

Facilitating and extending the win-win loan in Flanders, Wallonia and Brussels

Since 1 September 2006, private individuals residing in the Flemish Region have been able to benefit from a reduction in personal income tax by lending money to companies that can use financial support. Due to the coronavirus, the possibilities of the win-win loan have been eased and broadened.

The corona crisis has made it difficult for many companies to continue to pay all their invoices. They need extra capital.

In order to support these companies, the existing win-win loan was extended (from October 2020).

Since 1 September 2006, private individuals residing in the Flemish Region have been able to benefit from a reduction in personal income tax by lending money to companies. This creates a win-win situation on the one hand for the natural person and on the other hand for the company or self-employed person.

In order to make the win-win loan even more attractive, the legislator already made a number of adjustments in 2011. For example, the condition that the borrower must be a start-up company was removed.

The win-win loan is a success. Since 2006, almost half a billion euros of capital has already been mobilised via the win-win loan.

What does this win-win loan mean in concrete terms? The win-win loan is a subordinated loan granted by a natural person to a company with the aim of increasing the company's financial strength and rewarding the lender with a tax advantage.

Through the win-win loan, the borrower could take out loans of up to €200,000. This is now increased to as much as € 300,000.00.

The maximum amount that could be lent out by the lender will also be adjusted. Previously this amount was € 50 000.00, now it is a maximum of € 75 000.00. If this is not enough for the borrower, he will have to call on several friends or relatives.

The win-win loan had a fixed term of eight years. As a result of the adjustments, the term of the loan may vary between five and ten years. In addition, it will be possible to extend the term of loans maturing in 2020 by a maximum of two years.

Nowadays this loan can be paid off via a repayment table or in one go after eight years. In addition, it can be stipulated that the borrower can repay the win-win loan early by a one-off payment of the outstanding balance in principal together with interest. In addition, the lender may demand early repayment of the loan in the event, for example, of bankruptcy or cessation of business.

Small shareholders owning a maximum of 5% of the shares are also allowed to grant a win-win loan.

The win-win loan certainly has its advantages. For example, the win-win loan provides the lender with an annual tax reduction equal to 2.5% on the outstanding capital. In addition, the lender can benefit from a one-off tax reduction of 30% on the amount not repaid if the borrower is unable to repay the remaining amount.

This will be temporarily increased to 40% for agreements concluded until 31 December 2021 and for the whole term of the agreement.

Attention: the borrower will also have to pay interest on the win-win loan. These are calculated by multiplying the balance of the win-win loan by the interest rate laid down in the deed. This rate is not freely determinable: on the one hand, it may not exceed the legal rate in force on the date on which the participating loan is concluded and, on the other hand, it may not be less than half the same rate. In addition, 21% withholding tax is deducted from the interest paid by the enterprise or self-employed person.

In order to benefit from the win-win loan, the borrower and the lender must meet a number of conditions.

The borrower (Article 3 §2 Decree 19 May 2006):

- Registered with the Crossroads Bank for Enterprises or with a social security organisation;
- Main place of business in the Flemish Region;
- If it is not a natural person: a commercial company or a civil company with the legal form of a commercial company.

The lender (Article 3, §3 Decree 19 May 2006):

- Natural person who lends money outside the context of his commercial or professional activities;
- Not an employee of the borrower;
- Not the spouse or legally cohabiting partner of the borrower-independent person at the time the loan is contracted;
- If the borrower is a legal entity: Not a shareholder of the legal entity, nor appointed or acting as a director, manager or in a similar capacity within that legal entity. These rules also apply to the spouse or legal cohabitant of the creditor;
- No borrower in another other win-win loan (Article 3, §4 Decree 19 May 2006);
- Resident of the Flemish Region.

The popularity of the win-win loan in the current Corona crisis is clear: in the first half of 2020, 1,633 loans worth 36 million euros were taken out, compared to 1,344 loans for a total of 31.6 million euros in the same period last year.

Sufficient capital is also available: in Belgium there are no less than 280 billion euros in savings accounts.

What about Wallonia?

The Walloon win-win loan, known as the "prêt coup de pouce" or "kick-start loan", is a subordinated loan that allows the self-employed and SMEs in the Walloon Region to borrow money from natural persons outside the company.

Since its launch in Wallonia in September 2016, the kick-start loan has been a real success. On 30 June 2019, 574 loans amounting to €10,744,234.00 were registered with an average loan of €18,718.00. The kick-start loan was intended for a limited period until 31 December 2019, but was extended until 31 December 2021.

The kick-start loan enables the borrower to take out loans of up to € 100,000. The maximum amount that can be lent by a lender is € 50,000.00.

The kick-start loan can have a term of 4, 6 or 8 years.

Unlike in Flanders, the lender has no choice but to repay the loan in one go on the due date. There is no possibility of full or partial early payment.

The kick-start loan has the same advantages as the win-win loan. For example, the kick-start loan offers an annual tax reduction of 4% on the loan amount for the first four years and a reduction of 2.5% thereafter. The maximum annual benefit is therefore € 2,000.00 for the first four years and € 1,250.00 afterwards.

The borrower also has to pay interest. This is calculated by multiplying the amount borrowed by the interest rate laid down in the deed. As with the win-win loan, this interest is not freely determinable. On the one hand, it may not exceed the legal interest rate in force on the date the loan is concluded and, on the other hand, it may not be less than half of the same interest rate. This rate must be a minimum of 0.875% and a maximum of 1.75% (legal rate in 2020).

In order to be eligible for the kick-start loan, the borrower and the lender must meet a number of conditions.

On the date the loan is taken out, the borrower is:

- registered with the Crossroads Bank for Enterprises or with a social security organisation for the self-employed;
- established in the Walloon Region;
- not engaged in an activity or does not have an object consisting exclusively or mainly of :
 - the provision of financial services to third parties;
 - making financial investments;
 - the collective investment of capital;
 - the construction, acquisition, management, development, sale or lease of real estate for one's own account, or the holding of interests in companies with a similar purpose;
 - a company in which immovable property or other rights in rem on such property are invested, including natural persons exercising a mandate or functions as referred to in Article 32, first paragraph, 1° of the Income Tax Code, their spouse or children, when these persons or their spouse or children have the legal enjoyment of the income of these persons or the use thereof; and
- not subject to collective insolvency proceedings and is not subject to the conditions for collective insolvency proceedings.

In order to make the kick-start loan more attractive, the condition that the borrower must be a young company under 5 years of age has been abolished.

In addition, if the borrower is a legal person, it is :

- either a company with a commercial form, irrespective of whether it has a civil or commercial purpose, or an association or foundation within the meaning of the law of 27 June 1921 on non-profit associations, international non-profit associations and foundations;
- not an undertaking set up to conclude management or administration contracts or which derives the majority of its profits from management or administration contracts;
- not listed on a stock exchange;
- not formed in connection with a merger or division of undertakings; and
- the borrower has not yet made any capital reduction or dividend payment.

At the date of the loan and during the term of the loan, the lender :

- not an employee of the borrower;
- if the borrower is a self-employed natural person: not the spouse or legal cohabitant of the borrower; and
- if the borrower is a legal entity: the lender as well as his spouse or legally cohabiting partner is neither a shareholder of that legal entity, nor appointed or acting as director, manager, delegated to the daily management, or as holder of a similar mandate within that legal entity, nor does he, as permanent representative of another company, exercise a mandate as director, manager, liquidator or similar function;
- no borrower of another loan that meets the conditions of this decree and its implementing decrees.

Within the framework of the post-Covid recovery, the Walloon Minister of Economy, Willy Borsus, is also working on a reform of the kick-start loan.

The first amendment envisaged by the Minister for Economic Affairs concerns the current ceilings for the amounts lent and borrowed. It provides for the possibility of borrowing up to € 250,000 compared to the current € 100,000. This increase in the ceiling would be accompanied by a revision of the lender's tax credit by 4% in the first two years (compared with the current four years) and 2.5% in subsequent years. The reform could also enable the borrower to repay the loan in instalments, a possibility which does not currently exist.

The Minister of Economic Affairs is also trying to extend the system. Two hypotheses are being considered:

- Sowalfin could provide one euro of public loans for every private euro lent by the company;
- linking the Solwafin guarantee to each loan.

What about Brussels ?

The corona crisis has made possible the Brussels equivalent of the win-win loan and the "prêt coup de pouce" ("kick-start loan"). This is the proxi loan. On 11 June 2020, the Brussels Government approved a draft decree establishing the proxi-loan.

The proxi-loan should also enable individuals to lend money to Brussels entrepreneurs while benefiting from tax advantages in the form of a tax credit and a guarantee.

This proxi loan is very similar to the Flemish win-win loan and the Walloon kick-start loan. The proxi loan allows the borrower, self-employed or manager of an SME with an economic activity in the Brussels-Capital Region, to borrow money for a fixed period of 5 or 8 years at a reduced rate from a private individual with a maximum of €250,000 for the borrower.

The interest rate has yet to be fixed by decree.

The lender may lend up to €50,000.00 per year with a maximum of €200,000.00. The lender receives a tax credit of 4% of the amount for three years and 2.5% for subsequent years. The Brussels-Capital Region limits the risk by guaranteeing 30% of the amount if the borrower defaults.

However, on a temporary basis, and in order to help businesses cope with the consequences of the health crisis, in the years 2020 and 2021 the maximum amount per year and per lender will be increased to €75,000.00, while the maximum amount per borrower will be increased to €300,000.00.

If you have doubts as to whether it is advantageous in your specific case to take out a win-win loan, or if you still have some questions about this, be sure to consult one of our specialists.

If you would like to have the win-win loan agreement drawn up, you can also contact us!