



# Sports Law & Taxation

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# The Netherlands:

## Coronareserve 2019 for sports clubs and teams

BY DICK MOLENAAR<sup>1</sup>

### Introduction

The corona crisis has hit the sports business hard. In March 2020, competitions were paused or even stopped because of the risks for spectators and players, as almost every country went into lockdown. Only after two months, the first competitions started up again, but without spectators, who only had the chance to watch the action at home on their TV screens. Together with the performing arts, the sports sector is at the forefront of a crisis, which we have never seen before in modern times.

Economically, the outcome of this blackout period is heavy. No income, while expenses continue. Many governments are helping with financial support schemes, such as for salaries to avoid major layoffs, but very often these were capped at specific amounts of gross salaries, while many sports players are earning more. Therefore, they were asked to bring down their salaries during the lockdown period so that the sports clubs could survive. But even then, the financial result of the corona crisis will be that many sports clubs and teams will make big losses over the year 2020.

The topic of this article is the effect on corporate income tax (CIT) of such losses. The year 2019 has been very good for most sports clubs and teams, because the economy was at its peak then, spectators were spending their money, sponsors were looking for profile, television rights were sold at highest bids and transfer fees were strong. This means CIT to be paid over 2019, while the year 2020 will end with a considerable loss. Would it be possible to balance these out?

The Netherlands has come up with an inventive scheme for loss relief between these two years, which will create cash flow for the sports clubs and teams: the Coronareserve.

This article will discuss this new and one-off tax scheme.

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### Normal loss relief in The Netherlands

The normal loss relief scheme in the CIT in The Netherlands is 1 year backwards and 6 years forward. This scheme had just been restricted per 2019, because the CIT rates are going down (see below) and the government wanted to finance this reduction partially with a restriction in loss relief:

#### CORPORATION TAX (CIT) RATES

year	profit < € 200,000	profit > € 200,000
2018	20%	25%
2019	19%	25%
2020	16.5%	25%
2021	15%	21.7%

For many years, the loss relief had been 3 years backwards and indefinite forward, but when the CIT rates were lowered considerably in 2007, the loss relief was restricted to 1 year backwards and 9 years forward. And now with the trend towards lower CIT rates, the carry forward period has been restricted further to 6 years.

#### LOSS RELIEF

period	backwards	forward	reason
before 2007	3 years	indefinite	
2007–2008	1 year	9 years	lower CIT rates
2009–2011	3 years	6 years	financial crisis (temporary/ optional)
2012–2018	1 year	9 years	back to normal
2019–	1 year	6 years	lower CIT rates

After the financial crisis of 2008-2009, the loss relief had the option to be extended temporarily from 1 year to 3 years backwards, as it had been before the year 2007, but, when the option was used, the carry forward period was restricted to 6 years. This gave companies more room to offset their losses against profits from previous very good years.

But it was criticized that for many companies the help came too late; they went bankrupt before they could even make use of the extended loss carry backwards scheme. The reason was that the loss relief only became effective when the CIT assessment over the loss year had been finalized.



For example, when 2020 is a loss year, the CIT return will be filed in Spring/Summer 2021 and the final tax assessment will follow in the year 2022. After that, the loss relief will be processed by the Dutch *Belastingdienst* (tax authorities), which means that the 2020 loss will be carried backwards to 2019, leading to a tax refund over that year, but this will be effected in 2022, which is 2 years later than the current crisis. And that is unfortunately not very helpful for the cash flow problems occurring now in Spring/Summer 2020.

Also, a provisional loss relief is possible, after the CIT return has been filed, which is, in this example, in Spring/Summer 2021. For this, a separate request needs to be filed at the *Belastingdienst*, which will normally be allowed, and will give an 80% advance on the tax refund following from the loss carried backwards. In this example, the provisional 2019 tax refund will become available in Spring/Summer 2021, which is still a year later than the current financial crisis.

### The Coronareserve in The Netherlands

The Ministry of Finance has been very creative and came in April 2020 with a new scheme never been seen before: the Coronareserve<sup>2</sup>. A simple scheme, in which the estimated loss over 2020 following from the corona crisis can already be deducted in advance from the 2019 taxable profit for CIT and bring down the CIT for that year. This deduction needs to be mentioned in a special fiscal reserve in the CIT return 2019 and will be added again to the taxable income in 2020, offsetting the loss in this year. This means lower or even nil CIT to be paid over the year 2019, which will give direct cash flow relief to the company in 2020.

Very often companies have already paid a provisional CIT assessment during the taxable year, because there is 8.25% interest charged on CIT payments after the taxable year<sup>3</sup>. The provisional tax assessment 2019 can be brought down to nil, either with a request or with the 2019 CIT return, so that the provisional payments can be refunded by the Dutch *Belastingdienst* (tax authorities).

The Coronareserve cannot be higher than the profit in 2019, which means that it cannot create a loss over 2019. This also means that it will not work when 2019 is already a loss.

And the reserve cannot be brought forward further than 2020, but needs to be zero at the end of the year.

The Coronareserve will not be mentioned in the normal annual accounts of the company, because under normal bookkeeping rules a deduction and reserve for occasions occurring after the year do not qualify as an expense in the annual accounts. The Coronareserve is, therefore, only a part of the tax calculation following after the normal determination of the profit, on which the CIT is computed.

<sup>2</sup> *Besluit* (Decree) 6 May 2020, nr. 2020-9594, *Stcrt.* 2020, 26066. It will be converted into legislation in the *Belastingplan* (Tax Plan) 2021, which will be sent to Parliament in September 2020.

<sup>3</sup> This *belastingrente* (tax interest) has been brought down to 0.01% for the period 1 June–1 October 2020 because of the corona crisis.

Also, other elements, such as restrictions on the deduction of certain expenses, the investment allowances and the participation exemption, are not mentioned in the normal annual accounts, but only influence the taxable income and thus the CIT. The Coronareserve can be added to this list.

But different from other tax deductions, the Coronareserve is not a final deduction in 2019, but returns in 2020 as an addition to the taxable income. It will then minimize the loss, as this has already been carried backwards to 2019.

It might happen that the Coronareserve has been used in the CIT return 2019 because a loss in 2020 was expected and that the tax return 2019 has been filed in June 2020, but that later in 2020 the business is going better, leading to a lower loss or perhaps even a profit in 2020. If so, the Coronareserve should not be corrected in 2019, but needs to be added to the 2020 result and CIT 2020 needs to be paid based on the aggregate taxable profit<sup>4</sup>. Officially, the *Belastingdienst* (tax authorities) may have the option to correct the 2019 CIT assessment and lower or remove the Coronareserve, but it is not expected that this will happen. Because the Coronareserve is still only based on a Ministerial Decree and has not been mentioned in the *Wet op de vennootschapsbelasting* (Corporation Tax Act) yet, such legal aspects of the Coronareserve have not been discussed extensively in Parliament yet. The *Staatssecretaris van Financiën* (Minister of Finance) has answered in parliamentary questions that facts and circumstances about the corona-related loss over 2020 at the moment of filing the CIT return 2019 are decisive for the Coronareserve 2019.<sup>5</sup>

But it can also happen that the loss over 2020 is higher than expected and the initial Coronareserve 2019 did not bring the taxable profit over 2019 completely down to nil in 2019. This means that the Coronareserve 2019 can be raised later, either by filing a new CIT return 2019 (if there is no final CIT assessment 2019 issued) or by appeal (if there is already a final CIT assessment 2019).<sup>6</sup> This will give a CIT refund over 2019.

This special Coronareserve is a very good and direct measure, which can help most sports clubs and teams with their financial management in this difficult year. It gives room in the cash flow and may help to avoid restructuring.

The Coronareserve is only available for CIT and not for Personal Income Tax (PIT) in The Netherlands. This means that individual sportspersons cannot make use of it.

<sup>4</sup> This means that CIT needs to be paid over the year 2020. But this is profitable because the CIT rate for the first bracket of € 200,000 has been brought down from 19% to 16.5%.

<sup>5</sup> Answers on parliamentary questions 19 June 2020, nr. 2020-111321.

<sup>6</sup> The initial appeal period is 6 weeks after the final tax assessment but has been extended to 5 years after the taxable year as an extra right for taxpayers. This has been mentioned in art. 65 of the *Algemene wet inzake rijksbelastingen* (General Tax Act). There are some formal conditions to be met, such as that later court decisions cannot be used for appeals under the extended period of 5 years.

## Different accounting years

The preceding suggests that the taxable year is the normal calendar year from 1 January up until 31 December. That is the case for the vast majority of the Dutch companies but can also be different. Especially in the sports business, clubs and teams are using different accounting years, often depending on the competition. For many Dutch football clubs, the accounting year is from 1 July up until 30 June. How can the Coronareserve be used in that situation?

The *Besluit* (Decree) about the Coronareserve allows that the deduction can be used in the latest accounting year ending between 1 January 2019 and 1 March 2020<sup>7</sup> for the estimated loss related to the Corona crisis in the following accounting year.

For football clubs with an accounting year 1 July–30 June, the Corona-related loss will be divided over two accounting years, both 2019-2020 and 2020-2021. Because the Dutch football competition stopped 15 March 2020 and has not been resumed since, it is very likely that almost every club will have a loss over the accounting year 2019-2020. Under the *Besluit* (Decree), this can be deducted from an eventual taxable profit in the accounting year 2018-2019. Because almost every CIT return 2018-2019 will have been filed already when the Coronareserve was announced in April 2020, the deduction of the Coronareserve should be achieved by an amended CIT return (if no final CIT assessment has been issued yet) or by an appeal (if there is already a final CIT tax assessment).

## Taxable for corporation tax (CIT)

But not every sports club or team in The Netherlands should be taxable for CIT, which means that only those in the tax system can use the help of the Coronareserve. The rules for taxability of legal entities in The Netherlands are as follows:

- a *besloten vennootschap* (limited liability company) is always taxable for CIT;<sup>8</sup>
- a *stichting* (foundation) or *vereniging* (society or association) is only taxable for CIT when it runs a business, which means that it makes profits over various years,<sup>9</sup> or when it is in competition with other taxable persons.<sup>10</sup>

Many professional clubs and teams use the *besloten vennootschap* (“BV”) as the legal entity for their activities and are, therefore, taxable for CIT. The BV has shareholders and is a commercial legal entity aiming at making profits. It protects its shareholders and directors against liabilities, up to a certain extent.

<sup>7</sup> *Besluit* (Decree) 6 May 2020, nr. 2020-9594, Stcrt. 2020, 26066.

<sup>8</sup> Art. 2(a) *Wet op de vennootschapsbelasting* (Corporation Tax Act).

<sup>9</sup> Art. 2(e) *Wet op de vennootschapsbelasting* (Corporation Tax Act).

<sup>10</sup> Art. 2(e) *Wet op de vennootschapsbelasting* (Corporation Tax Act).

But there are also sports clubs and teams using the *stichting* (foundation) or *vereniging* (society or association) as the legal entity for their activities. They might fall outside the scope of the CIT, although this is not easy, because already, after a few years with profits, the *stichting* or *vereniging* may be considered to be running a business. Also, the condition that competing with other taxable persons creates taxability for CIT, is easily met by sports clubs or teams, as has been decided by the *Hoge Raad* (Supreme Court) in 2008.<sup>11</sup> This also applies to amateur sports clubs and teams.<sup>12</sup>

It might also be that the sports club or team is a BV, but that the only shareholder is a *stichting*, so that no individuals are owning the club or team.<sup>13</sup> In that case, the normal rules for BV’s apply, which means always taxability for the CIT.

The Netherlands does not have a legal entity comparable to the LLC (USA) or LLP (UK), which protects against liabilities but are transparent for income taxation. They are not taxed under the CIT but under the PIT. There is no such option in the Dutch legal framework.

## Final words

The Corona crisis has brought the Dutch Government to a creative idea for corporation tax: the Coronareserve. A loss in this year, related to the corona crisis, can directly be offset against a taxable profit over the previous year. The tax savings can be used for the cash flow in the current year. This is very helpful for Dutch sports clubs and teams who fall under the Dutch corporate income tax. This applies to almost every club or team, regardless of the legal entity. The Coronareserve needs to be added to the result of this year and will offset the loss resulting from the corona crisis.

Sports clubs and teams will also have other financial support from the Dutch government, such as the scheme for salary expenses (NOW<sup>14</sup>) and the one-off € 4,000 (TOGS<sup>15</sup>) and 50,000 (TVL<sup>16</sup>), but even then the losses will be considerable from mid-March 2020 onwards.

<sup>11</sup> *Hoge Raad* (Supreme Court) 17 October 2008, nr. 43641, BNB 2009/36 about a football club with the legal form of a *vereniging*.

<sup>12</sup> Although these amateur clubs and teams may be helped by the special deduction in the CIT for working with volunteers.

<sup>13</sup> An example is Sparta Rotterdam, where the *Stichting Sparta 1888* owns the shares of Sparta Rotterdam BV. The board of directors of the *stichting* is looking after the cultural identity of this oldest professional football club of The Netherlands.

<sup>14</sup> NOW means *Nood Ondersteuning Werknemers* (Emergency Support Employees), which gives 90% support for salaries up to 9,000 gross per month.

<sup>15</sup> TOGS means *Tijdelijke Ondersteuning Getroffen Sectoren* (Temporary Support Hit Sectors) and was just 4,000 per company in early April 2020. This support is tax-free for CIT.

<sup>16</sup> TVL means *Tegemoetkoming Vaste Lasten* (Support Fixed Expenses) and goes up to € 50,000 per company, depending on the loss of turnover between June-September 2019 and June-September 2020. This support is also tax-free for CIT.

The Coronareserve is a very helpful extra support scheme which may avoid paying high CIT over the year 2019 because of a good result, but only get the normal loss relief later in 2021 or 2022. It gives more financial room for sports clubs and teams to survive this very strange crisis.