



## BJA Legal & Tax Committee News

### Loss carry back reserve approved by Parliament

On 18 June 2020 Belgian Parliament adopted a law introducing the so-called "loss carry back reserve" aimed at supporting businesses facing losses during the COVID-19 crisis.

This newly introduced loss carry back reserve will allow companies to offset taxable profits related to tax year 2019, 2020 or 2021 (relating to financial year closed between 13 March 2019 and 31 December 2020) with losses expected to be incurred in the subsequent tax year, i.e. tax year 2020, 2021 or 2022.

In this respect, it is important to note that an important amendment was adopted during the legislative process. In the pre-draft law submitted to Parliament it was initially foreseen that companies would only be able to offset taxable profits related to tax year 2019 or 2020 (relating to financial year closed between 13 March 2019 and 12 March 2020) with losses expected to be incurred in the subsequent tax year, i.e. tax year 2020 or 2021 implying that companies with a financial year end as per 31 March would only be able to carry-back losses incurred during the financial year as per 31 March 2020 to the financial year as per 31 March 2019 whereas the most important COVID-19 losses will be incurred during the financial year as per 31 March 2021. This important amendment is a welcome technical improvement of the law allowing many Belgian subsidiaries and branches of Japanese groups to effectively benefit from this new measure.

The loss carry back reserve will allow companies to claim a temporary exemption for all or part of the tax year 2019, 2020 or 2021 result, corresponding to estimated tax losses (to be) incurred during the financial year related to tax year 2020, 2021 or 2022.

This measure will allow companies, depending on their situation, to pay no or less tax for tax year 2019, 2020 or 2021, or to obtain a (quick) refund of tax prepayments or tax already assessed and paid. The carry-back reserve will thus improve the solvency and liquidity of companies in the very short term.

This exemption will be granted through the creation of a temporary tax-exempt reserve, to be deducted from the taxable results of the financial year closed between 13 March 2019 and 31 December 2020. This reserve will have to be reversed in the financial year in which the losses have been incurred, i.e. the financial year linked to tax year 2020, 2021 or 2022.

Companies will be free to choose the carry-back year but carry-back will obviously be limited to one year.

The law provides for an additional taxable basis increase for the year of recapture, in order to neutralise the potential impact of differing corporate tax rates in the tax years involved (e.g. 29.58% for tax year 2020 vs. 25% for tax year 2021).

This tax-free reserve should not exceed the taxable period result following the so-called "first operation", subject to adjustments for income benefiting from dividend received deduction,

287/7, avenue Louise  
1050 Brussels, Belgium  
T +32 (0)2 644 14 05  
E-mail [info@bj.be](mailto:info@bj.be)  
Website [www.bj.be](http://www.bj.be)

Royal Association | Founded in 1963



innovation income deduction and patent income deduction. In addition, the exempted amount will in any event be capped at a maximum EUR 20 million.

To benefit to a maximum extent from this new rule, taxpayers will have to estimate as precisely as possible their potential losses, as only a 10% variance tolerance will apply and excessive variations will be penalised by a separate tax.

A number of companies subject to a special tax regime will be excluded from this measure, such as investment companies, pension financing organisations, cooperative participation companies and tonnage tax companies. Also excluded are companies executing prohibited equity distributions as of 12 March 2020, such as repurchase of own shares, dividend distribution or capital reduction, as well as companies that have certain links with those in tax havens (i.e. companies holding shares in a tax haven company or having made payments of at least EUR 100,000 to such company, without meeting the required business purpose test. Companies that could already be considered as distressed enterprises on 18 March 2020 are also excluded from this measure.

This loss carry back reserve could result in an important decrease of companies' cash tax exposure, which would be a welcome benefit for companies suffering from the financial consequences of the COVID-19 crisis. The monitoring of taxable results and interaction with other Belgian tax rules, such as the group contribution rule and the 30% EBITDA interest deduction limitation rule, will be needed to effectively benefit from these rules.

Wim Eynatten

BJA Legal & Tax Committee Chair and International Tax Partner, Deloitte

287/7, avenue Louise  
1050 Brussels, Belgium  
T +32 (0)2 644 14 05  
E-mail [info@bjabe](mailto:info@bjabe)  
Website [www.bjabe](http://www.bjabe)

Royal Association | Founded in 1963