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Tax & Legal

Changes to corporate income tax loss set-off as of January 1, 2022, BIK withdrawn

On Friday, May 28, 2021 the caretaker government announced that, on the basis of the awaited results of the implementation test, the changes to the corporate income tax loss set-off can take effect as of January 1, 2022. It was also announced that the Job-related Investment Allowance (*Baangerelateerde Investeringskorting*; BIK) will be withdrawn, because it cannot be ruled out that the measure will be qualified as unlawful State aid. Instead of the BIK, the contributions for the General Unemployment Fund (*Algemeen Werkloosheidsfonds*; 'AWF contributions') will be reduced. Both developments are discussed below.

Corporate income tax loss set-off rules finally agreed

The 2021 Tax Plan provides for entities that are subject to corporate income tax to set off, for financial years commencing on or after January 1, 2022, their losses against the taxable profits of the preceding financial year, and subsequently against the taxable profits of all following years. The latter also applies, in principle, to any loss set-off still available in 2022. However, not all taxable profit is available for loss set-off. Insofar as the taxable profit exceeds EUR 1 million, only 50% is available for loss set-off. For an entity with a taxable profit of, for example, EUR 1.8 million, only EUR 1.4 million will therefore be available (EUR 1 million + 50% of EUR 800,000). For a more detailed explanation, please refer to our previous memorandum.

A Royal Decree is required to have these rules take effect. The Dutch tax authorities first had to perform an implementation test. This has now been done and the advice was positive and was placed on the website of the Ministry of Finance on Friday, May 28, 2021. The Royal Decree will be published as soon as possible. This means that the new rules will apply for financial years commencing on or after January 1, 2022. For annual reporting purposes, the foregoing means that as of May 28, 2021 the new rules must be taken into account.

BIK canceled, but lower AWF contribution

The 2021 Tax Plan also included the Job-related Investment Allowance (BIK, for a more detailed explanation please refer to our previous memorandum). Investments in certain new operating assets would result in a discount on the payroll tax and social security contributions to be remitted. Because the BIK might be State aid and there was a potential EU leakage, the entry into force of the BIK was made dependent on the consent of the European Commission. It is now clear that this consent will not be given anytime soon. Uncertainty about whether the BIK will or will not proceed is undesirable. The caretaker government has therefore decided to cancel the BIK. The scheme will be canceled with retroactive effect to January 1, 2021. The budget will be used to reduce the AWF contributions, which will also reduce the payroll costs for businesses. The aim is to have the lower contributions take effect on August 1, 2021.

Comments by KPMG Meijburg & Co

The BIK was widely criticized. Many parties doubted the effectiveness of the scheme. The BIK would barely affect investment decisions. Now that the BIK will not be implemented, these discussions can also come to an end. The alternative, the reduction of the AWF contribution, is not a direct investment subsidy but a reduction of the payroll costs. Unlike with the BIK, all employers seem to benefit from this and thus not only employers that invest in certain qualifying operating assets. However, only once the definitive Ministerial regulation has been published will it become clear how it works and also for which period the reduction of the AWF contribution will apply. As was the case with the BIK, it seems likely that the reduction of the AWF contribution will also only be a temporary measure. The announcement only refers to a reduction of the contribution in 2021.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you.

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