

Topics covered by this Newsletter

This Newsletter addresses the following topics:

- a. the publication of the 2010 tax proposals
- b. the implementation in the Netherlands of the EU VAT Package and,
- c. the amendment of the Mining Act.

Introduction

Yesterday, the Dutch Ministry of Finance's ("MoF") submitted certain legislative proposals for the year 2010 to Dutch Parliament (the "2010 Tax Proposals").

Furthermore, certain new VAT rules will enter into force as per 1 January 2010 pursuant to the so-called EU VAT Package.

In addition, the 'Lower House' of Dutch Parliament recently adopted the proposed amendments to the Mining Act which are intended to stimulate the active use of exploration and production licences.

Below, we provide you with some brief general comments on these matters, as well as some specific remarks for the E&P industry..

2010 Tax Proposals

The 2010 Tax Proposals inter alia include the announced relaxation of the Dutch participation exemption and the Dutch loss carry-over rules. They also comprise certain other amendments to the Dutch Corporation Tax Act, such as amendments to the so-called Patent Box. For an overview of these amendment, we kindly refer to the attached [Tax Flash](#).

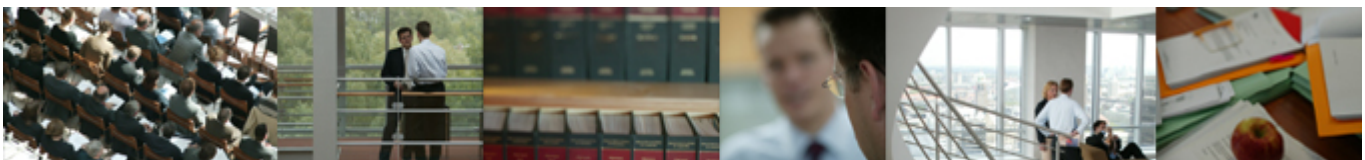
In addition, the 2010 Tax Proposals provide for an extension of the depreciation-at will ("DAW") regime for investments made in 2010. Under the current DAW regime, taxpayers are allowed to depreciate qualifying investments made in 2009 over a period of two years, up to a maximum of 50% of the invested amount in both 2009 and 2010. Under the proposals, qualifying investments made in 2010 may be depreciated up to a maximum of 50% in 2010 and 50% in 2011. For a more detailed description of the DAW regime, reference is made to our Oil & Gas Newsletter of May 2009.

Despite the MoF's earlier expressed intentions, the 2010 Tax Proposals do not include the announced amendment of the taxation of interest on (group) loans. A separate legislative proposal to that effect is anticipated to be published before the end of 2009.

Implementation in the Netherlands of the EU VAT Package

As from 1 January 2010 on the basis of the so-called EU VAT Package new VAT rules will enter into force. The VAT Package includes the following three items.

1. Significant changes of the place of supply of services in cross-border situations. A distinction will be made



between services to VAT taxable persons (“B2B services”) and services to consumers (“B2C services”). As a general rule, B2B services are taxed in the recipient’s country, whereas B2C services are taxed in the supplier’s country. On these general rules several exceptions apply.

2. New reporting obligations for cross-border services. The supplier must submit a list of B2B services to the tax authorities on either monthly or quarterly basis.
3. Centralised system for refund of EU VAT. A refund of VAT paid in other EU countries can be claimed in the company’s own member state, instead of in the member state in which the VAT was paid.

It is important for companies that purchase and/or render cross-border services to verify whether

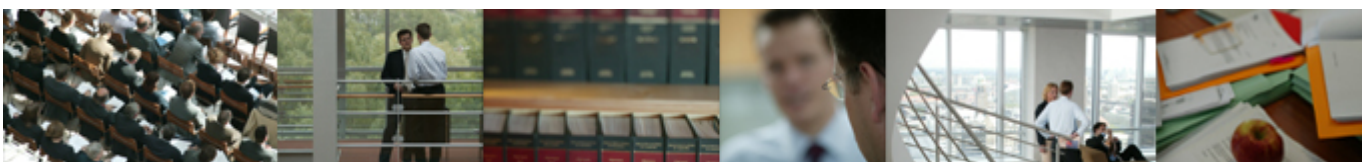
- VAT still needs to be applied on invoices for cross-border services;
- VAT must be reported on cross-border services from EU suppliers;
- VAT numbers of customers are available and valid;
- Agreements must be amended;
- Software systems must be adjusted;
- Listings must be submitted.

Amendment of Mining Act

Last week, the Lower House adopted certain amendments of the Mining Act, which are aimed at the stimulation of the development of (new) marginal offshore gas fields. When the proposals were announced, the Minister mentioned that production from existing gas fields will come to an end in the coming 10 to 15 years. The relevant infrastructure of platforms and pipelines will then in principle be dismantled, unless new gas fields have been connected to it by then. Without this existing infrastructure new marginal gas fields cannot be developed economically, and therefore it is important that these fields are developed and connected to the existing infrastructure before it is dismantled (i.e. in the coming 5 to 10 years). The proposed amendments of the Mining Act comprise financial and non-financial measures, as set out below.

The entry into force of the proposed amendment has been made conditional upon final agreement on the fallow covenant between the mining industry and the Minister. In this covenant the mining industry agrees that it shall provide for a transparent procedure according to which the license holder shall either engage into mining activities in fallow areas himself or enable others to develop activities in these areas. Undersigning of the covenant will prevent government action under the abovementioned legislation. Furthermore the measure will require approval by the European Commission on its compatibility with European state aid regulations. However, the government expects that the measures will be in line with the European energy policy and the energy objectives of the European Union.

The proposals are scheduled to be discussed in the Upper House of Dutch Parliament in the course of September. We anticipate that the proposals will be adopted without material changes thereto.



Non-financial measures

The non-financial measures to stimulate the development of marginal gas fields include a provision which allows the Minister to revise the delineation of licence areas in which no significant activities with respect to the exploration and production of minerals or the storage of substances have taken place for a period of two years, or in which all production activities have ceased. Other parties may be issued a new licence for the previously unused segments.

Financial measures

The financial incentive regards an amendment of the Mining Act, introducing a facility based on which offshore gas licence holders can deduct for state profit share purposes an additional amount of 25% of their capital expenditures in the year the expenditures are made. This deduction will be allowed in addition to the regular depreciation charges. Whether a gas field qualifies for this facility will be determined based (i) the expected size of the gas field, (ii) the expected productivity, and (iii) the distance to the existing infrastructure.

Furthermore, the legislative proposal as now adopted by the Lower House allows the taxpayer to elect to include the results of certain hedge contracts in the taxable base for the computation of state profit share. More in particular, this applies to hedge contracts that are concluded by a taxpayer to hedge price risks and currency risks relating to the produced minerals. It is noted that the taxpayer should make the election by filing a request with the tax inspector prior to entering into the hedge contract.

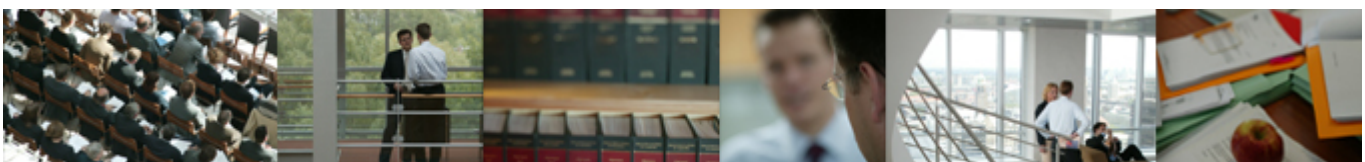
Impact of proposals on E&P industry

The amendments discussed in the 2010 Tax Proposals are not specifically aimed at the E&P industry. As a result, the impact on the E&P industry is of a general nature.

- As mentioned in our previous Oil & Gas Newsletter, in view of the nature of investments in E&P-related assets by E&P companies, these investments are rarely intended as a portfolio investment. Therefore, we anticipate that the amendments to the participation exemption will generally provide more clarity in respect of the applicability of the participation exemption in respect of investments by Dutch (holding) companies in shares in foreign entities involved in E&P activities. We therefore welcome the proposed changes to the participation exemption.
- In principle, we also welcome the extension of the loss carry-back period to three years, as this may offer cash benefits to corporation taxpayers. However, the limitations of (i) the loss carry-forward to six years, and (ii) the amounts to be carried back, which apply if the taxpayer elects to carry back losses for three years, may have a negative bearing on the taxpayer's tax position in the long run. Especially in the E&P industry, where the investment horizon is often far away and the amount of the investments are often substantial, it should be thoroughly considered whether the benefit of the extended loss carry-back period outweighs any adverse impact of the restrictions.

It should be noted that the amendments to the loss carry-over rules merely apply for Dutch corporation tax purposes. The carry-over rules for state profit share remain unchanged.

- Given the nature and the amounts of investments typical for the E&P industry, the extension of the DAW regime may be a beneficial feature of Dutch corporation tax law for this industry.



The DAW regime also applies to the computation of the depreciation for state profit share purposes, as in the Mining Act reference is made to the relevant articles of the Dutch 1969 Corporation Tax Act.

For further information with respect to the above, please feel free to contact any of the members of the Loyens & Loeff Energy Team.

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Amsterdam/Rotterdam
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