

### Topics covered by this Newsletter

In this edition of our Oil & Gas Newsletter, we like to inform you about certain aspects of the 2011 Tax Proposals, as published today, that may be of relevance for the E&P industry. Furthermore we inform you about certain other industry specific developments.

### The 2011 Tax Proposals

The 2011 tax proposals do not contain specific provisions that are of particular relevance for the E&P industry. However some of the anti-crisis measures introduced by the Dutch Government are continued and/or extended and they may beneficially impact the tax position of companies that are active in the E&P industry. More specifically, the relevant proposed measures could be summarized as follows. We like to note a more detailed general newflash on the 2011 Tax Proposals will be available shortly.

#### *Corporate income tax rate*

It is proposed to lower the top corporate income tax rate from 25.5% to 25%. It should be noted that companies that are in a State Profit Share (SPS) paying position will not effectively benefit due to the interaction between corporate income tax and SPS.

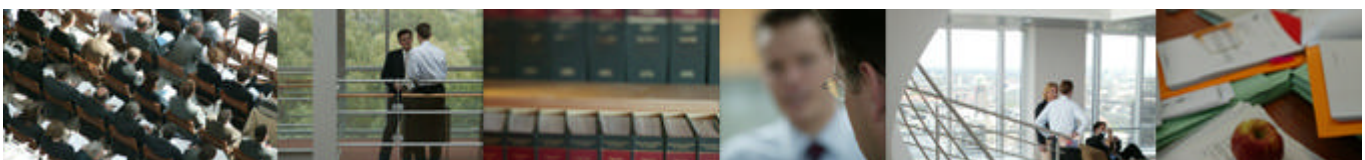
#### *Extension of depreciation-at-will-regime*

As part of the anti-crisis measures introduced by the Dutch Government earlier, the depreciation-at-will regime (DAW) applied for qualifying investments made in the years 2009 and 2010. In the course of the year 2010, the DAW regime was further improved by lifting a limitation previously set to maximize the depreciation in a specific year to 50% of the total investments made. It is now proposed to extend the DAW to investments made in the year 2011.

#### *Extension of temporary loss compensation*

The ordinary loss carry-over rules allow corporate taxpayers to carry-back losses for one year and to carry-forward losses for nine years. However as part of the anti-crisis measures, corporate taxpayers could opt for an extension of the carry-back period of one year to three years for losses incurred in the years 2009 and 2010. The amount to be carried back is restricted to €10 million per extra year. Furthermore, the carry-forward period is then restricted to six years.

It is now proposed to offer taxpayers the option to elect for an extended carry-back period for losses incurred in the year 2011, subject to the above-mentioned restrictions.



## *VAT filing relaxation*

As part of the anti-crisis measures introduced by the Dutch Government earlier, the possibility for entrepreneurs to file quarterly VAT returns in stead of monthly returns was introduced. Also VAT due (if any) is then payable on a quarterly basis. It was previously announced that it would no longer be possible to make use of this option as of 1 January 2011. It is however now proposed to make this a structural measure for the years 2011 and onwards.

## *Extension of Innovation Box regime*

In a previous edition of our Oil & Gas Newsletter, we informed you on the introduction of the so-called 'Innovation Box', the improved special tax regime for profits derived from qualifying R&D activities. Since 1 January 2010, the effective corporate income tax rate for such profits is 5%.

The Innovation Box regime does not provide for special rules in respect of the E&P industry or any other specific kind of business. Since the introduction of the new rules, we have analysed the relevance of the Innovation Box for the E&P industry. We have found that the Innovation Box may offer substantial benefits, as it may be possible for E&P companies to obtain patents or so-called R&D declarations in respect of their technical work.

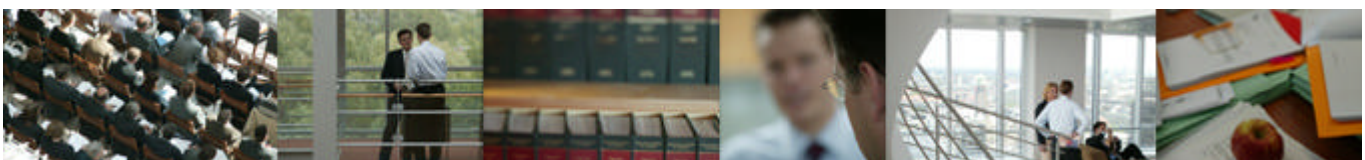
The existing Innovation Box regime could only be applied as of the year in which a patent was actually obtained. This could be disadvantageous in situations whereby the patent was already applied for and whereby the application procedure would take a relatively long time. In the 2011 Tax Proposals it is now proposed to further extend the Innovation Box regime to years in which a patent has been applied for but has not been formally obtained and whereby the patent is obtained in the next year.

## **Other relevant developments**

### *Entry into force of the investment allowance for marginal offshore gas fields*

In previous Newsletters, we informed you about certain amendments of the Mining Act that were aimed at the stimulation of the development of (new) marginal offshore gas fields. The amendments included the introduction of an investment allowance for SPS purposes for qualifying investments in marginal gas fields offshore. It allows offshore gas licence holders to deduct for SPS purposes an additional amount of 25% of their capital expenditures in the year the expenditures are made. The deduction will be allowed in addition to regular depreciation charges. The relevant investment allowance entered into force as per 16 September 2010.

Furthermore, in a Resolution of the Minister, which also took effect as of 16 September, the criteria are laid down for a gas field to qualify for the investment allowance. Whether a gas field qualifies for the allowance will be determined on the basis of (i) the expected size of the gas field, (ii) the expected productivity, and (iii) the distance to the existing infrastructure. The resolution also provides for certain requirements that have to be satisfied in order for the licence holder to be entitled to the allowance. In particular, this regards audit requirements and requirements in respect of the timeframe within which the investment should be made.



## *Extension of special VAT regime for natural gas as of 2011*

Under current Dutch tax law, a special VAT regime applies to supplies of natural gas through, and import of natural gas directly into, the Dutch natural gas distribution system (i.e. the GTS network). This regime consists of (i) specific rules to determine the country in which VAT is due on the supplies and (ii) the application of the zero percent VAT rate to the import of gas. In practice, the scope of this special regime is considered too limited; due to the requirement of a direct connection to the GTS network, the import of natural gas in the Netherlands through other means of transportation is not covered.

The Dutch regime as it currently applies is based on, and in accordance with, an EU regulation. As of 2011, the scope of the EU regulation will be extended to the supply and import of natural gas via any network connected to a natural gas distribution system. Furthermore, as of 2011 the EU regulation will stipulate that the zero percent VAT rate will also apply to the import of (liquefied) natural gas by tankers, provided this gas is subsequently brought into a natural gas distribution system or upstream pipeline network.

The amendments to the EU regulation needs to be implemented in domestic Dutch law. A legislative proposal for the implementation of the EU regulation is currently pending before Dutch Parliament. We anticipate that the proposal will be adopted and become effective as per the beginning of 2011.

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