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BJA Legal & Tax Committee News

Recovery reserve measure adopted: tax exempt profits to help recover pre-COVID-19 liquidity

As announced in the Federal Government agreement, the Belgian parliament approved a new tax law on 12 November 2020 that aims to support economic recovery following the downfall triggered by the COVID-19 pandemic.

For tax years 2022, 2023 or 2024, Belgian companies will have the possibility to exempt their profits by allocating the financial results to a new tax exempt "recovery reserve". The new measure should allow companies to maintain future profits by exempting them from tax, in turn helping restore their pre-COVID-19 equity levels faster.

In order to benefit from the new provision, companies should constitute and maintain the new recovery reserve in their accounts for as long as the exemption is granted. There would be certain limitations to the measure's application and a maximum amount of profit that can be allocated to the reserve.

Specifically, the exemption would be limited to the amount of book losses recorded in the company's financial statements for financial year 2020 (or 2021 for companies closing their financial years between 1 January 2020 and 31 July 2020), with an overall maximum amount of EUR 20 million.

A company recording no book losses for financial year 2020 or 2021 would not be eligible for this regime.

Exclusions and anti-abuse provisions

A number of companies subject to a special tax regime would be excluded from this measure, such as investment and tonnage tax companies. Also excluded are companies executing prohibited equity distributions, such as own shares repurchase, dividend distribution or capital reduction, as well as companies that have certain links with others 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 passing the required business purpose test).

This measure is also subject to a company maintaining its equity and employment levels; the recovery reserve would have to be recaptured and would become taxable for the taxable period during which the company either executes an equity distribution or reduces its personnel cost to below 85% of the amount recorded in the 2019 financial year.

Impact of this new measure

This new measure could help reduce companies' cash tax exposure in the next few years, which would be a welcome benefit for companies suffering from the financial impact of the COVID-19 pandemic. The monitoring of taxable results and interaction with other Belgian tax rules, such as the group contribution rule, will be needed to effectively benefit from these new rules.

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