

Advocate General advises the Supreme Court on the sustainability of interest on tax due

On November 7, 2024, the District Court of Noord-Nederland ruled in the case of a client of KPMG Meijburg & Co that the 8% interest rate on tax due for corporate income tax applied in 2022 and 2023 is contrary to the principle of proportionality. The court ruled that the interest on tax due in that case had to be calculated at 4%. The Deputy Minister of Finance lodged an appeal in cassation against this judgment with the Supreme Court. In these proceedings, the opinion of Advocate General (AG) Koopman was received.

The judgment of the District Court led to many objections from other taxpayers against the interest on tax due charged. The Deputy Minister has designated these objections as a class action. The outcome of these cassation proceedings therefore affects the handling of these objections.

Opinion of the Advocate General

The AG concluded, on various grounds, that the rate for interest on tax due of 8% cannot be maintained and should be reduced.

He comes to this conclusion along three different lines. The first line is that the AG concludes that the application of an interest rate of 8% goes beyond what is strictly necessary for the purpose of the interest on tax due; namely to compensate the tax authorities for the interest disadvantage. According to the AG, the use of a higher than strictly necessary rate for interest on tax due is unlawful. The second line is that the AG believes that the principle of motivation has been violated because the disadvantages for corporate taxpayers have not been taken into account – or have not been sufficiently known. The third line is that the AG believes that the legislator could not reasonably have arrived at the set interest rates; not even if the budgetary yield and influencing behavior (incentive to prevent failure to file tax returns on time) are accepted as legitimate aims when assessing the level of the rates for interest on tax due in the light of the principle of proportionality. The higher interest rate for corporate taxpayers leads to an arbitrary distribution of public burdens.

Each of the three separate lines leads the AG to the conclusion that the Deputy Minister's appeal in cassation must be declared unfounded. For the purposes of this specific case, given the size of the dispute in cassation, this should result in a rate for interest on tax due of 4%.

The AG then also discusses what the consequences should be for the other proceedings – including the proceedings belonging to class action – and what interest rate should be used. The question here is whether it is up to the Supreme Court to determine this percentage. In connection with legal certainty, AG Koopman advises the Supreme Court to set this percentage, on the basis of what he considers to be a reasonable outcome. He concludes that it seems to him a reasonable outcome to retain

the statutory (non-commercial) interest of Article 6:119 of the Dutch Civil Code. For the past few years, this would result in an interest rate of:

- 2022: 2%
- 2023: 6%
- 2024: 7%
- 2025: 6%

Continuation and broader meaning

The Advocate General's opinion is an advice to the Supreme Court, but not binding. It is now up to the Supreme Court to decide. KPMG Meijburg & Co endorses the AG's position that the interest rate of 8% should be declared non-binding. Although these proceedings relate to the years 2022 and 2023, we expect that a Supreme Court ruling may also have consequences for later years.

Read the AG's Opinion [here](#) (in Dutch). If you would like to know more, please feel free to contact us or your usual Meijburg advisor.

KPMG Meijburg & Co
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