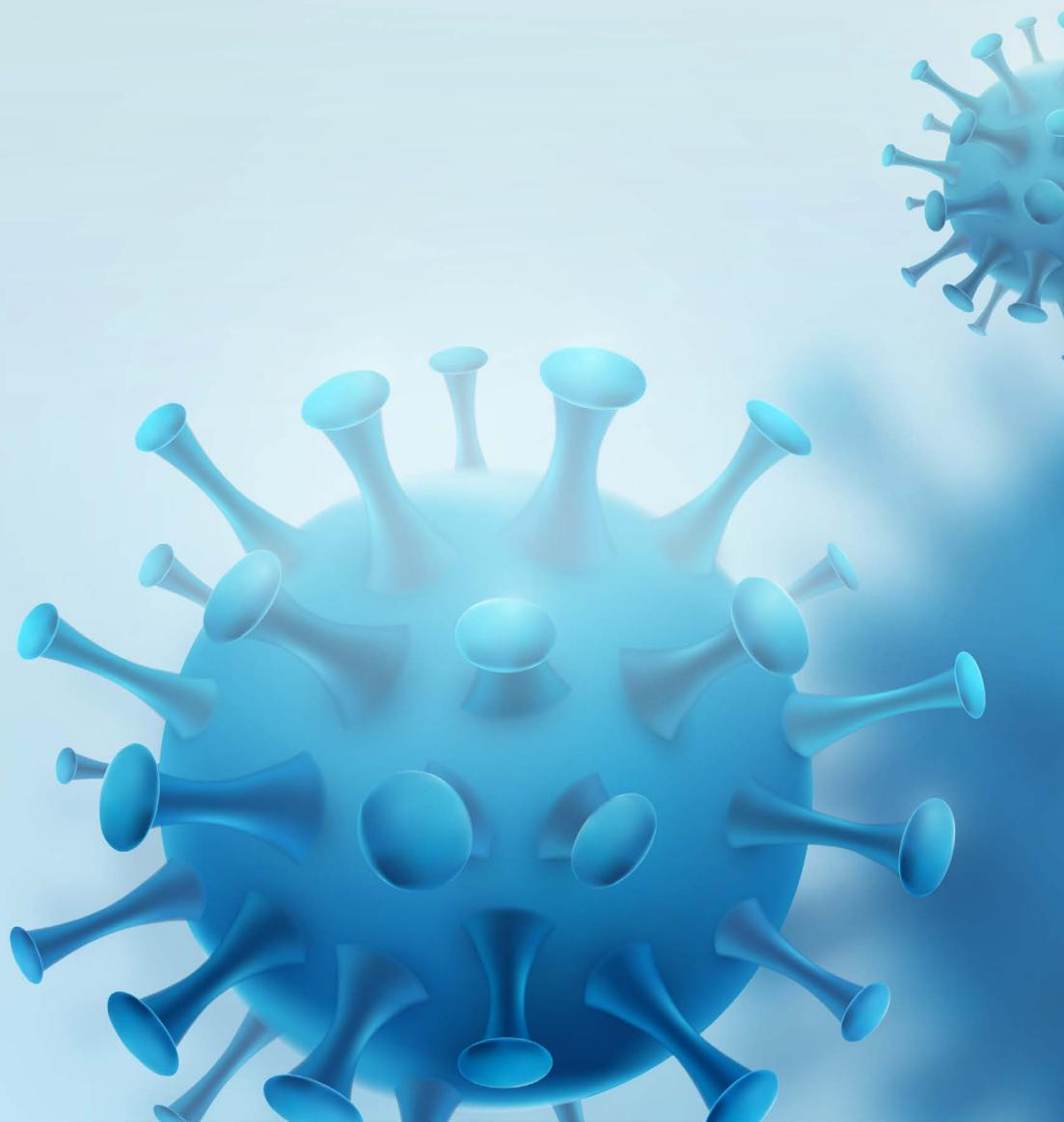


Q&A regarding
**tax relief measures due to
coronavirus**



Q&A regarding tax relief measures due to coronavirus

The Dutch government has recently outlined its crisis measures to support businesses active in the Netherlands during the coronavirus outbreak. Some important tax relief measures in this regard are:

- a. special deferral of payment;
- b. revision of provisional personal income tax and corporate income tax assessments; and
- c. temporary reduction of collection interest and tax interest from 4% and 8% respectively to 0.01%.

Below, we first outline the main rules on tax interest and collection interest. Next, we address several points of attention in a Q&A regarding (i) special deferral of payment, (ii) notification of payment inability, and (iii) revision of provisional tax assessments. Please note that the Q&A is based on current rules, taking into account the more lenient rules that the Dutch government has announced and which the Dutch Tax Administration has published on their website. The lenient rules are only meant for businesses that are facing financial difficulties caused by the coronavirus. Policy of the Dutch Tax Administration regularly changes. We therefore recommend closely monitoring the situation.

Tax interest

- In principle, tax interest is due from the first day of the seventh month after the period on which income tax or corporate income tax is calculated.
- In most cases (financial year equals calendar year) tax interest will be due from 1 July onwards following the tax year. In cases of a split financial year, tax interest will be due from the beginning of the seventh month after that book year.
- A taxpayer may prevent tax interest becoming due by timely asking for a provisional tax assessment.
- A lower provisional tax assessment results in a repayment of already paid tax and a pro rata reduction of a possible early payment discount.

- Tax interest is temporarily reduced to 0.01% (at the moment: 4%, 8% for corporate income tax). The reduction of tax interest on corporate income tax will take effect on 1 June 2020. For personal income tax this will be 1 July 2020.
- In principle, this temporary reduction of tax interest will last until 1 October 2020. If a provisional tax assessment is lowered and this eventually proves to be wrong, there is therefore a risk that tax interest may have gone up again by then. Therefore, it is recommended monitoring developments in this respect in order to be able to request a revised provisional tax assessment in time when necessary.

Collection interest

Collection interest becomes due after a payment term of a tax assessment has lapsed. Each type of tax assessment has a certain payment term (the date on which an assessment is collectable). Collection interest has gone down to 0.01% for all tax debts as of 23 March 2020. This temporary reduction of collection interest will in principle be in place until 1 October 2020. For situations where the taxpayer is entitled to collection interest, the 4% interest rate remains applicable.

Special deferral of payment

1. What does this rule come down to in short?

The Dutch Tax Administration grants special deferral of payment to all businesses that are facing or will be facing liquidity problems due to the coronavirus, unless otherwise required by the interests of the Dutch State.

2. What does 'payment problems' mean?

It seems that 'payment problems' come down to 'payment inability', a concept already known in tax collection matters (see Q&A on the notification of payment inability, question 21 and further). Possibly, this also covers payment

problems that are expected in the short run due to the coronavirus. Whether expected payment problems justify a request for special deferral of payment will depend on the facts and circumstances of each case. It may be that payment problems are already quite urgent so that using the tax relief measure is justified.

3. For which taxes may I ask for deferral of payment?

The more lenient rules apply to corporate income tax, personal income tax, social insurance contributions, payroll taxes, value added tax, gambling tax, excises, consumption tax on nonalcoholic beverages, insurance premium tax, landlord levy, energy tax and other environmental taxes as well as comparable taxes in Caribbean Netherlands. In case of a three-month deferral, a request for deferral of payment automatically applies to all assessments that are imposed in the period from the request for deferral until 1 October 2020. This lenient policy in principle applies until 1 October 2020. It is possible that this policy will be extended. This does not apply to some of these taxes insofar these are levied under application of customs legislation for import.

Postponement of payment of private motor vehicle and motorcycle tax is made possible from taxable period May 2020. You may also ask for deferral of payment for customs duties in relation to payment problems caused by the coronavirus, albeit under different conditions.

The dividend tax is exempt from the possibility to request for special deferral of payment. Payment of dividend weakens companies' liquidity positions, which the government does not wish to stimulate.

4. When does special deferral of payment start?

After the Dutch Tax Administration has received the request they will stop all collection measures and businesses get deferral of payment for three months. Deferral of payment starts immediately. This lenient policy applies to all assessments that are received in the period until 1 October 2020. Please note: for every assessment received within this three-month period deferral ends no later than three months after the request for deferral. If a request for deferral is filed on 1 May deferral ends on 1 August. An assessment that has been received on 1 June must also be paid on 1 August.

As far as customs duties are concerned, the Dutch Tax Administration has announced that businesses may get deferral of payment on request. Deferral of payment for these customs duties will run until no later than the 15th day of the month following the month in which the additional corona measures will end.

Energy suppliers are granted partial deferral of payment of energy tax, surcharge for sustainable energy and value added tax during the months April, May and June of 2020.

5. What are the requirements for a request?

Relatively few procedural rules apply. You can file the request in writing. When doing so, you must specify that the liquidity problems are caused by the coronavirus. You must also include the characteristics of the tax assessment for which you want to ask for deferral of payment. According to the Dutch Tax Administration a request for deferral of payment for personal income tax, social security contributions, corporate income tax, payroll taxes and value added tax may be filed in one go. It is not necessary to wait until a tax assessment has been received for all these five taxes/levies. For other taxes, a request for deferral of payments has to be separately filed for each tax. In addition to a request in writing, it is possible to request special deferral for payment online for the first three months. The relevant online form can be found [here](#). You do not need to attach a statement of an external expert for these first three months of deferral of payment.

Please note that this is different for customs duties. A publication on the website of the Dutch Tax Administration states that it will examine the situation of each business separately and that it may ask for further information.

6. Will the requests be examined substantively at a later stage?

According to information made available so far, a request for deferral of payment will be automatically granted for the aforementioned period of three months. It is unlikely that the Tax Collector will look into these deferral of payment requests into detail during this period; however, we cannot completely exclude that either. If deferral is requested for a longer period than three months, the taxpayer will be given the opportunity to provide additional information in the first three months. However, please bear in mind that abuse may be penalised (you may still get an offense penalty if, for example, you do not pay your value added tax or payroll taxes due to intentional misconduct or gross negligence).

7. Do I have to file a separate request for deferral of payment for each tax assessment or self-assessment?

According to the Dutch Tax Administration a request for deferral of payment for personal income tax, social security contributions, corporate income tax, payroll taxes and value added tax may be filed in one go. It is not necessary to wait until a tax assessment has been received for all these five taxes/levies. For other taxes, a request for deferral of payments has to be separately filed for each tax (see also Q&A 5). From the moment of filing the request for deferral, payment on tax assessments for which deferral has been requested may be postponed for three months. This also applies to new assessments for taxes covered by the request for deferral within this three-month period. Please note: for every assessment received within this three-month period deferral ends no later than three months after the request for deferral. If a request for deferral is filed on 1 May 2020 deferral ends on 1 August 2020. In such case, an assessment that subsequently has been received on for example 1 June 2020 must also be paid on 1 August 2020.

8. When do I need to file a request for deferral of payment for self-assessment taxes such as payroll taxes and value added tax?

It is only possible to request deferral of payment after receiving an additional tax assessment. According to the Dutch Tax Administration, three steps need to be followed:

Step 1: The tax return must be filed before the ultimate return date. The taxes payable do not need to be paid.

Step 2: About three weeks after the ultimate date of return, an additional tax assessment will be imposed. At that moment, it is possible to request for deferral of payment.

Step 3: After the Dutch Tax Administration has received the request for deferral for payment, collection measures will stop automatically and possible default penalties will be annulled at the discretion of Dutch Tax Administration.

The Dutch Tax Administration will send a written confirmation of receipt after the request for deferral of payment has been made. Some delay is expected in this, however.

9. What conditions apply if I want to get deferral of payment for longer than three months?

The following (additional) conditions apply to longer deferral:

- existing payment problems require further deferral;
- these payment problems are mainly caused by the Corona crisis;
- the taxpayer has met its obligation to file a tax return for the tax debt for which deferral is requested.

If the tax debt is less than EUR 20,000, the request for a longer extension must be accompanied by documentary evidence that shows that the (expected) turnover or orders/reservations have decreased significantly in comparison to previous months. For higher tax debts, a third-party expert statement is required.

Moreover, a request for deferral of payment for a period longer than three months, cannot yet be filed online. However, the Dutch Tax Administration announced the availability of an online form mid-June 2020.

For administrative purposes, taxpayers are requested to postpone requesting such extended deferral of payment until filing digitally is possible.

A deferral of more than three months will not be granted if required by the interests of the State (see also Q&A 23). An already granted deferral may likewise be withdrawn.

An extension of deferral is of a temporary nature and will be withdrawn if the circumstances allow so. This may be the case once the government terminates the restrictions imposed on the industry of the business. E.g., in case of a bar or restaurant: when the business is allowed to open again. The Tax Collector may ask for interim repayments if the cash position of the business allows so during deferral of payment. Before withdrawing any deferral, the Tax Collector will enable the business to agree to a fitting repayment schedule which is not bound by a maximum instalment or by other requirements of regular deferral. The Dutch government will announce the details of the payment schedule shortly.

10. What is the statement of an external expert about?

Normally, an external expert will have to state that the business is financially healthy and viable. The statement of an external expert for extended deferral due to the corona crisis must contain at least the following elements:

- a statement that it is likely that real payment problems exist at the moment of filing the request for deferral or that they are expected in the short run. "In the short run" includes the period in which real government restrictions apply to the business in question;
- a statement that it is likely that these payment problems have mainly been caused by the Corona crisis;
- a liquidity forecast which is plausible according to the external expert. This forecast must have been prepared based on the facts and circumstances that are known at the moment of filing the request for deferral of payment.

The State Secretary further announces in a Decree that the external expert must specify in the explanation to the statement which information and data have been provided by the business. The external expert must further clarify this if necessary. It is not necessary that the external expert give a so-called assurance statement that the business meets the conditions.

Finally, the Dutch Government has – as part of the second support measures – announced an additional requirement for deferral of payment. The taxpayer must declare that no dividends or bonuses will be paid and that no shares will be repurchased. The method in which a declaration must be presented will be announced shortly.

11. Who qualify as an external expert?

An external consultant, an external financier, trade organisation, the tax adviser or (own) accountant. It may not be someone within the own business.

12. To whom must I address the request for deferral of payment?

Requests for deferral of payment for the taxes mentioned in the Q&A must be sent to:

Dutch Tax Administration (De Belastingdienst)
Postbus 100
6400 AC HEERLEN
The Netherlands

If the client has a contact person for tax collection issues, please discuss with that person to whom the request may be sent.

Requests for deferral of payment for customs duties must be sent to:

Dutch Customs/Amsterdam
Postbus 3070
6401 DN HEERLEN
The Netherlands

We recommend sending the request by registered mail (with acknowledgement of receipt).

For customs duties, the Dutch Tax Administration also recommends contacting the local Customs contact point. You may also send an email to the Tax Collector of the Dutch Customs Amsterdam: douane.nederland.invordering@belastingdienst.nl

13. Who must send the letter containing the request for deferral of payment?

From a practical point of view, either Loyens & Loeff or the client may file the request for deferral of payment. The preferred method depends on the circumstances. In case of a digital request for deferral of payment, a person working for the business in question may request the deferral of payment online by using his or her own DigiD.

14. Does the business have to provide security?

As we already noted above, the Dutch Tax Administration will automatically grant deferral of payment for a period of three months. At a later stage it may examine whether this request was justified. If the business seeks postponement for a longer period the Dutch Tax Administration may ask for additional information. For tax debts exceeding EUR 20,000 the Tax Collector may still require a statement of an external expert or, for instance, demand security: (i) a pledge on assets such as stock or a receivable, (ii) a mortgage, or (iii) a bank guarantee. If the businesses provides sufficient opportunity for recovery, the Tax Collector normally will not demand security. However, this is based on our experience in practice and this may vary depending on the person representing the Tax Collector in question. If deferral of payment runs for a relatively short period of time (e.g., six months) the Tax Collector is less likely to demand security compared to deferral of payment for a much longer period.

15. I am not facing liquidity problems; may I still use this tax relief measure?

The answer would be 'no'. According to the Dutch government and the Dutch Tax Administration, the tax relief measure is only meant for businesses that are facing liquidity problems due to the coronavirus.

16. May sanctions be imposed if I use the tax relief measure unjustly?

The State Secretary has approved that no default penalties will be imposed for payment defaults from March 12 until and including the date on which deferral of payment due to the Corona crisis ends. If a default penalty has been imposed the Tax Collector will annul this at his own discretion.

No deferral of payment is granted, and already granted deferral of payment will be withdrawn, if the interests of the State so require. This may, amongst others, be the case if the Tax Collector suspects abuse which results in fewer recovery options.

A Decree has yet to be published to determine from which date a penalty will be lowered. In theory, the Dutch Tax Administration may impose an offense penalty if a self-assessment tax is not (timely) paid due to intentional misconduct or gross negligence. Providing incorrect information could result in criminal prosecution. We cannot rule out that the Dutch Tax Administration may use these powers (in extreme cases) if businesses abuse this tax relief measure.

17. What are the downsides of asking for deferral of payment?

The Tax Collector normally has the power to set off unpaid tax with tax he has to repay the business. If the Tax Collector knows about payment problems of a business, for instance because of a notification of payment inability or a request for deferral of payment, he may use his power to set off tax. The State Secretary has announced that during the deferral period because of the Corona crisis the Tax Collector will not set off tax refunds (except for import duties) against the tax debt, unless the business asks for this or the interests of the State are harmed. The latter may be the case if the Tax Collector suspects abuse which results in fewer recovery options.

18. Does the date of filing the special deferral of payment influence the term?

A three-month deferral is granted automatically (with the exception of customs duties and energy tax, see Q&A 4). Furthermore, it cannot be ruled out at this stage that the government will extend the three-month period for all deferrals related to the coronavirus.

19. Can I get a late payment penalty at a later date, if it turns out that I was not entitled to deferral of payment (retroactive effect)?

We do not think this is likely, because of the clear promise by the Dutch government. We assume, however, that the request for deferral was real.

20. Does it matter that a company with payment issues is part of a group?

Companies with payment problems that are part of a group can also request for deferral of payment. The fact that other parts of the group may still have sufficient liquidity and would be able to assist, is not an obstacle to this. The assessment of whether a request for special deferral can be submitted, should be made at the level of the taxpayer/company.

Notification of payment inability

21. What precisely does a notification of payment inability mean?

The notification of payment inability is related to possible director liability for tax debts of the company. This concerns tax debts for payroll taxes, value added tax and a number of other (mostly indirect) taxes. It does not concern corporate income tax, personal income tax and dividend tax. Rules on director liability are not only contained in the Dutch Civil Code, but also in the Dutch Recovery Act 1990.

22. What are the potential consequences if no (timely) notification of payment inability is made?

If the notification of payment inability has not been made (in time), each director is jointly and severally liable to the Tax Collector for unpaid taxes. In that case, an individual director can only exculpate himself of liability if he proves that it is not attributable to him that the company has not complied with its duty of notification and that the non-payment of the taxes does not arise from improper management on his part. If the notification is made in time, a director is only liable if the Tax Collector can demonstrate that the non-payment of the debt is the result of manifestly improper management attributable to the director.

23. What are the disadvantages of a notification of payment inability?

A notification of payment inability may lead the Tax Collector to make earlier use of his authority to set off unpaid tax against tax that has yet to be repaid (see also Q&A 17.)

Furthermore, a notification of payment inability can also have non-fiscal consequences. For example, a notification of payment inability can cause a cash pool agreement with the bank to be immediately terminated under the contract, without any notice being required.

Reporting payment inability to the Dutch Tax Administration can also have consequences for civil law liability of directors. After making a notification of payment inability, the Board must exercise extra vigilance when entering into new obligations on behalf of the company. In principle, if a director has entered into an obligation on behalf of the company, while he knew or should reasonably have understood that the company could not fulfil its obligations and could offer no recourse for the damages of a third party, a serious reproach can be made against him, which leads him to be personally liable towards the third party.

24. What about the notification of payment inability for a fiscal unity for value added tax?

According to the Supreme Court, a notification for a fiscal unity for purposes of value added tax is only made if the 'entity' is in default. However, a fiscal unity is not an 'entity'. The Tax Collector should first hold the individual members of the fiscal unity liable. At that time, each of the members of the fiscal unity is liable, and the directors must make a notification of payment inability. If the Tax Collector holds the members of the fiscal unity liable, he must first send a prior notice of assumption of liability.

25. To whom does this director liability apply?

In addition to the current directors, this also includes the former director(s) during whose management the tax debt has arisen and, in principle, the person who is likely to have determined or partly determined the strategy of the company as if he were a director.

26. When does a payment inability exist?

According to policy, the term 'payment inability' is understood to mean the circumstance in which the relevant entity which has to pay value added tax and/or payroll taxes:

- has insufficient funds to its disposal to pay them;
- temporarily has insufficient funds to its disposal to pay them, but has a reasonable expectation that it will be able fulfil this obligation (at a later date); or
- does have sufficient funds to its disposal to pay them, but does not use these resources to do so in connection with its other due and payable payment obligations.

27. Is the mere payment inability sufficient reason to make a notification of payment inability?

In case of payment inability: yes.

In case of 'expecting not to be able to pay', the question arises if a notification should already be made. The relevant moment to test this is the moment when the notification must be made: immediately after it has been found that the entity is unable to pay. In this context, 'immediately' means that the notification must be made within two weeks after the taxes should have been paid or paid.

28. Who should make the notification of payment inability?

A director of the entity that has payment problems. Each of the directors is authorized to submit the notification. Where appropriate, the adviser can submit the notification for the director, but the director needs to provide material permission. The Tax Collector acknowledges the notification upon receipt.

29. What does the legal concept 'director' encompass?

This term includes the statutory director, the former director under whose management the tax debt has arisen, the de facto director who can be assumed to have acted as if he were a director (such as, for example, a CFO who is not a statutory director), and a legal entity director.

30. What if the director of the company for which a notification of payment inability is made, is a legal entity?

In that case, the report is made for the directors of the legal entity who are a director of the company for which the notification of payment inability is made. In other words, a look-through approach is applied.

31. How do I make a notification of payment inability?

The specific form of the Dutch Tax Administration can be used, but this is not mandatory. The written notification is free of form. It is important that insight is given into the circumstances that have led to the tax not being paid on time.

Further, the letter must mention the names of all entities that file a notification of payment inability and it must be clear that the notification of payment inability is filed on behalf of the directors of these entities. It is also important that the directors of each entity materially agree to the notification of payment inability (see Q&A 28).

32. To whom should I send the notification of payment inability?

To the Tax Collector of the Dutch Tax Administration.
This is centralized at the following address:

Dutch Tax Administration (De Belastingdienst)
Postbus 100
6400 AC HEERLEN
The Netherlands

33. At what moment in time should I make a notification of payment inability?

Immediately after the payment problems have become apparent. In this context, 'immediately' means within two weeks after the tax should have been paid.

34. After I have made a notification of payment inability, what happens next?

The Tax Collector assesses the notification of payment inability. He may request further information in order to gain a better understanding of the causes of the payment inability and the financial position of the company. An untimely report cannot be repaired; a timely but incomplete report can be repaired. If the notification has been made in time and in full, the Tax Collector will confirm this in an individual decision.

35. Does deferral of payment also count as a notification of payment inability?

Based on both case law and policy of the Dutch Tax Administration, a request for deferral of payment can in some cases also be regarded as a notification of payment inability. For this to happen, it is at least necessary that the request for deferral of payment provide insight into the cause of the payment problems.

The Dutch Tax Administration has announced that a request for deferral of payment because of the coronavirus in principle will also be treated as a notification of payment inability. According to the Dutch Tax Administration a separate notification of payment inability is not or no longer needed if a request for deferral for, in particular, payroll taxes and value added tax is filed. However, the Dutch Tax Administration notes it will assess the notification of payment inability and that it will contact the taxpayer. Next, the Dutch Tax Administration notes that the 'implicit notification' mentioned above applies to tax filing periods as of February 2020 as far as payment inability was actually caused by the coronavirus. This is understandable, given that the concepts of payment inability and payment

problems seems to largely agree with one another. Whether a request for deferral of payment always and automatically implies a timely filing of a notification of payment inability is not fully clear.

To avoid discussion about whether the notification of payment inability has been filed in time (see Q&A 33), it is recommended to timely file the notification of payment inability instead of waiting until a request for deferral of payment can be filed. If the request for deferral of payment should include a notification of payment inability we recommend explicitly including so in the request for deferral of payment (see further Q&A 31).

36. The Dutch business unit is part of an international group. The Dutch business unit is still in good shape but it provides liquidity to other parts and subsequently finds itself in payment problems. Does a risk of director liability exist?

Whether there is a risk of director liability, depends on the facts and circumstances of the case. The director must be accusable of 'manifestly improper management' in the period of three years before the notification of payment inability. There must be a causal relationship between this manifestly improper management and failure to pay tax.

If no right thinking director would have entered into this obligation, manifestly improper management could exist. In principle, however, a director has a lot of freedom.

Moreover, director liability only comes into play if the company itself is in default of payment.

Revision of provisional tax assessments

37. For which years can a reduction of a provisional tax assessment be requested?

According to the Dutch Tax Administration, the coronavirus does not affect the income or profits of previous years. That means that the outbreak of the coronavirus can only be a reason to request for a lower provisional income or corporate income tax assessment for the year 2020. If payment of (provisional) tax assessments from previous years encounters problems, deferral of payment can be requested for those assessments.

38. What are the consequences of requesting for a reduction of a provisional tax assessment?

After a request for revision of a provisional tax assessment has been made, the taxpayer immediately pays less taxes. If the amount of the provisional tax assessment is lower than the taxes that have been paid in the first months of 2020, the Dutch Tax Administration will pay back the difference. If this does not provide sufficient financial relief, deferral of payment for the provisional tax assessment may be requested as well.

39. From my draft financial statements, I conclude that my provisional tax assessment has been set too low. Am I obliged to request a higher provisional tax assessment?

No obligation to request a provisional tax assessment exists, nor an obligation to request a revision of a provisional tax assessment if it is clear that it has been set at an incorrect amount.

40. Do I run the risk of getting a penalty if I request for a too low provisional tax assessment?

If a lower provisional tax assessment is requested, the amount of the estimated profits must be realistic. If a too low tax assessment is applied for intentionally, the risk of getting an offense penalty exists. In order to exclude a penalty risk, a request for a lower provisional tax assessment must in any event be based on a reasonably arguable position.