

## **8% interest on corporate income tax due contrary to principle of proportionality**

On November 7, 2024 the Noord-Nederland District Court rendered judgment in a case KPMG Meijburg & Co had initiated concerning the interest on tax due charged on a corporate income tax assessment for the year 2021. The interest rate was 8%. The District Court ruled that the interest rate percentage was contrary to the principle of proportionality and should be set at 4%, which was the percentage that applied in those years to other taxes, such as personal income tax.

This judgment is relevant for all corporate income taxpayers that have been charged interest on tax due on their tax assessments.

### **Background**

Interest on tax due is payable if a tax assessment is not requested on time or if a tax return is not filed on time and an amount in tax is payable. Until recently, a minimum rate of 8% applied for corporate income tax purposes to interest on tax due. That rate is so high because it was linked to the statutory interest rate for business transactions. Since January 1, 2024 it was even increased to 10%. There has always been a great deal of criticism about the rate, because it is not in accordance with commercial rates, is much lower for other taxes and because the high rate appears to above all serve a budgetary purpose.

The idea behind this high rate is that it should encourage taxpayers to file their tax returns on time and to request a provisional tax assessment on time, so that any tax payable is paid as soon as possible after the end of the financial year. Only if a tax assessment is requested within four months of the end of the financial year at exactly the correct amount of the taxable profit, is no interest on tax due charged. In practice, this is not as simple as it seems, because determining the tax position is complex. Many taxpayers are therefore confronted with a high amount of interest on tax due.

### **Exceptive review**

Until the COVID crisis, the rate for interest on tax due was included in legislation. As a result of the prohibition on judicial review, law provisions are not assessed to see whether they are in accordance with general principles of law. However, during the COVID crisis, the government wanted to have the option to be able to quickly change this interest rate and the rate for interest on tax due was therefore transferred to the Decree on Interest on Tax Due and Late Payment Interest. Such a decree can be assessed to see whether it is in accordance with general principles of law, including the principle of proportionality. This is called an exceptive review and that is what the Noord-Nederland District Court has done.

### **The judgment**

The District Court ruled that the Decree on Interest on Tax Due and Late Payment Interest must be declared non-binding, because the government could not in all reasonableness link the interest on tax due rate for corporate income tax purposes to the statutory interest rate for business transactions (with a lower limit of 8%). That interest rate is intended for trade receivables. The District Court ruled that a tax debt that has not yet been formalized is not a trade receivable.

It also noted in the judgment that it had difficulty finding out exactly what purpose the government had in mind/the decree served with the high rate. It is stated in older legislative records that the interest on tax due rules are based on the rules for default interest contained in administrative law, which means that a high rate would be permitted. However, the default interest rules relate to a default in *payment*, whereas interest on tax due is charged for a default with regard to the *tax return*. The District Court therefore did not find this a justification for using such a high rate. It ruled that when weighing the interests involved, the government therefore could not in all reasonableness have arrived at this 8%. The considerable adverse effects are disproportionate compared to the unclear goals the rules serve. According to the District Court, interest on tax due must therefore be charged with due observance of a rate of 4%.

We have not yet spoken to the Dutch tax authorities about this. It is likely that they will appeal this judgment or perhaps appeal directly to the Supreme Court.

#### **KPMG Meijburg & Co comments**

The judgment is relevant for all corporate income taxpayers that have been charged interest on tax due in their tax assessments. This effectively applies to interest on tax due charged since January 1, 2022.

We recommend that you submit a notice of objection against the interest on tax due decision included in the tax assessment. For final tax assessments, the notice of objection must be submitted within six weeks of the date of the tax assessment.

For decisions on interest on tax due included in provisional tax assessments, a request to revise the decision must first be requested. A request for a revised decision can be submitted until six weeks after the date of the final tax assessment for that year.

Feel free to contact Rian Waaijer, tax lawyer, or your usual Meijburg advisor if you have any questions.

KPMG Meijburg & Co  
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