

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

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This Tax Alert provides an update on the previous EY Global Tax Alert, [Dutch Government announces tax and legislative measures in response to COVID-19](#), dated 19 March 2020.

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 flights to certain destinations. The hospitality and travel industries are being impacted 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).

Thereafter, new measures were introduced and previously proposed measures are clarified.

Measures for entrepreneurs

Extra support for self-employed workers (Tozo)

Temporary financial support for self-employed workers (Tozo) will be introduced. This arrangement provides support for the living expenses of self-employed workers when their income falls below the social minimum as a result of the COVID-19 crisis. The arrangement is available for self-employed workers without employees (zzp-ers), self-employed workers with employees and for entrepreneurs/individual business owners.

The arrangement applies (with retroactive effect) from 1 March 2020 through 1 June 2020 (three months) with a possibility of extension.

To qualify for the arrangement, a number of conditions must be met:

- ▶ The entrepreneur is between 18 years old and retirement age
- ▶ The entrepreneur lives and resides in the Netherlands
- ▶ The business or profession is practiced in the Netherlands
- ▶ The company is registered with the Dutch Chamber of Commerce on 17 March 2020
- ▶ The entrepreneur meets the "hours criterion," i.e., performs at least 1,225 hours of work for the business on an annual basis

The Dutch Government is investigating the possibility of making the scheme available for foreign businesses as well.

An application can be submitted with the municipality where the entrepreneur resides. The application can be submitted up to and including 31 May 2020, with retroactive effect up to and including 1 March 2020. The municipality provides income support up to the social minimum that applies to the entrepreneur for a maximum of three months. There is no wealth test (such as whether there are savings or an owner-occupied residence) and no partner test. There is also no assessment of the viability of the business. The income support does not have to be refunded. However, the municipalities do check the actual income afterwards.

In addition, an entrepreneur can apply for a working capital loan of up to €10,517. This amount must be repaid. The maximum term is three years. No repayments are required until 1 January 2021 and the interest rate is 2%.

More information can be found on the website of the [Dutch Government](#). See also the website of the [Dutch Association of Municipalities](#) (in Dutch). The website of the Ministry of Social Affairs and Employment contains a [check-list](#) with which entrepreneurs can assess whether they are eligible for the scheme (in Dutch).

Compensation for entrepreneurs in affected sectors due to COVID-19 (TOGS)

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.

This is a one-off gift to entrepreneurs who were forced to close as a result of the COVID-19 crisis. Companies in the non-food sector can also qualify. A condition is that the entrepreneur has a physical place of business outside his own home.

The Dutch Government indicated that the gift of €4,000 is tax-free. There is also no need to deduct the gift from the income support received under Tozo (see above).

We refer to the website of the [Netherlands Enterprise Agency](#). On this website, the SBI code can be used to see whether an entrepreneur is eligible for the TOGS. The Dutch Government has noted that, if entrepreneurs are at risk of not meeting the SBI code requirement due to an incorrect registration, this can be reviewed on a case-by-case basis.

Payment extensions

Entrepreneurs who have encountered payment problems due to the COVID-19 outbreak can request a deferral of payment of tax by a letter to the Dutch tax authorities. This deferral applies to personal income tax, corporate income tax, wage withholding tax and VAT.

It is our understanding that a three-month extension will be granted automatically after filing the request. For an extension of more than three months, additional information must be provided to the tax authorities. The Dutch Government is still determining what information is required and how this should be provided.

For more information, see our Tax Alert: [COVID-19 tax measures payment extension and reduced tax and collection interest rates](#).

The request deferral of payment is separate from and will not qualify as a so-called "notification of insolvency."

Various parties have asked the Ministry of Finance for clarification and a simplified policy with regard to the notification of insolvency.

Reduction of administration and tax interest

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

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

For more information, see our Tax Alert: [COVID-19 tax measures payment extension and reduced tax and collection interest rates](#).

No administrative penalties

The Dutch tax authorities will temporarily impose no administrative penalties on entrepreneurs for late payment of tax. Already imposed penalties will be waived.

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.

Discussions with local municipalities

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.

Leniency scheme of Dutch Regional Water Authorities

The Dutch Regional Water Authorities introduced a leniency scheme for affected entrepreneurs.

Requests for deferral of payment are dealt with courteously. Entrepreneurs and self-employed workers who indicate that they are unable to pay the assessment timely, will receive a deferral of payment by most water boards. The postponement is for a limited period only, usually for a period between three to six months as of 22 March 2020.

In addition, flexible repayment schedules are available. The imposed assessment still has to be paid in full, but this can be done over an extended period in time.

€50,000 for e-health solutions for Dutch healthcare institutions

To limit the spread of COVID-19, the Dutch Ministry of Public Health, Science and Sport, has temporarily extended the SET (a stimulation scheme for E-health at home).

The SET COVID-19 scheme is intended for care and welfare organizations that need to invest extra in digital support and remote care for vulnerable elderly people living at home, or people with a chronic illness or disability during the COVID-19 crisis. A subsidy of €50,000 is available per application. The subsidy is meant to cover the project expenses of the implementation of the digital care, which may also involve external support.

In addition, up to 50% of the amount can be spent on technology such as licenses or devices. The maximum period of the project is nine months. No personal contribution is required.

To claim the SET COVID-19 Scheme, a request must be filed with the RVO (Netherlands Enterprise Agency).

Measures for employers and employees

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.

Request from the Dutch tax authorities: timely filing of wage tax returns

Despite the COVID-19 crisis and the possibility to request a tax payment extension, the Dutch tax authorities request taxpayers to file the wage tax returns by the due date. However, employers do not have to pay if deferral of payment is requested.

The Dutch tax authorities state that the UWV needs this data from the wage tax returns for purposes of the emergency fund for bridging employment measure (see above).

No pension implications for retired care workers who return to work

Healthcare institutions can temporarily (re)employ retired healthcare workers.

Some retired healthcare workers have commenced their pension more than five years earlier than their state pension age. They stated at their early retirement age that they no longer had the intention to work. The CAP (Dutch Central Contact Point for Pensions) of the Dutch tax authorities has indicated that these retired healthcare workers can be re-employed during the COVID-19 outbreak without adverse tax consequences with respect to their pensions. We also refer to the website of the [Dutch tax authorities](#) (in Dutch).

No consequences for workers from home

Many employees are required to work from home. As a result, the working hours and place of work are temporarily different for many people. For example, this could be in another country than usual.

According to the SVB (Dutch Social Security Bank), this has no consequences for the social insurance of an employee that normally lives or works across the border in the European Union, European Economic Area or Switzerland. No action is needed in this respect. See the website of the [SVB](#).

Deferral of pension contributions

According to the *Dutch Pension Act*, the employer's and employee's part of the pension contributions must be paid within one month after the end of each quarter. Pension funds and pension insurers have a reporting obligation for late payments. These legal regulations hinder flexible payment arrangements.

The Dutch Association of Insurers, the Pension Federation, the Dutch Central Bank and the Ministry of Social Affairs and Employments are investigating the possibilities to have the pension sector contribute to the financial consequences due to the COVID-19 crisis.

Measures relating to financing

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.

Measures for international trade

Export credit insurance

New measures for expanding export credits will be introduced. Short-term export credit insurance will now be covered. Previously, export insurance with a term of more than two years was covered, while export credit insurance with a term of less than two years will now also be covered.

In addition, there will be an increase in the possibilities for domestic coverage, the country policy will become more flexible and coverage will be available for more countries. Procedures are also being expanded and accelerated and a higher percentage of working capital is covered.

Measures adopted by the Dutch Customs Authorities

The Dutch Customs Authorities are willing to support businesses that are temporarily unable to meet all strict deadlines and/or customs compliance rules by way of the following measures:

- ▶ Late compliance would be circumstantially excusable (customization based on individual circumstances)
- ▶ Pro forma objections and refund requests allowed, circumstantially excusably late
- ▶ Leniency towards the solvability criterium for AEO license holders
- ▶ Reduction or full exemption of (bank) guarantees
- ▶ Extension of current license request procedures that cannot be completed
- ▶ Customization based on individual circumstances for urgent requests for licenses

See the [Dutch Customs Authorities](#) for more information.

Extraordinary extension of payment deadlines (Customs)

Businesses that are experiencing payment difficulties or cash flow issues due to the outbreak of the COVID-19 virus, can file with the Dutch Customs Authorities for an extraordinary

extension of their payment deadlines. This applies to both harmonized and national excise duties (i.e., including those on non-alcoholic beverages).

This extension of payment deadlines is also aimed to apply to customs duty and VAT on imports (in absence of a VAT deferment license). At the time of writing, an implementation regulation is being designed, due to the fact that customs duty and import taxes are levied assessment-based. The implementing regulation is expected to be published prior to the next settlement of the monthly bank guarantees.

Contrary to the extension of payment deadlines for other taxes as outlined above, the Customs extension of payment deadlines applies up to the 15th day of the month following the month in which the COVID-19 measures have been announced to end. At this stage, this date is unknown. Furthermore, the Customs extension does not apply automatically; each business' individual situation will be assessed, and it is possible that additional information will be requested.

See the website of the [Dutch Customs Authorities](#) for more information.

No default penalties (Customs)

Currently, the Dutch Customs Authorities will refrain from issuing penalties for (untimely) compliance with customs laws and regulations. This only applies if the finable behavior does not concern criminal offenses, intent or severe negligence.

Customs duty exemption for the import of personal protective gear

Many businesses and institutions are keen to support the fight against the COVID-19 virus by way of donating personal protective gear to hospitals and other healthcare institutions. The Dutch Customs Authorities therefore are allowing circumstantial customs duty-free imports of personal protective gear.

See the website of the [Dutch Customs Authorities](#) for more information.

It is possible that other goods that are being used to support the fight against the COVID-19 virus are eligible for customs duty exemptions upon import.

Refer to [this Regulation](#) for an overview of all import exemptions.

Export license required for the export of personal protective gear

Export from the Netherlands of personal protective gear is no longer allowed without an export license, which is required to be obtained prior to the export.

The request form can be found on the website of the [Dutch Customs Authorities](#).

Measures for the Caribbean Netherlands

The Dutch Government is taking economic measures for employees and companies on Bonaire, Saba and Sint Eustatius, similar to the measures taken in the Netherlands.

Compensation for loss of income

A company expecting a loss of turnover (minimum of 20%) and which as a result does not have work for its employees, can request compensation for wage expenses. The compensation amounts to a maximum of 80% of the maximum daily wage. The compensation is granted for a period of three months and can be extended with another three months. To benefit from this compensation measure, it is required that no employees are fired and salaries continue to be paid during the compensation period.

Self-employed workers are also compensated. Self-employed workers can receive a payment of up to 80% of the legal minimum wage.

In certain cases, the local social welfare system can be used. For example, for costs made for certain living expenses made due to special circumstances.

Emergency desk

An allowance (a one-off gift) for immediate aid will be available for companies that have been affected by the measures taken by the Government to combat the COVID-19 crisis.

Extension of tax payments

Companies that are experiencing or expect to be experiencing payment issues due to the COVID-19 crisis can request a special extension for tax payments. The request has to be filed with the Tax Authorities/Caribbean Netherlands (BCN). The BCN will immediately grant the tax payment extension to the taxpayers. On a case-by-case basis, and after consultation with and substantiation by the taxpayer involved, the BCN will decide on the scope and duration of the special deferral of payment.

BKMB, GO and Qredits

The proposed regulations in the Netherlands for the BKMB, the GO and the expansion of the Qredits (as described above) will also be introduced in the Caribbean Netherlands.

Further discussions

Further discussions will take place with the executive boards of the local public bodies to discuss the possibility to stop tax collection actions of local island taxes. This particularly concerns tourist tax and the surcharge on real estate tax.

Additional reading

EY prepared an overview of policy and stimulus responses to COVID-19 per country. The [overview](#) now covers 101 countries and is updated daily.

EY also has an [EY Response Tracker | Impact of COVID-19 on Global Immigration](#).

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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