



EXCESSIVE BORROWING FROM OWN COMPANY ACT EXPLAINED

Advisory Handbook 2025



The Excessive Borrowing from Own Company Act broadly stipulates that a director and major shareholder who has borrowed excessively from their own private limited company (BV) must pay tax on these loans. A threshold of €500,000 applies. For the application of this threshold, more than just a loan to the director and major shareholder may be considered. Furthermore, there are possible exceptions to the rule. The key assessment date in 2025 is 31 December 2025. You, therefore, have until that time to determine how this law affects your situation in 2025 and whether you need or can take any action.

WHO DOES THE LAW APPLY TO?

The Excessive Borrowing from Own Company Act may apply to anyone:

- who has a so-called substantial interest in one or more companies, and
- who has debts to those companies, or whose partner or so-called connected persons (including their partners) have debts to those companies.

Broadly speaking, an individual has a substantial interest if they:

- hold at least 5% of the shares, and/or
- have the right to acquire 5% of the shares, and/or
- hold profit certificates that relate to at least 5% of the annual profit or at least 5% of the liquidation proceeds.

A director and major shareholder generally refers to an individual who, based on the above rules, holds a substantial interest. Such a director and major may be affected by this law.

Tip!

The rules for determining whether someone has a substantial interest can be complex. For example, you may also hold a substantial interest in a company where you do not directly own the shares but indirectly through another company. This means you may hold a substantial interest in multiple companies. Consult with our advisors to determine whether you have a substantial interest in your situation, which companies this applies to, and how the rules affect you.

Note!

This advisory handbook focuses primarily on a substantial interest in a private limited company (BV). However, a substantial interest may also exist in other entities, such as a participating interest in an open mutual fund, membership rights in a cooperative, or a share in another (Dutch or foreign) company whose capital is wholly or partially divided into shares. The Wet Excessive Borrowing from Own Company may also apply in these cases.

DEBTS EXCEEDING €500,000 FOR DGA AND PARTNER

A director and major shareholder with debts to their own BV that exceed €500,000 on 31 December 2025 may be affected by this law in 2025. This concerns not only the director and major shareholder debts but also the debts of the director and major shareholder's fiscal partner. To assess whether the €500,000 threshold is exceeded, the debts of the director and major shareholder's and their fiscal partner are added together. If you have a receivable from the BV in addition to a debt, these are not offset; only the debts are considered.

Note!

If you and/or your fiscal partner have a substantial interest in multiple BVs, you must add together all the debts that you and your fiscal partner have with all these BVs. Only if the total on 31 December 2025 is not higher than €500,000 will you avoid the consequences of the law in 2025. You cannot borrow a maximum of €500,000 per BV but may borrow a maximum of €500,000 in total from all your BVs together with your fiscal partner.

If you have already paid tax in 2023 or 2024 on an excessive debt with your own BV, the threshold of €500,000 will be increased by the amount of the debt for which you have already settled. You will therefore not pay tax again on a debt for which you have previously paid tax.

Example

You have a substantial interest in BV X and a substantial interest in BV Y. You have borrowed money from both BVs. On 31 December 2025, your debt to BV X amounts to €350,000, and to BV Y, €500,000. Together, your debts exceed €500,000. If you take no action, you will have to pay tax on an amount of €350,000 in 2025 (€850,000 minus €500,000).

If the total debt on 31 December 2024 was also €850,000, you would have already paid tax on €350,000 in 2024 (€850,000 minus €500,000). In 2025, you will not have to pay tax again on the €350,000 already included in 2024. The threshold will be increased by this €350,000, meaning your threshold in 2025 is €850,000 (€500,000 + €350,000).

ALSO INDIRECT DEBTS AND OTHER RIGHTS

When assessing your debts, you must consider all civil-law debt relationships and obligations, including indirect debts.

Note!

If the director and major shareholder and/or their fiscal partner can only obtain external financing if the BV provides a guarantee, this loan also counts towards the assessment of whether the debts exceed €500,000 on 31 December 2025. If the director and major shareholder and/or their fiscal partner can obtain external financing without a guarantee, but the BV's guarantee provides better terms, the loan does not count.

Tip!

Consult with our advisors to determine whether your situation involves any civil-law debt relationships and obligations and how to handle guarantee arrangements by the BV.

ALSO DEBTS OF CONNECTED PERSONS

If your direct blood relatives or in-laws have debts to your BV, you must include these debts for the portion that exceeds €500,000 in your assessment. Direct blood relatives include children, grandchildren, great-grandchildren, and their ancestors (parents, grandparents, great-grandparents) of you and/or your fiscal partner.

Example

If, for instance, your child has borrowed €400,000 from your BV in 2025, you do not need to include this. However, if your child's debt to your BV on 31 December 2025 is €600,000, you must include €100,000 when assessing whether you exceed the €500,000 threshold.

If you personally borrowed €450,000 from your BV in 2025, this means you will need to pay tax on €50,000 ($€450,000 + €100,000 - €500,000$).

Tip!

This rule does not apply if your blood relative has a substantial interest in your BV. In such cases, they must assess for themselves to what extent the law applies to them. Their debt is not included in your assessment.

Example

If your child from the previous example has a substantial interest in your BV, the €100,000 is not included in your assessment. You will not pay tax. However, your child must pay tax on €100,000 ($€600,000 - €500,000$).

EXCEPTION FOR LOANS RELATING TO YOUR PRIMARY RESIDENCE

Loans relating to your primary residence, also referred to as home loans, are exempt from the assessment. These do not count towards determining whether you have debts to your BV(s) exceeding €500,000 on 31 December 2025. However, this only applies if the loan meets the statutory conditions for mortgage interest deduction in income tax. Additionally, a right of mortgage must be provided to the BV.

Note!

If no mortgage has been granted, the loan relating to your primary residence will count. This also applies if a mortgage has been granted but the loan relating to your primary residence does not meet the statutory conditions for interest deduction in income tax. If a mortgage has been granted but the registration amount of that mortgage is lower than the loan amount, the portion of the loan exceeding this registration amount will also count.

Tip!

If your loan relating to your primary residence from the BV existed on 31 December 2022, the requirement for a mortgage to be provided does not apply. These loans only need to meet the statutory conditions for interest deduction in income tax.

Example

On 31 December 2025, you have a debt of €500,000 to your BV, which you used to purchase your owner-occupied home. Additionally, in 2025, you borrowed another €500,000 from your BV for other purposes.

The loan for your owner-occupied home meets the statutory conditions for mortgage interest deduction in income tax. However, you have not granted a mortgage for this debt to your BV. If this home loan already existed on 31 December 2022, you will not be affected by the Excessive Borrowing from Own Company Act. The home loan does not count for the assessment, and the other loan is not higher than €500,000.

If the loan was provided after 31 December 2022, you will have to pay tax in 2025 on an amount of €500,000 (€500,000 + €500,000 - €500,000). This is because the home loan will count in the assessment.

Tip!

The exemption for home loans also applies to debts of direct blood relatives or in-laws. If these are home loans that meet the conditions described above, they will not be included in your assessment.

PEILDATUM 31 DECEMBER 2025

On 31 December 2025, the assessment will take place for the year 2025 to determine whether your debts exceed €500,000. This will be done in accordance with all the applicable rules described above.

If your debts at this time exceed €500,000 and this was not the case in 2024, you still have until then to take action. Consult with our advisors to explore any available options.

Tip!

For assessing the €500,000 limit, you may not offset receivables you have from your BV(s) against debts you owe to your BV(s). Therefore, it may be advisable to officially settle these receivables and debts before 31 December 2025. Consult one of our advisors about this.

TAX RATE

You are liable for tax in Box 2 on any excess above €500,000 (or the higher threshold that results from paying tax on excessive borrowing in 2023 or 2024). In 2025, two rates apply in Box 2:

- The first €67,804 of Box 2 income (or double this amount for fiscal partners) is taxed at 24.5%.
- Any income exceeding this amount is taxed at 31%.

CONSEQUENCES OF LATE REPAYMENT OF THE DEBT

If you have paid tax in 2023 or 2024 on the portion of your debts that exceed the €500,000 threshold, this threshold will be increased by the amount of debt on which you have already paid tax. This prevents you from having to pay tax again each year on the excess above the threshold.

The same system applies if you pay tax in 2025 on the portion of your debts that exceed the €500,000 threshold (or a higher threshold that has arisen).

If you later repay these debts, it results in negative income in Box 2. This negative income is offset against other positive income in Box 2 in that year, or it leads to a loss in Box 2. This loss can then be offset against Box 2 income of the previous year or with Box 2 income of the following six years.

Example

You hold a substantial interest in a BV and on 31 December 2024, you have a debt of €850,000 to this BV. This debt arose in 2024. You must pay tax on €350,000 in 2024 (€850,000 minus €500,000). In your 2024 income tax return, you owe €109,805 in tax (24.5% on €67,000 plus 33% on €283,000).

If you repay €350,000 of the debt in 2025 (and have no other income from Box 2 in that year), this creates a loss of €350,000 in Box 2. You can fully offset this loss against the profit from 2024, resulting in a refund of the €109,805 you paid in tax in 2024. The remaining debt after repayment is €500,000, which matches the threshold as of 31 December 2025.

Tip!

Would you like to know more about the consequences of late repayment in your situation? Discuss this with our advisors.

DEBTS UP TO €500,000

If your debts are less than €500,000, you may still face a risk of tax assessment if the Dutch Tax Authorities believe there is a disguised dividend distribution. However, the Dutch Tax Authorities must be able to substantiate this claim.

To reduce this risk, ensure your loans are always documented in a written agreement with commercial terms. This makes it significantly harder for the Dutch Tax Authorities to prove a disguised dividend distribution.

ONLY TAX IMPACT

If your BV is affected by the consequences of this law and must pay tax on the excess above €500,000, this has purely fiscal implications. In other words, the debt still exists. You may also continue to list the debt in your income tax return.

IN CONCLUSION

The Excessive Borrowing Act can once again result in an unwelcome tax settlement on 31 December 2025. Do you, your partner, or any connected persons have debts to your BV? Consult with our advisors to determine the consequences of the law and the reduction of the threshold for your situation.

CONTACT

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Disclaimer

Although the utmost care has been taken in the preparation of this advisory handbook, no liability is accepted for any inaccuracies or omissions. Due to the broad and general nature of the advisory handbook, it is not intended to provide all information necessary for making financial decisions.