

UPDATE

Covid-19: payment extension measures further relaxed

Tax Alert | 9 April 2020

Introduction

In response to the impact of the Covid-19 virus, the Dutch government has proposed tax measures to improve the liquidity position of taxpayers. This includes extension of payment of taxes and lowering the tax interest and collection interest to 0.01%. Due to implementation reasons the percentage cannot be lowered to 0%.

In our Tax Alert of March 20 and April 2, 2020 we have outlined a.o. practical instructions in order to obtain payment extension for taxes.¹ Meanwhile the payment extension measures have been further relaxed and the website of the Dutch tax authorities outlining instructions to obtain payment extension has been updated multiple times. There is also further (limited) clarification regarding the notice 'unable to pay'. The government requested companies to act appropriately in relation to the tax measures, and to only use them to the extent needed.

In the below you will find an outline of the current payment extension measures. Thereafter you will find updated practical instructions in order to obtain payment extension for taxes based on the information known as per April 9, 2020, 9 AM. A distinction is made between:

- 1) Personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax;
- 2) Gambling tax, insurance premium tax, landlord tax, environmental taxes (a.o. energy tax, coal tax, waste tax) and similar taxes in the Dutch Caribbean;
- 3) Excise duty (including those on non-alcoholic beverages);
- 4) Customs duty and other import taxes; and
- 5) Energy tax and surcharge durable energy and climate transition (SDE) for the benefit of buyers of electricity and natural gas.

Payment extension for taxes – what to do?

Personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax

General

For all personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax assessments payment extension can be requested if you have financial problems as a result of the Covid-19 virus outbreak. The government requested companies to act appropriately in relation to the tax measures, and to only use them to the extent needed.

How long will you get payment extension?

3 months payment extension

If you request for payment extension due to financial problems as a result of the Covid-19 virus outbreak, payment extension is granted automatically for 3 months. This automatically applies to all taxes mentioned above and applies to all unpaid and future tax assessments that will be imposed during the 3-month extension period. Payment extension can be requested online via a digital form (which requires "Digi-D" login) or by filing a letter to the Dutch tax authorities.

¹ The government issued further guidance and relaxation regarding the payment extension for taxes by means of a Parliamentary letter on April 2, 2020 around 7pm. Therefore, this guidance was not included in the Tax Alert of April 2, 2020.

These measures apply to filed requests as of March 12, 2020 until June 19, 2020. You will get payment extension for 3 months after receipt of the request. Our understanding is as follows. If you have requested for payment extension on March 12, 2020, payment extension is granted automatically for 3 months until June 12, 2020. If you request for payment extension on June 18, 2020, payment extension is granted automatically for 3 months until September 18, 2020. The aforementioned can be taken into account when deciding on the moment to file the request for payment extension.

Payment extension > 3 months

For payment extension exceeding 3 months additional information needs to be provided to the Dutch tax authorities.

- If the total outstanding tax liabilities are below EUR 20k: additional information should be provided to the Dutch tax authorities substantiating that the impact of the Covid-19 virus outbreak, for example by means of a significant decrease in turnover / orders compared to earlier months (no need for a statement of a third-party expert).
- If the total outstanding tax liabilities exceed EUR 20k: a statement of a third party expert (such as an external accountant, tax advisor or consultant) must be provided to the Dutch tax authorities, substantiating that the financial problems are mainly caused by the Covid-19 virus outbreak. It is not yet clear whether such statement is sufficient or whether additional substantiating information needs to be provided.

For both situations the additional information needs to be provided to the Dutch tax authorities within the 3-months payment extension period. The amount of the total outstanding tax liabilities needs to be determined on the moment you file the request for payment extension. According to the website of the Dutch tax authorities, you can defer the payment of the tax assessments until the Dutch tax authorities have decided on the request for payment extension. We recommend to timely prepare the request for payment extension exceeding 3 months. It can be considered to file this request toward the end of the 3 months extension period. Payment extension exceeding 3 months can only be requested by filing a letter to the Dutch tax authorities.

One request per entity is sufficient

For all personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax assessments payment extension can be requested by means of filing solely one request (both for extension for 3 months and extension exceeding 3 months). This request can be filed after receipt of a (additional) tax assessment for one of the aforementioned taxes. In case you do not need payment extension for all 5 mentioned tax assessments, those assessments can just be paid.

Please note that a request for payment extension applies per entity. Take this in consideration in case of for example a fiscal unity for corporate income tax or VAT purposes. For example, in case you receive a corporate income tax assessment for a BV which is the parent company for this fiscal unity, the request for payment extension will be considered to be made solely on behalf of this BV. In other words, in this situation no payment extension for VAT and wage tax is then requested for other BVs included in the fiscal unity.

In the below you will find our advice on the next steps to take to obtain payment extension for taxes.

Recommended steps if no request for payment extension has been filed yet

1. Make sure you timely file your tax return, but do not pay the tax due in case of payment problems.
2. Wait for the (additional) tax assessment that will be imposed by the Dutch tax authorities. After receipt of a(n additional) tax assessment, you can request for payment extension. This request automatically applies to all unpaid and future personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax assessments. For all these tax assessments you will get payment extension for 3 months after receipt of the request. In case you do not need payment extension for all 5 mentioned tax assessments, those assessments can just be paid. We recommend requesting for payment extension within the payment term of the (first) tax assessment. This can be done by filing a letter to the Dutch tax authorities or online via a digital form (which requires "Digi-D" login). Consider filing the request at the start of the final week of the payment term of the tax assessment.
3. For payment extension exceeding 3 months additional information needs to be provided to the Dutch tax authorities.
 - If the total outstanding tax liabilities are below EUR 20k: additional information should be provided to the Dutch tax authorities substantiating that the impact of the Covid-19 virus outbreak, for example by means of a significant decrease in turnover / orders compared to earlier months (no need for a statement of a third-party expert).
 - If the total outstanding tax liabilities exceed EUR 20k: a statement of a third party expert (such as an external accountant, tax advisor or consultant) must be provided to the Dutch tax authorities, substantiating that the financial problems are mainly caused by the Covid-19 virus outbreak. It is not yet clear whether such statement is sufficient or whether additional substantiating information needs to be provided.

Please note: for VAT and wage tax it is not needed to separately file a notice 'unable to pay' if you request for payment extension.

The Dutch tax authorities will send a confirmation letter further to the request for payment extension. Due to the expected significant number of requests, the confirmation letter may take some time. You can defer the payment of the tax assessments until the Dutch tax authorities have decided on the request for payment extension.

Already filed a request for payment extension?

- Have you already requested for payment extension before you received a tax assessment? In that case our advice is to request for payment extension after the receipt of a (additional) tax assessment (in line with the above).
- Have you already requested on or after March 12, 2020 for payment extension after you received a tax assessment? Payment extension for 3 months will be granted automatically for all unpaid and future personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax assessments. The Dutch tax authorities will send a confirmation letter further to the request for payment extension.

Specific points of attention for VAT and wage tax

Please note that irrespective of any request for payment extension, tax returns should always be filed timely and correctly.

According to the website of the Dutch tax authorities a request for payment extension will in principle also be considered as a notice 'unable to pay'. This applies for the future tax returns and historic tax

returns. In other words, for VAT and wage tax no separate notice 'unable to pay' needs to be filed. The Dutch tax authorities will review the notice 'unable to pay' and will separately respond to this.

The website of the Dutch tax authorities states that (omission) penalties for late payment of VAT and wage tax will be waived if a request for payment extension is filed. The date as of which these penalties will be waived will be announced. As such we recommend filing an objection against these penalties within 6 weeks. We do note that penalties in case of (intentional) abuse of this payment extension arrangement.

With respect to VAT and wage tax the Blocked account (in Dutch 'G-rekening') can be released if payment extension is granted. A request for payment extension thus needs to be filed. The following steps need to be taken to release the Block account:

1. Request for payment extension (see the recommended steps above)
2. Request for release of the Blocked account by means of a specific form which can be found on the website of the Dutch tax authorities:

https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/themaoverstijgend/programmas_en_formulieren/verzoek_deblokkering_g_rekening

The form needs to be completed as follows:

- o In Section 3 you indicate that you have financial problems as a result of the Covid-19 virus outbreak.
- o In Section 4 you indicate the amount for which release is requested.
- o In Section 5 the permission to settle taxes does not apply for the amount payment extension is granted by the Dutch tax authorities.

Gambling tax, insurance premium tax, landlord tax, environmental taxes (a.o. energy tax, coal tax, waste tax) and similar taxes in the Dutch Caribbean;

General

For all assessments gambling tax, insurance premium tax, landlord tax, environmental taxes (a.o. energy tax, coal tax, waste tax) and similar taxes in the Dutch Caribbean payment extension needs to be requested separately after the receipt of an additional tax assessment. You can include this in the same request as the payment extension request for personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax. But this is only possible in case you received an additional tax assessment and payment extension for this tax needs to be mentioned explicitly in the request.

Otherwise the procedure to obtain payment extension is similar as the procedure as described for personal income tax, Health Insurance Act, corporate income tax, VAT and wage tax. Please note that the below recommended steps apply separately per type of tax as mentioned in the title of this paragraph.

Recommended steps for applying for payment extension – this applies per type of tax!

1. Make sure you timely file your tax return, but do not pay the tax due in case of payment problems.
2. If decided to do so, file a notice 'unable to pay' no later than 14 days following the initial payment deadline of the tax due.
3. Wait for the additional tax assessment, which should follow approx. 3 weeks after the initial payment deadline and file the request for payment extension. This request then should apply to all unpaid and future reassessments for the specific tax it is requested for. All payment deadlines should be extended automatically for 3 months. We recommend filing this request for payment extension within the

payment deadline of the reassessment. This can be done by regular mail or online via a digital form (log in via personal identification required). Consider filing the request at the start of the final week of the payment term of the tax assessment.

4. For payment extension exceeding 3 months additional information needs to be provided to the Dutch tax authorities.
 - If the total outstanding tax liabilities are below EUR 20k: additional information should be provided to the Dutch tax authorities substantiating that the impact of the Covid-19 virus outbreak, for example by means of a significant decrease in turnover / orders compared to earlier months (no need for a statement of a third-party expert).
 - If the total outstanding tax liabilities exceed EUR 20k: a statement of a third party expert (such as an external accountant, tax advisor or consultant) must be provided to the Dutch tax authorities, substantiating that the financial problems are mainly caused by the Covid-19 virus outbreak. It is not yet clear whether such statement is sufficient or whether additional substantiating information needs to be provided.

The Dutch tax authorities will send a confirmation letter further to the request for payment extension. Due to the expected significant number of requests, the confirmation letter may take some time. You can defer the payment of the tax assessments until the Dutch tax authorities have decided on the request for payment extension.

Specific points of attention

Please note that irrespective of any request for payment extension, tax returns should always be filed timely and correctly.

Specific to gambling tax, insurance premium tax, landlord tax and environmental taxes (a.o. energy tax, coal tax, waste tax): Following each tax return period / payment deadline, companies should consider filing a 'notice unable to pay' (please refer to 'Notice unable to pay, is that really necessary?'). We stress that the request for payment extension and the notice unable to pay are in principle separate procedures. This is due to the fact that a request for payment extension is also regarded as a 'notice unable to pay' has only been confirmed to apply to VAT and wage tax and not (yet) for other taxes.

Furthermore, we are not aware of an official confirmation that penalties raised for non or late payment of gambling tax, insurance premium tax, landlord tax and environmental taxes (a.o. energy tax, coal tax, waste tax) will be waived. Should you therefore receive a reassessment including a penalty for non or late payment, we recommend filing an objection against this penalty.

Excise duty (including those on non-alcoholic beverages)

General

For payment extension for excise duty (including those on non-alcoholic beverages) a separate request should be filed following receipt of the reassessment. It is allowed to combine this request with the request for PIT, Health Insurance Act, CIT, VAT and wage tax, however that is only possible in case at the time of filing the request, a reassessment for excise duty has been received. In the request, it should be explicitly stated that the request is also aimed to cover excise duty. Moreover, we recommend filing this request for payment extension also by e-mail to douane.nederland.invordering@belastingdienst.nl.

Recommended steps for applying for payment extension – this applies per type of tax!

1. Make sure you timely file your tax return, but do not pay the tax due in case of payment problems.
2. If decided to do so, file a notice 'unable to pay' no later than 14 days following the initial payment deadline of the tax due.
3. Wait for the additional tax assessment, which should follow approx. 3 weeks after the initial payment deadline and file the request for payment extension. This request then should apply to all unpaid and future reassessment for the particular tax it is requested for. All payment deadlines should be extended automatically for three months.² We recommend filing this request for payment extension within the payment deadline of the reassessment. This can be done by regular mail or online via a digital form (log in via personal identification required). Moreover, we recommend filing this request for payment also by e-mail to douane.nederland.invordering@belastingdienst.nl. Consider filing the request in the last week of the payment deadline.
4. For payment extension exceeding 3 months additional information needs to be provided to the Dutch tax authorities.
 - If the total outstanding tax liabilities are below EUR 20k: additional information should be provided to the Dutch tax authorities substantiating that the impact of the Covid-19 virus outbreak, for example by means of a significant decrease in turnover / orders compared to earlier months (no need for a statement of a third-party expert).
 - If the total outstanding tax liabilities exceed EUR 20k: a statement of a third party expert (such as an external accountant, tax advisor or consultant) must be provided to the Dutch tax authorities, substantiating that the financial problems are mainly caused by the Covid-19 virus outbreak. It is not yet clear whether such statement is sufficient or whether additional substantiating information needs to be provided.

The Dutch Tax and/or Customs Authorities will send a confirmation letter further to the request for payment extension. Due to the expected significant number of requests, the confirmation letter may take some time. You can defer the payment of the tax assessments until the Dutch tax authorities have decided on the request for payment extension.

Specific points of attention

Please note that irrespective of any request for payment extension, tax returns should always be filed timely and correctly.

Following each tax return period / payment deadline, companies should consider filing a 'notice unable to pay' (please refer to 'Notice unable to pay, is that really necessary?'). We stress that the request for payment extension and the notice 'unable to pay' are in principle separate procedures. This is due to the fact that a request for payment extension is also regarded as a 'notice unable to pay' has only been confirmed to apply to VAT and wage tax and not (yet) to excise duty.

Furthermore, we are not aware of an official confirmation that penalties raised for non or late payment of excise duty will be waived. It has been confirmed on the 'green' website of the Dutch Customs Authorities that penalties for non or late payment of excise duty will not be issued. Should you therefore receive a

² This can be derived from the Parliamentary letter dated 2 April 2020. Based on the 'green' website of the Dutch Customs Authorities, it appears still that payment extension will be granted up to the 15th day of the month following the month in which these Covid-19 measures end.

reassessment including a penalty for non or late payment, we recommend filing an objection against this penalty. For completeness sake, please note that penalties for intentional non or late payment of taxes, for example in case of misuse or abuse of the extension measures, will not be waived.

Customs duty and other import taxes

General

Payment extension measures for customs duty and other taxes levied upon import are based on EU customs legislation. We understand that therefore, an executive regulation is currently drafted.

Recommended steps for applying for payment extension

- Do you settle customs duty on a monthly basis, i.e. for 'AGS' declarations or due to a license for entry in the declarant's records? Following the notification to pay and/or the customs duty assessment, send your request for payment extension by e-mail to douane.nederland.invordering@belastingdienst.nl. Motivate the circumstances that have led to the request for payment extension to your best ability and as detailed as possible. It is our recommendation to file a request for payment extension for each notification / assessment and e-mail it to douane.nederland.invordeing@belastingdienst.nl. The 'green' website of the Dutch Customs Authorities does not confirm that filing one request would suffice also for future assessments or payment obligations.
- Do you settle customs duty on an import-by-import basis? For those imports, customs duty must be settled prior to the goods being released from customs supervision. At this stage we cannot foresee in what way payment extension would be possible to obtain for these imports.

Specific points of attention

The reduced rates for tax and collection interest (0.01%) do not apply to customs duty. During the payment extension for customs duty, the regular rates for interest on arrears and credit interest (2-3%) remain applicable.

Energy tax and surcharge durable energy and climate transition (SDE) for the benefit of buyers of electricity and natural gas

General

The Parliamentary letter of 2 April 2020 indicated, after consultation with the energy suppliers, that it will be approved that the energy suppliers are allowed to settle the energy tax and the SDE, inclusive of VAT, for the supply of natural gas and electricity in the months of April, May and June 2020, at a later time than usual. In short - this concerns supplies for which the energy supplier does not invoice advance payments or, if nevertheless invoicing for advance payments, the reconciling invoice relates to a calendar month. The basic principle here is that the energy supplier does not charge energy tax and SDE, inclusive of VAT, to the concerning customers for supplies in April, May and June 2020. This way companies can be granted an extension of payment of the SDE and energy tax. In October 2020, the energy tax and ODE, inclusive of VAT, should be charged by way of an additional invoice and paid to the energy suppliers. Deferred chargeability for months prior to April 2020 has unfortunately proven impossible.

Recommendations

At this moment we are not aware how and to what extent energy suppliers will apply the announced regulation. We advise buyers of electricity and natural gas who pay energy tax and/or SDE to their

energy supplier(s) and wish to obtain temporary extension of payment for this, to contact their energy supplier(s). With reference to the aforementioned consultations and the notice from the State Secretary, a temporary extension of payment may then be requested.

Notice unable to pay, is that really necessary?

The purpose of a notice 'unable to pay' is to mitigate joint and several liability for directors regarding certain tax liabilities (such as VAT and wage tax) in case the company remains unable to pay those. The question often raised is whether a notice 'unable to pay' should be filed if payment extension is requested, i.e. if there are no acute payment problems (for example if payment extension is requested and granted).

According to the website of the Dutch tax authorities a request for payment extension will in principle also be considered as a notice 'unable to pay'. This applies for the future tax returns and historic tax returns. In other words, for VAT and wage tax no separate notice 'unable to pay' needs to be filed. The Dutch tax authorities will review the notice 'unable to pay' and will separately respond to this.

This does not (yet) apply for other taxes such as gambling tax, environmental taxes (a.o. energy tax, coal tax, waste tax) and excise duty (including those on non-alcoholic beverages). We expect that this will be announced on a short notice. Until this is confirmed, we recommend the following for these taxes:

Companies that find themselves in acute payment problems ('unable to pay taxes') in relation to tax debts should file a notice 'unable to pay' no later than 14 days following the initial payment deadline. To be on the safe side we recommend to do this for every tax return until the tax authorities confirm the notice 'unable to pay' by means of a separate confirmation.

Companies that find themselves not in acute, but potential future payment problems ('taxes can still be paid now but potentially not in the near future'), should consider whether or not they would file a notice 'unable to pay'. Relevant considerations are:

- In case a notice 'unable to pay' is not filed in this situation, directors could be held liable if for example in a few months' time the company can still not pay its taxes (for example bankruptcy) and this is confirmed with hindsight as well. Filing a notice 'unable to pay' at a later point in time (for example after the extended payment deadline) is then considered too late and invalid.
- In case a notice 'unable to pay' is filed but the company is not experiencing acute payment problems, the notice is not considered valid according to the current formal rules. Various parties have raised this topic with the Ministry of Finance and we expect (on short notice) further guidance and simplified procedures from the government. We note that filing a notice 'unable to pay' may normally trigger a specific process within the authorities, such as additional request for information to determine whether the filed notice is valid, certain collection measures or even seizure and the authorities can record the filing of the notice in the taxpayers file. We can imagine however that this may be different during the current Covid-19 times, but we cannot exclude the aforementioned process' completely. Should it be decided to file a notice 'unable to pay', we recommend to do so for every tax return until you received confirmation from the authorities the notice is valid.

This tax alert is intended for general information purposes only and should not be regarded as tax advice.

Information

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