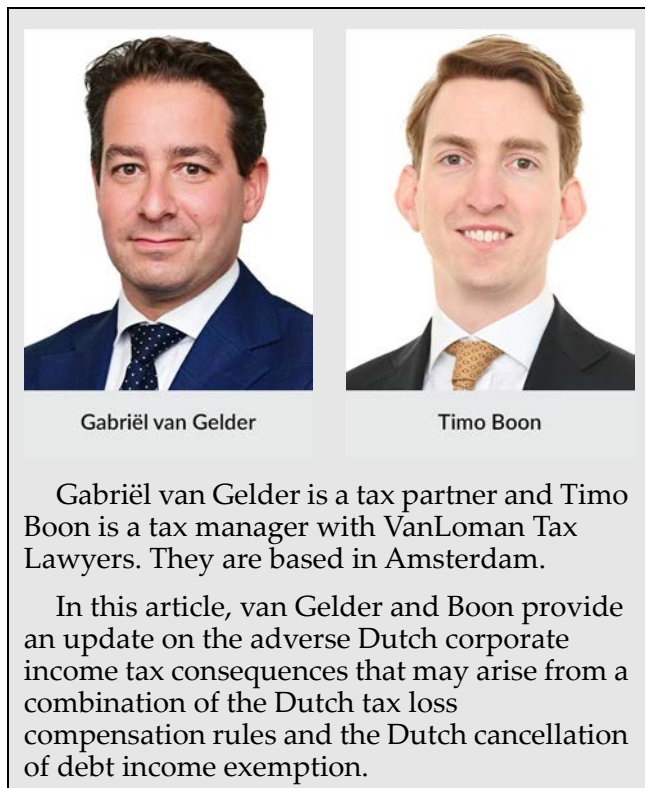


Handle With Care: Dutch Tax Loss Compensation Rules and the Cancellation of Debt Income Exemption

by Gabriël van Gelder and Timo Boon



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In this article, van Gelder and Boon provide an update on the adverse Dutch corporate income tax consequences that may arise from a combination of the Dutch tax loss compensation rules and the Dutch cancellation of debt income exemption.

On October 9, 2023, the Dutch state secretary for finance announced a plan to review and potentially resolve any adverse Dutch tax effects from the concurrence of the Dutch cancellation of debt income (CODI) exemption and Dutch tax loss compensation rules.¹ In this article, we provide some background, an overview of the legal framework, a description of the adverse effects, and a potential solution.

Under Dutch COVID-19 mitigation measures, taxpayers could apply for a deferral of tax payments. The debts should be repaid by October

2027. Many entrepreneurs are in breach of their COVID-19-related tax debt payments.² As a consequence, a debt restructuring may be required for certain entrepreneurs. The Dutch act on confirmation of private restructuring plans (Wet homologatie onderhands akkoord) may form a basis for that debt restructuring. A debt restructuring may, however, require the creditor to forgive part of the debt. That forgiveness may lead to Dutch CODI if forgiveness of the loan is considered a business-like debt forgiveness. There are arguments that debt forgiveness is considered business-like if an unrelated party forgives the debt obligation. A business-like forgiveness of a debt obligation creates CODI at the level of the Dutch debtor. In the case of a business-like debt forgiveness, the resulting accounting profit will be treated accordingly for Dutch tax purposes. Under certain circumstances, the CODI may be exempt under the Dutch CODI exemption, as described below. However, if the debt forgiveness is motivated by a shareholder, then the debt forgiveness will be considered a nonbusiness-like debt forgiveness. A nonbusiness-like forgiveness should not lead to a taxable profit, but also will not allow a tax deduction at the level of the creditor.

The Dutch tax loss compensation rules were amended in 2022. The concurrence between the amended rules and the Dutch CODI exemption may lead to additional Dutch corporate income tax payable upon the business-like forgiveness of debt. The Dutch state secretary for finance's announcement indicates the intent to review and potentially amend the adverse effects of that concurrence. In this article, we address the

¹M.L.A van Rij, Dutch State Secretary of Finance, legislative proposal 36 342 no. 9 (Oct. 4, 2023) (in Dutch).

²Letter on COVID-19-related tax debts from van Rij, Dutch State Secretary of Finance, to Second Chamber of the Parliament (Aug. 31, 2023) (in Dutch).