

## LEGAL AND TAX ALERT

### Tax Alert: Legislative proposals on amendment CIT loss set-off regime and on Job-related Investment

Oct. 13, 2020

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#### Introduction

On 5 October 2020 the government presented two Memoranda of Amendment to the bill on the 2021 Tax Plan to the Lower House of Parliament. These memoranda had been previously announced on Budget Day and are discussed in more detail below by way of two brief synopses outlining the essence of these legislative proposals followed by more comprehensive summaries.

#### Amendment CIT loss set-off regime - Summary

The first Memorandum of Amendment seeks to amend the loss set-off scheme. The bill proposal would result in an indefinite loss carry-forward period (currently six years, loss carry-back will remain 1 year) as from 1 January 2022. However, losses can only be deducted in full (both forwards and backwards) up to an amount of EUR 1 million in taxable profits. In the case of a higher profit, the losses will only be able to be set off up to 50% of that higher taxable profit.

#### Job-related Investment Allowance - Summary

The so-called Job-related Investment Allowance (in Dutch: *Baangerelateerde Investeringskorting*, “JIA”) enables businesses to deduct a percentage of investments made from their wage tax and it is a crisis-related measure which will come into effect as of 2021 and will apply for two years (2021 and 2022).

#### Amendment CIT loss set-off regime - General

- Losses will only be fully available for carry-forward and carry-back set-off up to an amount of EUR 1 million of taxable profit per year. This means that losses up to an amount of EUR 1 million should in any case be set off against available profits in a qualifying year.
- In the case of an annual profit higher than EUR 1 million, any remaining loss can only be set off against 50% of profit exceeding EUR 1 million. This new limitation of the loss set-off is proposed in combination with an in time unlimited carry-forward loss set-off (currently a period of six years applies). Moreover, the carry-back loss set-off period is and will remain one year.
- This amendment to the loss set-off regime exclusively applies to Dutch corporate income taxpayers and expressly not to the personal income tax Act.
- The unlimited carry-forward loss set-off will apply to all offsetable losses incurred as of January 1, 2022 or that are still available for carry-forward loss set-off at year-end 2021.
- Under the proposed transitional rules, losses incurred in financial years commencing on or after 1 January 2013, that had not yet been set-off at the end of the financial year commencing on or after 1 January 2021, may be carried forward indefinitely. Such losses may be set off against taxable profits for financial years commencing on or after 1 January 2022. However, the new rules under the proposed amendment as set forth above will apply to these losses.

#### Job-related Investment Allowance - General

- The JIA reduction in wage tax amounts to 3% per calendar year for investment amounts up to and including EUR 5,000,000 and 2.44% for amounts in excess thereof. As set forth in the summary, the

JIA applies for two years, namely 2021 and 2022.

- There must be a JIA withholding agent. This should be a natural person who, or an entity that has a withholding obligation for wage tax and social security contributions and is also subject to personal or corporate income tax.
- In order to qualify there should be one or more so-called job-related investments. In short, that is the case if commitments were entered into for the purchase of an asset not previously used by anyone. The investment obligation must also be at the expense of the JIA withholding agent or the fiscal unity for corporate income tax purposes. Please note that production and improvement costs do not qualify for the JIA.
- Operating assets for which the amount invested is less than EUR 1,500 per operating asset are excluded.
- The commitment in respect of the investment should have been entered into on or after 1 October 2020 but before December 31, 2022. The taxpayer must be able to convincingly demonstrate this (for example by means of a signed contract).
- The investments must be fully paid with a final payment in 2021 or 2022, and must have been put into use within six months of the full payment.
- Each application should include at least EUR 20,000 of JIA investments.
- The BIK remittance reduction is a supplement to existing incentive schemes, such as the energy investment allowance (in Dutch: *energie-investeringsaftrek*), the environmental investment allowance (in Dutch: *milieu-investeringsaftrek*), the KIA (in Dutch: *kleinschaligheidsinvesteringsaftrek*) and the free depreciation of environmental investments (in Dutch: *willekeurige afschrijving milieu-investeringen*), and can coincide with these schemes.
- It is also explicitly stated that the amount of the JIA is not part of the acquisition costs, so that depreciation and investment tax relief can be used as if no JIA had been received.

Should you have any questions on how these legislative proposals may affect your business, please do not hesitate to contact us.

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