions may encounter financial issues as a result of higher costs, the temporary decline or stop of production or the decrease of demand. It should be determined which entity/division within the group should bear the financial consequences of (temporary) production halts.

It may be that group companies or divisions require additional financing or financial guarantees from Dutch group entities or that Dutch group entities require financing from foreign group entities. In these cases it is recommended to critically review the classification of the financing structure for Dutch corporate income tax purposes. Furthermore an arm's-length interest rate and/or guarantee fee should be determined and applied.

Furthermore, the VAT treatment of additional financing should be assessed, including the impact on the VAT recovery position. In domestic situations adverse VAT consequences may be mitigated by creating a VAT fiscal unity between involved VAT entrepreneurs.

Interest deduction limitations

For corporate income tax purposes, net borrowing costs are not deductible insofar as they exceed 30% of a taxpayers' earnings before interest, taxes, depreciation and amortization (EBITDA) for corporate income tax purposes. Net borrowing costs up to €1 million will always be deductible, even if they exceed 30% of the EBITDA for corporate income tax purposes. COVID-19 may impact the EBITDA of taxpayers, as a result of which taxpayers may face interest deduction limitations under the aforementioned rule. It is noted however that any non-deductible interest may be carried forward indefinitely.

Substance requirements

For Dutch corporate income tax and withholding tax purposes various substance requirements apply with regard to (among others):

- Advance tax ruling requests
- Conduit financing, licensing and leasing companies
- Foreign shareholders
- Controlled foreign corporation measures
- Withholding tax on interest and royalties (as per 2021)

COVID-19 may have an impact on meeting these requirements, especially the possibility of holding physical board meetings in a certain jurisdiction.

Preliminary tax assessments

In cases where COVID-19 is expected to cause tax losses in 2020 (e.g., as a result of declined profits or as a result of provisions or amortization), the Dutch tax authorities may be requested to reduce the amount of preliminary tax assessments.

Adjustment of VAT filing periods

It could be beneficial to investigate the possibility to adjust VAT filing periods. VAT entrepreneurs that are typically in a VAT recovery position may adjust quarterly VAT filing to monthly. VAT entrepreneurs that are typically in a VAT remittance position may adjust VAT filing from monthly to quarterly. It may also be requested to credit VAT recovery rights with other tax liabilities (such as wage tax).

No work for employees

Personnel may be put on mandatory leave or may be let go. In the latter case a transition payment must be paid.

It could be investigated if a provision may be formed for future salary or transition payments. A provision for wage payment continuation for employees that are put on mandatory leave is possible if an employer structurally will not make use of the services of its employee.

Employers and employees

For employees that are forced to postpone business travel or secondments (or need to extend them), the personal income tax, wage tax and social security position should be re-assessed.

From an immigration perspective, it is recommended to consider travel restrictions, visa applications, working permits as well as closed airports. These restrictions will impact business travel. It is recommended to always check the application of restrictions and the potential impacts on the employee.

Companies and their employees should also consider specific visa conditions beforehand, for example validity with regard to immigration dates and vice versa.

Furthermore, companies must be aware of previous travel of employees (e.g., to high-risk corona jurisdictions) and to assess the impact on future travel to other jurisdictions. An employee may run the risk of being placed into quarantine for 14 days which results in delay of business travel.

In the case of mandatory working from home, specific tax issues may arise in the case of frontier workers.

Measures taken by the Dutch Government

On 12 March 2020, the Dutch Government announced various measures to mitigate adverse impacts of COVID-19. On 17 March 2020, the Dutch Government announced a substantial number of new (temporary) measures (partly replacing the measures that were announced on 12 March).

Payment extensions

Entrepreneurs may request extension of tax payments from the Dutch tax authorities. This applies to personal income tax, corporate income tax, wage tax and VAT. Once the request has been received by the Dutch tax authorities, tax collection actions will be postponed and taxpayers will immediately be granted the tax payment extension. The individual assessment of the request will take place at a later time. Entrepreneurs no longer need to submit a statement of a third-party expert.

Reduction of administration and tax interest

Administration interest will be reduced from 4% to 0.01% as per 23 March 2020. This will apply to all tax liabilities.

Tax interest rate will also be reduced to 0.01% (per 1 June 2020 and per 1 July 2020 for personal income tax). This will apply to all taxes for which tax interest is taken into account.

No administrative penalties

The Dutch tax authorities will temporarily impose no administrative penalties on entrepreneurs for late tax filing or payment. This will apply to personal income tax, corporate income tax, wage tax and VAT.

Emergency cases

A compensation measure will be introduced for certain companies that are impacted the hardest (e.g., restaurants, cafes, etc. that need to close down). This includes a fixed payment of €4,000 for a period of three months.

The reduction in working time will be replaced by an emergency fund for bridging employment

Initially, companies affected by COVID-19 qualified for the regulation on reduction in working time. This regulation was applicable to companies which suffered a temporary loss of working hours as a result of a calamity.

Considering the large number of requests for a reduction of working time, the abovementioned regulation appeared not suitable. Therefore, it has been replaced by a new measure: the "Temporary Emergency Measure Bridging for Employment Preservation."

The new measure applies as per 1 March 2020 and provides compensation for employee costs if a company suffers a loss of turnover. A company expecting a loss of turnover (minimum of 20%) can request compensation in employee costs for a period of three months at the UWV (the Dutch Employee Insurance Agency). The compensation amounts to a maximum of 90% of the employee costs. Thus, the employer continues to pay a minimum of 10% of the wages. The UWV shall provide an advance payment of 80% of the requested compensation in order to have companies continue to be able to pay their personnel.

The below requirements apply for this measure:

- During the compensation period no personnel will be fired because of business economic reasons.
- The salary costs continue to be paid.

The old regulation has been terminated. Requests already submitted under the old regulation will automatically apply for the new measure.

Compensation for self-employed workers

There will be a new measure for self-employed workers. It concerns temporary support for self-employed workers, so they may continue their business. The new regulation applies as per 1 March 2020, for a period of three months. Self-employed workers can obtain an additional payment for their living expenses for that period through an accelerated procedure. It concerns an additional payment up to the social minimum. An advance payment is possible.

No partner test, equity test or viability test will be applied during the granting process. The received additional payments do not have to be reimbursed.

Support is also possible via equity loans, against a reduced interest percentage.

Temporary deferral of energy tax

The levy of the energy tax and/or the levy of the Storage of Durable Energy will be deferred for companies in the second, third and fourth tax bracket. The Dutch Government is deliberating how to formalize this measure.

Expansion of guaranteed SME-credits (BMKB)

The BMKB regulation has been expanded as per 16 March 2020. Under the BMKB, the Government will partly guarantee for companies that are unable to provide sufficient securities to the involved financier (especially banks) to obtain a loan.

The guaranteed credit amounts up to 75% of the debt the financier is providing. The guarantee of the Government amounts up to 90% of this guaranteed credit.

This measure can be utilized by companies and is intended for bridge loans or the increase of current account credits at a financier, with a maximum term of one year.

Expansion of the Guarantee for Business Financing (GO)

Companies that are unable to obtain financing or guarantees from banks are able to use the GO regulation. The maximum guaranteed amount of the GO regulation will be increased by €400 million to €1.5 billion. The GO regulation benefits both SMEs and large enterprises by providing a 50% guarantee on bank financing and bank guarantees. The maximum amount of guarantee per enterprises will temporarily be increased to €150 million.

Postponement and interest discounts microcredits

Microfinancing provider Qredits provides loans to small and starting entrepreneurs. For entrepreneurs affected by COVID-19 issues, a six-month deferral of the loan repayment will be offered. During this period the interest will automatically be reduced to 2%.

Temporary guarantee for agriculture and horticulture enterprises

The regulation Guarantee for SME-Agriculture loans (BL) will be extended to provide a temporary guarantee for working capital. Under this regulation, the Government guarantees loans of agricultural and horticultural entrepreneurs. The Government aims to formalize this expansion of the BL as soon as possible.

Discussions with local authorities

The Government will have discussions with the so-called "Vereniging Nederlandse Gemeenten" (VNG) with respect to the possibility to terminate (preliminary) local assessments and to revoke earlier imposed assessments to companies. This specifically applies to tourist taxation.

Further reading

On EY's global website more information can be found about the impact of COVID-19 on companies:

- Responding to COVID-19
- How companies can reshape results and plan for a COVID-19 recovery
- Ten ways to enhance firmwide resilience

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