

Dear Colleagues,

Attached you will find a template letter requesting an exceptional deferment of tax payments in connection with the outbreak of the coronavirus.

What is the current status of this exceptional deferment? / What do you currently need to bear in mind?

In the case of entrepreneurs and self-employed persons an exceptional deferment of payments can be requested in writing. This presumably does not apply to persons who have income from other activities. Taxpayers subject to corporation tax, entrepreneurs who are liable for VAT and withholding agents can, however, apply for a deferment. It is unclear what action should be taken in the case of entrepreneurs who have experienced a sharp drop in turnover, but who still have significant liquid assets.

For the first three months of a deferment no declaration is required from a third-party expert. In the letter it is simply necessary to indicate that the client is experiencing payment problems due to the outbreak of the coronavirus. This is possible for all assessments(!) relating to income tax, corporation tax, VAT and payroll taxes. Three points to bear in mind:

Firstly, VAT and payroll tax returns must be submitted in the usual way. The VAT/payroll tax return is submitted, but the client does not pay the amount owed. The Tax and Customs Administration will send out an additional VAT/payroll tax assessment. A deferment of payments can then be requested in respect of this additional assessment. Fines will be waived if non-payment is a consequence of the coronavirus crisis.

Secondly, provisional income tax/corporation tax assessments for 2020 (current financial year) may be reduced. This can be done via the regular channels (software of intermediary/Mijn Belastingdienst). It is not yet known whether a deferment of payments can be applied for in respect of the assessment that follows the reduction. We will keep a close eye on any relevant communications. You should, of course, think about the consequences that reducing the provisional assessment could have for the final assessment and the interest to be calculated. It therefore makes sense to consider, during the course of 2020, whether you should possibly request a further (higher) provisional assessment!

Thirdly, a request for a deferment of payments is not generally regarded as a valid notification of inability to pay (in the context of directors' liability for payroll taxes and VAT, etc.). Let's assume that notification needs to be submitted within the normal statutory periods (as if no deferment will be requested) until we are informed to the contrary.

What is the result of requesting a deferment of payments?

The request results in the following:

- suspension of collection measures;
- automatic three-month deferment of payments;
- a fine for late payment of VAT or payroll taxes does not have to be paid. The fine is reduced to zero if it is incurred as a consequence of the coronavirus crisis.

For the sake of completeness, in the letter we request that any fine resulting from non-payment or late payment be waived or retrospectively cancelled. Also for the sake of completeness, it makes sense to indicate in the request that it is being submitted as a consequence of the coronavirus crisis.

What if a three-month deferment is not enough?

A three-month deferment may be too short. It is possible to request a deferment for a longer period, although in this case additional information has to be supplied. The precise details are not yet available. It is possible that this may include a declaration from a third-party expert.

What questions remain outstanding?

- How should the term “entrepreneurs” be interpreted? Presumably, the concept of an “entrepreneur” as defined in the individual income tax Acts will be followed for the time being. A person under a hospital order (“TBS’er”) is therefore not an entrepreneur!
- The correspondence from the state secretary and on the website of the Tax and Customs Administration does not yet lay down in black and white that this exceptional deferment can be applied to provisional assessments for past financial years (before 2020). Presumably that is the case, as a return has been submitted for these years;
- In the letter of 12 March the ministers state that “the usual requirements for granting a deferment continue to apply”. If you generally apply for a payment arrangement (not a short deferment requested by telephone), the following conditions must be met:
 - o No outstanding motor vehicle tax assessment, and:
 - o You have a form of security, such as a bank guarantee, mortgage right or pledge. (NB Measures will follow in relation to municipal taxes.)

Currently no mention is made of this on the Tax and Customs Administration website. It seems that this will not play a significant role in relation to the automatic three-month deferment, but we will keep a close eye on the relevant information;

- Will the short three-month deferment present an obstacle to obtaining a longer deferment of payments in the future?