



## Legislative proposal 'Excessive lending from own company'

In a previous newsflash we briefly discussed the draft legislative proposal that was submitted for consultation. This legislative proposal introduces measures to discourage 'major shareholders' (shareholders owning 5% or more in their company) to borrow from their own company by maximizing such borrowings at € 500,000 for Dutch tax purposes, excluding debt borrowings for owner-occupied homes (subject to conditions). The excess amount is regarded as a deemed dividend triggering 'box 2' income taxation. This legislative proposal was submitted to the Dutch Lower Chamber on 17 June 2020, after some amendments following from the earlier consultation round. The amendments are briefly explained below.

### Time line

Due to the corona crisis the State Secretaries of Finance have decided to postpone the date of enactment from 2022 to 2023. Major shareholders therefore have until 31 December 2023 to prepare.

With respect to borrowings by major shareholders from their own company for their owner-occupied house which arise after 31 December 2022, such borrowings will need to be secured by a mortgage to be able to exclude the debt borrowing from the above maximum. Following the postponement of enactment of the legislative proposal with one year, also this date has been postponed with one year.

### Relief for double taxation

The legislative proposal includes some reliefs to avoid double taxation. Double taxation is now proposed to be avoided by introducing a 'negative deemed dividend'. If total borrowings at the end of the year exceed the maximum amount of € 500,000 ('excessive debt'), this will in principle trigger a (taxable) deemed dividend. The maximum amount of debt for the future is then increased by the amount of that deemed dividend. If the debts are repaid in the following year a negative deemed dividend may be taken into account. The maximum amount is then reduced by the amount of this negative deemed dividend to a maximum of € 500,000. This aims to avoid double taxation, for instance, if a dividend payment is used to repay the excessive part of the debts.

Please contact your Taxperience tax advisor should you have any questions or if you anticipate that the above legislation would become applicable to your situation, in which case we would welcome the opportunity to further discuss the possibilities and implications of this new legislation.