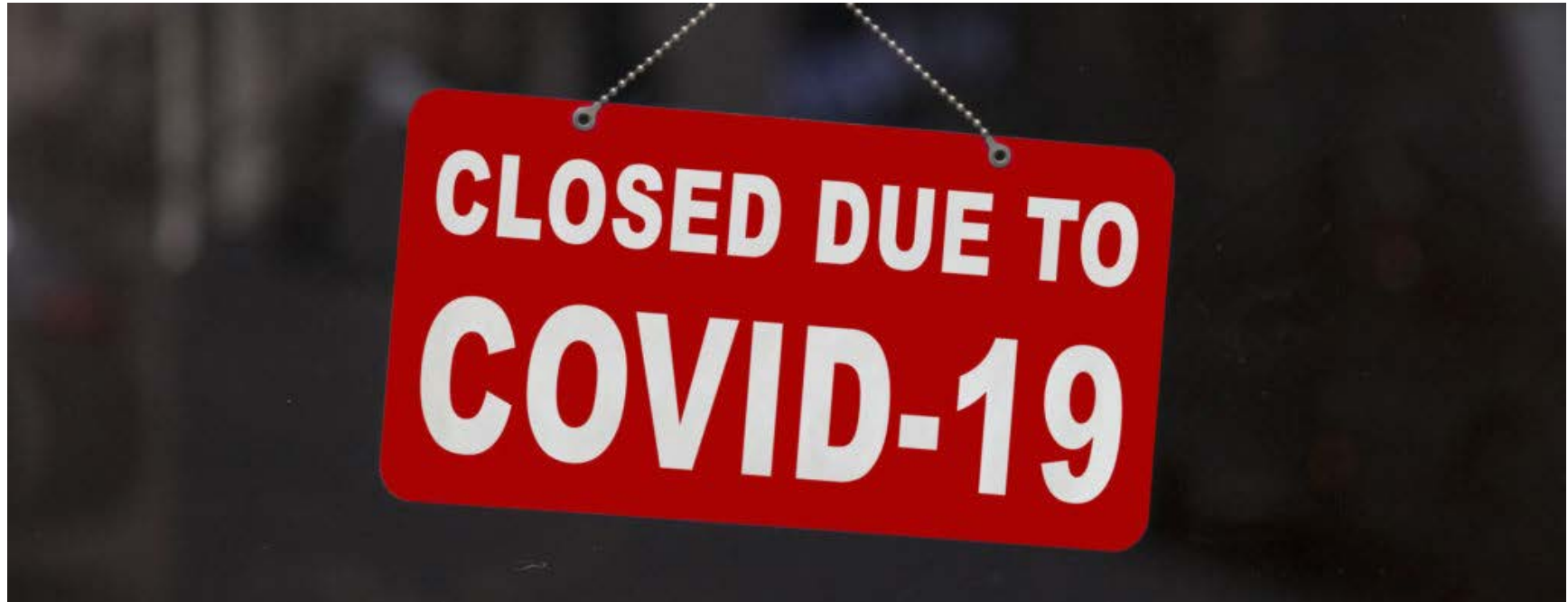




# Entering the post- COVID era: Reconstruction reserve

—  
17<sup>th</sup> December 2020

# COVID-19 pandemic affects businesses



# Governments continue to help businesses



# Current (tax) measures taken by the Belgian authorities

An overview of the measures taken by the tax authorities is available.

- NL: <https://financien.belgium.be/nl/ondernemingen/coronavirus>
- FR: <https://finances.belgium.be/fr/entreprises/coronavirus>

The regional authorities have also announced certain (tax) measures.

- Flanders: <https://www.vlaio.be/nl/begeleiding-advies/moeilijkhedencoronavirus/specifieke-maatregelen-mbt-het-coronavirus/coronavirus>
- Wallonia: <https://www.1890.be/>
- Brussels: <https://1819.brussels/>

KPMG & K law have a website dedicated to the government response:  
<https://home.kpmg/be/en/home/insights/2020/03/txl-tax-legal-update.html>



# New kid on the block: Reconstruction reserve

# Reconstruction reserve in short



## ***Purpose?***

- The reconstruction reserve allows companies to keep future profits within the company in a tax advantageous way and to rebuild their equity to pre-corona levels.

## ***Who?***

- Belgian companies and PE's.

## ***What?***

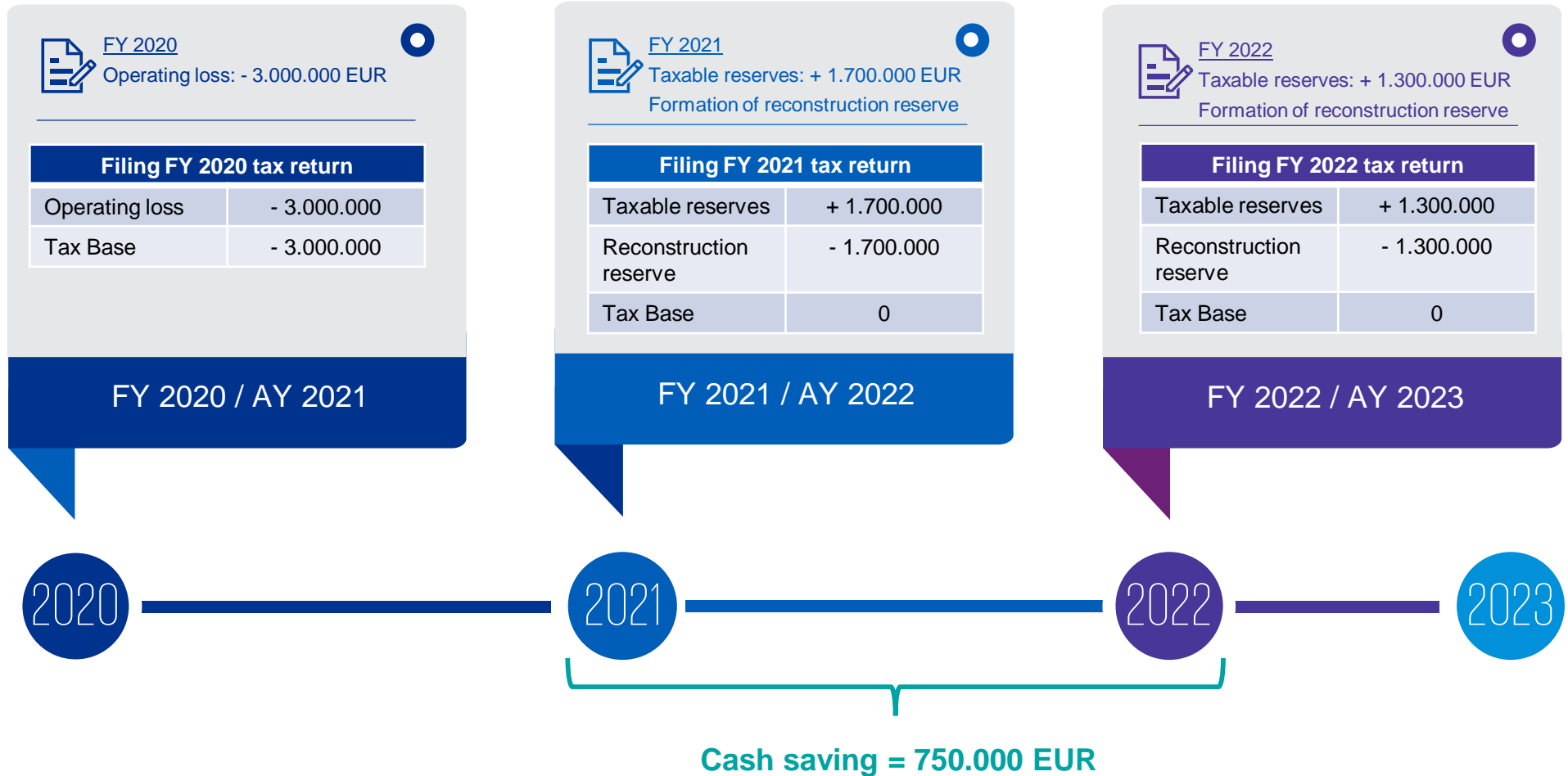
- Booking of a tax exempt reserve up to the operating loss of FY 2020.

## ***When?***

- The reconstruction reserve can be formed in the financial years linked to assessment years 2022, 2023 and/or 2024.



# Reconstruction reserve visualised in time



# Reconstruction reserve - Ceiling

- The reconstruction reserve can be formed amounting to the operating loss of FY 2020.
  - Code 9901 in the annual accounts.
  - FY ending between 01/01/2020 and 31/07/2020 → possible choice for the operating loss of FY 2021.
- Limit: movement taxable reserves of FY 2021, 2022 and/or 2023.
- Absolute maximum of 20 mio EUR.



<b>Bedrijfsopbrengsten</b>		
Omzet	6.10	70/76A
Voorraad goederen in bewerking en gereed product en bestellingen in uitvoering: toename (afname) (+)/(-)		71
Geproduceerde vaste activa		72
Andere bedrijfsopbrengsten	6.10	74
Niet-recurrente bedrijfsopbrengsten	6.12	76A
<b>Bedrijfskosten</b>		60/66A
Handelsgoederen, grond- en hulpstoffen		60
Aankopen		600/8
Voorraad: afname (toename) (+)/(-)		609
Diensten en diverse goederen		61
Bezoldigingen, sociale lasten en pensioenen (+)/(-)	6.10	62
Afschrijvingen en waardeverminderingen op oprichtingskosten, op immateriële en materiële vaste activa		630
Waardeverminderingen op voorraden, op bestellingen in uitvoering en op handelsvorderingen: toevoegingen (terugnemenen) (+)/(-)	6.10	631/4
Voorzieningen voor risico's en kosten: toevoegingen (bestedingen en terugnemingen) (+)/(-)	6.10	635/8
Andere bedrijfskosten	6.10	640/8
Als herstructureringskosten geactiveerde bedrijfskosten (-)		649
Niet-recurrente bedrijfskosten	6.12	66A
<b>Bedrijfswinst (Bedrijfsverlies)</b>	<b>(+)/(-)</b>	<b>9901</b>
<b>Financiële opbrengsten</b>		75/78B
Recurrente financiële opbrengsten		75
Opbrengsten uit financiële vaste activa		750
Opbrengsten uit vlottende activa		751
Andere financiële opbrengsten	6.11	752/9
Niet-recurrente financiële opbrengsten	6.12	76B
<b>Financiële kosten</b>		65/66B
Recurrente financiële kosten	6.11	65
Kosten van schulden		650
Waardeverminderingen op vlottende activa andere dan voorraden, bestellingen in uitvoering en handelsvorderingen: toevoegingen (terugnemenen) (+)/(-)		651
Andere financiële kosten		652/9
Niet-recurrente financiële kosten	6.12	66B
<b>Winst (Verlies) van het boekjaar vóór belasting</b>	<b>(+)/(-)</b>	<b>9903</b>
<b>Onttrekking aan de uitgestelde belastingen</b>		<b>780</b>
<b>Overboeking naar de uitgestelde belastingen</b>		<b>680</b>
<b>Belastingen op het resultaat</b>	<b>(+)/(-)</b>	<b>67/77</b>
Belastingen		670/3
Regularisering van belastingen en terugneming van voorzieningen voor belastingen		77
<b>Winst (Verlies) van het boekjaar</b>	<b>(+)/(-)</b>	<b>9904</b>
<b>Onttrekking aan de belastingvrije reserves</b>		<b>789</b>
<b>Overboeking naar de belastingvrije reserves</b>		<b>689</b>
<b>Te bestemmen winst (verlies) van het boekjaar</b>	<b>(+)/(-)</b>	<b>9905</b>



# Reconstruction reserve - operating result (code 9901)

## ***Includes (a.o.)***

- Amounts written down on stocks
- Non-recurring depreciation of tangible fixed assets
- Provisions for major repairs and maintenance

## ***Excludes (a.o.)***

- Dividends received
- Interest costs



### Words of advice:

- Accounting and tax treatment may differ
- Check with your accountant/auditor and tax adviser, as needed

# Reconstruction reserve - Conditions

The reconstruction reserve only remains tax exempt if conditions are fulfilled:

- Equity must be maintained;
- Employment must be maintained;
- So-called “intangibility condition” remains fulfilled;

Becomes taxable ultimately upon liquidation.

# Reconstruction reserve - Condition of equity

## **What?**

- The following operations will lead to a (partial) taxation of the reconstruction reserve:
  - I. Share buyback (value of buyback);
  - II. Dividend distribution (amount of dividend);
  - III. Capital reduction (amount of capital reduction);
  - IV. Any other distribution of the equity (amount of distribution).

## **Example 1**

- FY 2021: company has formed a reconstruction reserve of 250.000 EUR.
- FY 2024: company distributes a dividend of 100.000 EUR.
  - reconstruction reserve becomes taxable for an amount of 100.000 EUR.

## **Example 2**

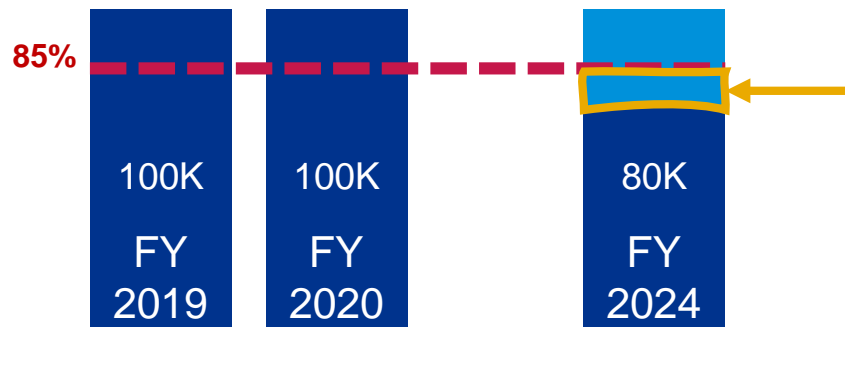
- FY 2021: company has formed a reconstruction reserve of 250.000 EUR.
- FY 2024: company distributes a dividend of 300.000 EUR.
  - reconstruction reserve becomes taxable for an amount of 250.000 EUR.

# Reconstruction reserve - Condition of employment

## What?

- Guaranteeing the employment level within the company.
- Condition of employment: personnel costs FY 20XX  $\geq$  85% \* personnel costs FY 2019
- No longer meeting the condition of employment results in a (partial) taxation of the reconstruction reserve.

## Example



- Reconstruction reserve becomes taxable amounting to 5.000 EUR (= 85.000 – 80.000)



# Reconstruction reserve - Intangibility condition

## ***The reconstruction reserve is subject to the intangibility condition:***

- Liabilities' side of the balance sheet
- Indefinitely, ultimately taxable upon liquidation
- Violation = taxation

Accounting FY 2021 / AY 2022		Tax return FY 2021 / AY 2022		
689 Transfer to tax exempt reserves	1.700.000		Beginning	End
@ 132 Tax exempt reserves	1.700.000	Tax exempt reserves	0	1.700.000

The company should also attach a specific form to their tax return (not yet available).



# Timeline reconstruction reserve

## Financial year 2019

- Condition of employment
- Personnel cost FY 2019
- Personnel cost FY 20XX  $\geq 85\%$  \* personnel cost FY 2019

## Financial year 2021, 2022 and/or 2023

- FY linked to assessment years 2022, 2023 and/or 2024
- Possible formation of a reconstruction reserve
- Amounting to the taxable reserves of the FY
- Maximum of operating loss FY 2020/2021 or 20 mio EUR



## Financial year 2020 (or 2021)

- Operating loss (code 9901)
- Basis for formation reconstruction reserve
- FY ending 01/01/2020 – 31/07/2020: possible choice for operating loss FY 2021 (irrevocable)



# Reconstruction reserve - Exclusions



## Certain companies are **excluded**:

- Companies who as from 12<sup>th</sup> March 2020 until the filing date of the tax return wherein the reconstruction reserve is formed have executed one of the following operations:
  - I. **Share buybacks;**
  - II. **Dividend distributions;**
  - III. **Capital reductions;**
  - IV. And/or any other **distribution of the equity.**
- Companies not subject to the common Belgian tax regime (e.g. investment companies and regulated real estate companies).
- Companies having a direct participation in a company located in a tax haven country or having made payments to those companies of more than 100.000 EUR, unless these payments are justified on specific economic grounds.
- Companies already qualifying as “company in economic difficulty” on 18<sup>th</sup> March 2020.



# Special topics



# Interaction with limitation of deductions (70%-rule)

# Reconstruction reserve - Interaction with 70%-rule

## ***Reconstruction reserve offers possible escape route***

- 70%-rule: part of the taxable base > 1.000.000 EUR can only be offset by 70%
- Tax losses carried forward are subject to 70%-rule
- Formation of a reconstruction reserve may prevent application 70%-rule
- Optimizing cash-out through interaction

# Reconstruction reserve - Interaction with 70%-rule

## Example

Company X	FY 2020
Operating result	- 250.000
Formation reconstruction reserve	0
<b>Result after 1st operation</b>	<b>- 250.000</b>
<b>Taxable base</b>	<b>- 250.000</b>



## No reconstruction reserve

Company X	FY 2021
Taxable reserves	1.250.000
Formation reconstruction reserve	0
<b>Result after 1st operation</b>	<b>1.250.000</b>
Tax losses carried forward	- 1.175.000
<b>Taxable base</b>	<b>75.000</b>

Remaining taxable base of 75.000 in FY 2021  
 → cash-out = 18.750 EUR

## Reconstruction reserve of 250.000 EUR

Company X	FY 2021
Taxable reserves	1.250.000
Formation reconstruction reserve	- 250.000
<b>Result after 1st operation</b>	<b>1.000.000</b>
Tax losses carried forward	- 1.000.000
<b>Taxable base</b>	<b>0</b>

Remaining taxable base of 0 in FY 2021  
 → cash-out optimized ✓  
 → available tax losses increased ✓



# Interaction with loss-carry back



# Reconstruction reserve - Interaction with loss-carry back regime



Carry back	
Filing FY 2019 tax return	
Taxable reserves	+ 2.000.000
Carry back	- 2.000.000
Tax Base	0

Filing FY 2020 tax return	
Operating/tax loss	-2.000.000
Reversal of carry back	+ 2.000.000
Tariff compensation/ Penalty	+ 367.924,22
Tax Base	367.924,22

Reconstruction reserve	
Filing FY 2021 tax return	
Taxable reserves	+ 2.000.000
Reconstruction reserve	- 2.000.000
Tax Base	0

**Cash saving: 591.600 EUR**      **Cash-out: 91.981,10 EUR**      **Cash saving: 500.000 EUR**

**Total cash saving = 999.618,90 EUR**

# Reconstruction reserve - Interaction with loss-carry back regime

## ***Benefit?***

- Operating loss of FY 2020 can be used for both loss-carry back and reconstruction reserve
  - Possible divergence between operating loss and tax loss !

## ***Not applied loss-carry back?***

- Loss-carry back can still be applied
  
- Preferably through claim against assessment note



# Interaction with tax consolidation

# Reconstruction reserve - Interaction with tax consolidation

## ***Recipient group contribution***

- Potential impact on reconstruction reserve:
  - Group contribution received increases result after the 1st operation in tax return for FY 2020
  - BUT: basis for reconstruction reserve = operating loss
  - HOWEVER: compensation recorded in FY 2020, if any, will reduce the operating loss
- Formation of reconstruction reserve in FY 2021, 2022 and/or 2023 possible.

# Reconstruction reserve - Interaction with tax consolidation

## ***Situation FY 2020***

<b>FY 2020</b>	<b>Company A</b>	<b>Company B</b>
Operating result	+ 500.000	- 300.000
Result after the first operation	+ 500.000	- 300.000

## ***Group contribution of 300.000 from A to B***

<b>FY 2020</b>	<b>Company A</b>	<b>Company B</b>
Operating result	+ 500.000	- 300.000
Taxable result	+ 200.000	0

## ***Impact on reconstruction reserve***

- Receiving a group contribution affects the result after the 1st operation. However, operating result remains unchanged.
- Company B can still form a reconstruction reserve of 300.000 in future years.
- Amount of reconstruction reserve would decrease with 75.000 if company A recognizes a compensation to company B in FY 2020.

# Reconstruction reserve - Interaction with tax consolidation

## Point of attention

- Extra attention if a part of the reconstruction reserve becomes taxable
- Received group contribution > result after the first operation → minimum taxable base
- Take a close look before applying the tax consolidation regime

## Example

- Part of reconstruction reserve becomes taxable in FY 2022, e.g. due to capital reduction.

Company B	FY 2020	FY 2021	FY 2022
Operating result/taxable reserves	- 300.000	300.000	- 200.000
Formation reconstruction reserve	0	- 300.000	0
Taxable part of reconstruction reserve	0	0	100.000
<b>Result after 1st operation</b>	<b>- 300.000</b>	<b>0</b>	<b>- 100.000</b>
Group contribution	300.000	0	200.000
<b>Taxable result</b>	<b>0</b>	<b>0</b>	<b>100.000</b>





# Interaction with ESR

# Reconstruction reserve - Interaction with ESR

## **General overview ESR**

- “Earnings Stripping Rules” = new interest deduction limitation rules:
  - “Exceeding borrowing costs” deductible up to either:
    - 30% of tax adjusted EBITDA; or
    - 3.000.000 EUR
  
- Formation of a reconstruction reserve impacts the “result after the 1<sup>st</sup> operation” in the tax return
  
- “Result after the 1<sup>st</sup> operation” is starting point for calculating the tax adjusted EBITDA

# Reconstruction reserve - Interaction with ESR

## ***To apply reconstruction reserve or not?***

### *Example*

<b>Company X</b>	<b>FY 2020</b>	<b>FY 2021</b>
Operating result/taxable reserves	- 1.000.000	11.000.000
Formation reconstruction reserve	0	- 1.000.000
<b>Result after 1st operation</b>	<b>- 1.000.000</b>	<b>10.000.000</b>

- Result after 1<sup>st</sup> operation drops from 11.000.000 → 10.000.000
- Impact on ESR
  - Potential tax impact: 30% of the reconstruction reserve
  - Potential cash impact: 7,5% of the reconstruction reserve
- Case-by-case assessment - review ESR calculations!



# Investment deduction

# Reconstruction reserve - Investment deduction

## ***Increased investment deduction SME***

- Only for SME (art. 1:24 CCA)
- Assets acquired 01/01/2018 – 31/12/2019: increased ID of 20%
- Investment deduction = acquisition price \* 20%
- General principle: unused capacity can be transferred to next FY

## ***COVID-19 measures***

- Assets acquired 12/03/2020 – 31/12/2022: increased ID of 25%
- Investment deduction = acquisition price \* 25%
- Unused capacity related to investments in 2019, 2020 and 2021 can be transferred 2 years

# Investment deduction

## **Time limited tax deduction**

- FY 2020: 25% investment deduction claimed = 200.000 EUR  
→ transfer of unused capacity to FY 2021 and FY 2022 (COVID)

<b>Company X</b>	<b>FY 2020</b>	<b>FY 2021</b>
Operating result/taxable reserves	- 300.000	300.000
Formation reconstruction reserve	0	- 100.000
<b>Result after 1st operation</b>	<b>- 300.000</b>	<b>200.000</b>
Investment deduction	0	- 200.000
<b>Taxable result</b>	<b>- 300.000</b>	<b>0</b>

- Investment deduction has been fully used
- Reconstruction reserve of another 200.000 EUR can be formed in FY 2022 and/or 2023
- ! Attention: unlimited transfer unused capacity (e.g. energy-saving, R&D) → prioritize reconstruction reserve



# Minimum taxable base?

# Reconstruction reserve - Minimum taxable base?

## ***NO minimum taxable base***

- Taxable part of reconstruction reserve is **not** a minimum taxable base
- Taxable base can be offset with other tax deductions
- Combination with time limited tax deductions should be evaluated (e.g. investment deduction for SME)
- Optimizing moment of taxation





# Key take-aways



# Key take-aways

## No minimum taxable base

The taxable part of the reconstruction reserve can be offset with other tax deductions.



## 70%-rule

Possibility for optimizing the 70%-rule.



## Interactions with other tax measures

The interaction with other tax measures should be evaluated from case to case. Important is to keep the overview.



## Cash saving

Welcome temporary cash saving during these difficult times.





# Q&A





# Thank you!

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