NEWS UPDATE | 15 SEPTEMBER 2020

TAX

Dutch Budget Day: main changes for corporate taxpayers

On 15 September 2020 (Prinsjesdag), the Dutch Ministry of Finance submitted the 2021 Dutch Budget to parliament. The Budget is impacted by the corona crisis and the government is committed to overcome this crisis by means of various investments. This is for instance reflected by introducing a temporary job-related investment incentive per 2021.

Other proposed changes include:

- Carry forward of losses unlimited in time as from 2022, but with certain quantitative limitations;
- Formal submission of the earlier proposed limitation to deduct losses on liquidation of participations and permanent establishments;
- Leaving the main corporate income tax rate at 25%, but extending brackets for the SME rate;
- Increase of the effective tax rate for the innovation box to 9%;
- Increase of the general tax rate for real estate transfer tax to 8%; and
- Technical changes to certain interest deduction limitations and anti-hybrid rules.

The announced measures if adopted will be in force as of 1 January 2021, if not specified otherwise. Of course, measures may change during the parliamentary process.

Finally, also (investigations on) other future changes were announced today, which are highlighted hereafter.

Temporary job-related investment incentive by means of a wage tax remittance reduction

As an emergency measure, a job-related investment incentive for businesses will be introduced for a period of two years. A percentage of investments made will be available to reduce the amount of wage tax to be remitted by the employer making the investments. The formal proposal for this incentive still has to be published and will contain further details.

Annual limitation of loss compensation and unlimited carry forward as of 1 January 2022

Following the report of the Dutch Advisory Committee on taxation of MNEs (see our Tax Flash dated 16 April 2020), annual loss compensation will be limited to 50% of the taxable profit to the extent such profit exceeds a threshold of EUR 1 million. This applies to both carry back and carry forward of losses. In addition, the limitation in time of loss carry forward of six years will be abolished. Hence, losses realized will be available to offset future taxable profits for an indefinite period. The formal proposal for these changes still has to be published and will enter into force, if adopted, as of 1 January 2022.

Restrictions on deduction of liquidation losses on subsidiaries

As announced on Budget Day 2019 and following a private members' bill (see our Tax Flash dated 16 April 2019), a restriction on the deduction of liquidation losses on participations is proposed.

1. A liquidation loss on a subsidiary will be maximized on EUR 5 million, unless:
   a. the taxpayer has a controlling interest in the subsidiary; and
   b. the subsidiary is a resident of an EU or EEA member state, or certain designated countries that have an association agreement with the EU (only Turkey currently qualifies).
2. The subsidiary's dissolution must be completed within three calendar years following the year in which the activities of the subsidiary were discontinued or a decision to that end was taken. If this period is exceeded no liquidation loss is deductible, unless the taxpayer demonstrates that such delay is not tax driven.

Similarly, discontinuation losses on foreign permanent establishments are limited to EUR 5 million for non-EU/EEA permanent establishments. Such losses are entirely disallowed from deduction if dissolution of a permanent establishment exceeds the abovementioned three-year period.

These restrictions are proposed to enter into force on 1 January 2021. Dissolutions of subsidiaries that are currently in process must be completed on 31 December 2023 at the latest in order for a liquidation loss to remain tax deductible.

Tax rates

The main corporate income tax rate will remain at 25% and will not be lowered as adopted last year. Brackets for the SME rate of 15% will be changed as reflected in the summary below:

	2021	**2022**
15% corporate income tax rate	Profits up to EUR 245,000	Profits up to EUR 395,000
25% corporate income tax rate	Profits exceeding EUR 245,000	Profits exceeding EUR 395,000

The main corporate income tax rate is also decisive for the tax rate to be applied for the conditional withholding tax on interest and royalties that was already adopted last year and will enter into force on 1 January 2021 (see our Tax Flash dated 17 September 2019). As a result, the applicable 2021 rate for the conditional withholding tax will also be 25%.

The effective tax rate for the innovation box will be increased to 9% as already announced in the 2020 Budget (see again our Tax Flash dated 17 September 2019).

Finally, the general real estate transfer tax rate for residential and commercial real estate will be increased to 8%. For owner occupied dwellings the rate will remain 2% and will in specific circumstances even be lowered to 0%.

Technical changes to interest deduction limitations and to anti-hybrid rules

A change is proposed to the anti-base erosion provision of article 10a CITA that limits interest deduction on intra-group loans related to certain transactions. However, in case of currency exchange gains exceeding interest costs or in case of negative interest on a loan this provision would effectively result in an exemption. It is now proposed that article 10a CITA can no longer lead to an exemption of such positive results.

Furthermore, changes are proposed for situations in which application of the earningsstripping rule of article 15b CITA (see our Tax Flash dated 25 March 2019) coincides with the anti-hybrid rules implemented in Dutch law pursuant to ATAD2 (see our Tax Flash dated 2 July 2019). This concerns for instance cases in which interest was regarded non-deductible under the ATAD2 rules in a certain year but can be deducted in later years based on so-called 'dual inclusion income' rules. Such deduction of interest in later years will have to be tested against the earningsstripping rule.

Formalization specific fiscal corona reserve and further guidance published

To accelerate loss-compensation and the resulting cash benefit, it is possible to include a corona crisis fiscal reserve in the 2019 corporate income tax return. The amount of this fiscal reserve is the expected taxable loss in 2020 to the extent such loss is a result of the corona crisis. The reserve however may not exceed the 2019 taxable profit excluding such reserve. By requesting a revised provisional 2019 corporate income tax assessment as a result of such fiscal reserve, taxpayers can, if applicable, obtain a refund for the financial year 2019. Taxpayers that foresee an overall positive taxable result in 2020 are not allowed to benefit from this measure. This fiscal corona reserve, previously included in a policy decree, will now be formalized into law. In addition, some further clarifications and technical guidance have been published.

Changes to credit system for Dutch dividend withholding tax as of 1 January 2022

Following EU case law, the credit for Dutch dividend withholding from portfolio investments will be limited. The credit is maximized to the corporate income tax due before such credit and therefore can no longer result in a refund. Excess credits can be carried forward to future years.

Other announced proposals and studies

In the documents published today, further proposals and studies are announced. Other changes were already adopted previously and enter into force on 1 January 2021. They are highlighted in the below table.

Measure / Announcement	Expected publication date	Entry into force
Conditional withholding tax *Legislative bill on conditional withholding tax on interest- and royalty payments*	Already adopted	1 January 2021
Arm's length principle *Legislative proposal amending the arm's length principle in line with international developments effectively rejecting informal capital contribution structures in certain situations*	Spring 2021	1 January 2022
Conditional withholding tax dividends *Legislative proposal that introduces a conditional withholding tax on dividends*	Spring 2021	1 January 2024

Measure / Announcement	Expected publication date	Entry into force
Participation exemption *Substance requirements for Dutch entities that apply the participation exemption on incoming dividends; non-compliance will lead to exchange of information with source states*	-	1 January 2022
Fiscal unity *Publication of the outcome of the public consultation on the future of the Dutch consolidation regime. Most support is available for either keeping the current regime in place (together with some further repair measures) or the introduction of a new regime. In the latter case, two alternatives are outlined for purpose of further discussion with the Dutch government:* - *Combination of group relief and group contribution; and* - *Pooling of separately determined taxable results.*	-	-
Interest deduction *Study on possible implementation of a deduction on equity and changes to interest deduction limitation rules (including earningsstripping rules)*	Spring 2021	-
Royalty deduction *Study on nature and volume of royalties to explore further limitation of deduction*	-	-
Shareholder costs deduction *Study on nature and volume of shareholder costs of head offices to explore limitation of deduction*	-	-
Report Advisory Committee on taxation of MNEs *Further review of the following suggested measures is put on hold, pending the OECD Pillar 2 initiative:* - *Stricter legislation on controlled foreign companies; and* - *Restriction on depreciation of assets that have been transferred within the group.*		

Contact

We will keep you updated on further developments. Should you have queries, please contact your trusted adviser at Loyens & Loeff.