

The Netherlands – April 2020

COVID-19 measures impacting the real estate business

In brief

The Dutch government has announced various emergency measures in response to the coronavirus epidemic. For example, affected businesses can rapidly access loans and guarantees, and businesses can be granted more time to pay their tax. Employers can already apply for a short-time working permit and part-time unemployment benefit. Also, deferment of payment can also be obtained for the landlord levy and environmental taxes.

In addition, there have been negotiations between sector organisations in order to agree on relief arrangements available for that particular sector.

In this NewsAlert, we summarise the general, tax and legal measures relevant for the Dutch Real Estate practice.

General

Certain measures adopted by the Dutch government cover all types of sectors (i.e. are not real estate specific) but may still be relevant for the real estate sector. In short, these measures are the following:

- Compensation scheme for affected sectors:

An emergency counter will be set up for sectors that have been severely affected by government measures to combat the coronavirus and which, as a result, see their turnover disappear entirely or to a large extent. This is the case for businesses in hospitality, travel, events and some parts of the cultural sector. Companies in these sectors will receive compensation in the form of a one-off lump sum of four thousand euros. The compensation is currently being devised and has been urgently submitted to the European Commission for (lawful) State aid assessment.

- Temporary Emergency Measure Bridging for Retention of Work (NOW):

If an employer is facing at least a twenty percent expected loss of turnover, it can apply to the Employee Insurance Agency ("UWV") for compensation for a period of three months. The size of the compensation depends on the extent of the turnover decrease. The basis of the NOW is the salary amount from the January 2020 wage bill plus a fixed surcharge of thirty percent for employer's costs (holiday pay, pension contributions and employer's contributions).

Tax

Payment deferral

A request for a three-month deferment shall be granted automatically for personal income tax, corporate income tax, VAT and wage tax. As of 2 April 2020, deferment of payment can also be obtained for the landlord levy and environmental taxes (energy tax/Surcharge for Sustainable Energy, coal tax, waste tax, tax on tap water).

For all the taxes mentioned above, the postponement applies until 19 June 2020.

Reduction of tax interest and recovery interest

If the amount of the final tax assessment is higher than that of your provisional tax assessment as per the reference date, interest will have to be paid on the difference between the tax payable on the two assessments. The current interest on tax for corporate income tax amounts to eight percent. For other taxes, including personal income tax, wage tax and VAT, it is four percent. From 1 June 2020, the tax interest will be temporarily reduced to 0.01% and will apply to all taxes subject to tax interest.

Corona reserve in corporation tax

A loss for the year 2020 can in general be offset against the taxable profit of 2019. However, the corporate income tax return for 2020 is not normally filed until 2021 or later. As the government considers this time gap to be undesirable in the current crisis, companies may charge the loss expected to arise in 2020 as a result of the corona crisis as a 'tax corona reserve' against their profit for 2019. Such reserve may not however exceed the taxable profit for 2019.

Board member decisions and tax residency funds

The place of management is usually the place of residency of the funds and investment vehicles for tax treaty purposes. Therefore, uncertainties with regard to tax residency of funds and investment vehicles are in place due to travel restrictions. The Netherlands has not implemented measures to aid with this issue.

The OECD has published guidance on 3 April 2020. It is stated in the guidance that the OECD does not expect any changes in tax residency status where the change in location is an extraordinary and temporary situation due to COVID-19. This guidance is not binding on states and therefore the implementation of this guidance should be closely monitored.

G-Account holders

An additional measure has been taken for suppliers which use a G-Account (*Geblokkeerde Rekening*). A G-Account is a blocked account that an entrepreneur can use solely to make payroll taxes and VAT payments to the tax authorities.

The government would like to ensure that the temporary tax payment deferment policy also offers relief to these entrepreneurs. In addition to the existing possibility for unblocking surpluses (for instance because the right to recover VAT diminishes the VAT amount to be paid to the VAT authorities), it is now also possible to release the G-Account up to the amount for which special deferral of payment has been granted. This gives these entrepreneurs the same benefits as entrepreneurs without a G-Account (i.e. the free disposal of tax paid to them by their customers).

Work-related costs scheme: staff allowances

The tax free threshold of the work-related costs scheme will be temporarily increased, for the year 2020, from 1.7% to 3% for the first 400,000 EUR of the wage amount per employer.

Legal

Tenant relief

To enable entrepreneurs to pay their bills (on time) and avoid payment arrears, entrepreneurs can borrow money on more favourable terms from their bank (up to a maximum of 1.5 million EUR). The State is the guarantor of this loan.

In addition to the above general rules, some arrangements have been made after negotiations between sector organisations and retailers, but these are only applicable between those parties. These measures include:

- quarterly rents are converted into monthly rents;
- if necessary, retailers will be allowed postponement of payment (at least 50% of the rent) during April, May and June;
- no fines or interests will be charged in case of postponement of payments; and
- retailers do not have to comply with the obligation to operate.

Retailers without a substantial drop in turnover (at least 25% as a result of the COVID-19 crisis) are not entitled to these measures.

The Minister of Environment and Housing together with the landlord organisations and trade associations have announced that emergency measurements will be put in place with respect to evictions of persons as a result of the COVID-19 crisis, extension of temporary lease contracts that are nearing the notice period and landlords that operate vacancy management of assets that are inhabited.

The emergency measurement will apply to lease contracts that end between 1 April 2020 and 30 June 2020. Lease contracts can be extended once with a maximum of three months and until 1 September 2020 at the latest.

Tenants are being given the opportunity to request a temporary extension from their landlord. If the landlord already had agreements before 1 April, for example to sell, demolish or renovate the house, the landlord does not have to extend the contract.

Legal concepts

Dutch law also provides for some legal concepts like (i) force majeure, (ii) unforeseen circumstances and (iii) the standards of reasonableness and fairness, which may be used as a remedy (provided that the criteria are met).

Since the current circumstances, as a result of COVID-19, are extraordinary and unprecedented, it is unsure how judges/courts will decide in such cases. Given this uncertainty, many landlords and tenants are in discussions to see whether they can reach a workable solution. There are, however, increasing signs from the market (i) that the financial consequences as a result of COVID-19 should be shared as much as possible between parties and (ii) that the government should take measures (for example rent relief measures).

Our view

All of the initiatives adopted or proposed by the Dutch government aim to provide the various parties with more breathing room during these difficult times. It is to be assessed for each business if certain measures are relevant and beneficial.

It is important to note that these measures are available for businesses that are significantly impacted by the current crisis. Before applying for any relief measures, it should be considered if that is indeed the case.

In any case, the deadlines and periods for which these measures are applicable, should be closely monitored.

In addition to the legal and tax aspects, there is also a lot of movement in other areas. For more information, we refer to the following page dedicated to the Dutch COVID-19 measures:

<https://www.pwc.nl/en/topics/covid-19.html>

Contacts



Uwe Stoschek

Global Real Estate Tax Leader
+49 30 2636-5286
uwe.stoschek@pwc.com

Jeroen Elink Schuurman

EMEA Real Estate Tax Leader
+31 88 792-6428
jeroen.elink.schuurman@pwc.com

The Netherlands



Jeroen Elink Schuurman

National Real Estate Tax Leader
+31 88 792-6428
jeroen.elink.schuurman@pwc.com

Serge de Lange

Tax Partner
+31 6 53 68 66 60
serge.de.lange@pwc.com

Iris Dingemans

Legal Director
+31 6 10 89 56 84
iris.dingemans@pwc.com

Matthijs Vogel

Tax Partner
+31 6 13 51 50 55
matthijs.vogel@pwc.com

Richard van der Linden

Tax Partner
+31 6 27 82 58 07
richard.van.der.linden@pwc.com

Mark van Wouwe

Legal Director
+31 6 13 59 35 89
mark.van.wouwe@pwc.com



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