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INTERNATIONAL
TAX SERVICES

2020 year-end **tax attention points**

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Year-end is approaching rapidly. This checklist contains an overview of actions to be considered by multinationals with Dutch group entities before 1 January 2021. The suggested actions are relevant for Dutch corporate income tax and withholding tax purposes.

☐ **Finalize liquidation on non-EU subsidiaries to avoid limitation on deductibility of liquidation losses**

The deduction of liquidation losses on non-EU/EER subsidiaries and non-controlled subsidiaries will be restricted to a maximum of EUR 5 million per subsidiary as per 1 January 2021. If any non-qualifying subsidiaries are envisaged to be wound up in the near future, the liquidation of these subsidiaries should be completed on 31 December 2020 at the latest in order to deduct a liquidation loss in excess of EUR 5 million.

☐ **Identify loans by Dutch entities to low-tax and EU blacklisted jurisdictions and eliminate these from structure**

Interest payments on loans and royalty payments by Dutch entities to low-taxed jurisdictions or jurisdictions on the EU blacklist will become subject to a conditional withholding tax at a rate of 25% as of 1 January 2021 (see our Tax Flash). It is recommended to identify any payables, whether interest bearing or not, by Dutch entities to low-tax jurisdictions before year end and eliminate these from your structure. Interest payments made indirectly to low-taxed / EU blacklisted jurisdictions (e.g. a back-to-back via a treaty country) as well as interest payments to hybrid entities can fall within the scope of these rules. The same applies with respect to royalty payments made by Dutch entities to low-taxed / EU blacklisted jurisdictions.

☐ **Restructure fiscal unity with UK top or intermediate holding company to avoid termination of fiscal unity due to Brexit**

Check whether there is a fiscal unity for Dutch corporate income tax purposes in the structure which relies on a UK top holding company or a UK intermediary holding company, as these fiscal unities will automatically terminate on 1 January 2021 due to Brexit.

☐ **Identify intercompany loans with (latent) positive FX-result for purposes of interest deduction limitation of article 10a CITA**

As of 1 January 2021, the interest deduction limitation of article 10a CITA that applies to certain intercompany loans may no longer result in an exemption (net) positive currency exchange gains. It is recommended to identify intercompany loans with a different currency denomination as the functional tax currency of the Dutch taxpayer. It could be considered to trigger latent / hidden positive Fx gains before year end to make sure that such positive Fx gain can still benefit from an exemption.

☐ **Utilize tax losses which will evaporate as per the end of the year**

We recommend checking potential utilization of tax losses before year end in case these evaporate as per the end of 2020 (e.g. losses from the year 2011).

☐ **CbC reporting obligations before the end of the year**

Multinational enterprises (MNEs with a *Dutch reporting entity* are reminded to prepare and file their 2019 Country-by-Country ("CbC") report with the Dutch Tax Authorities before year end.

MNEs with a *foreign reporting entity* should notify the Dutch Tax Authorities in which country the MNE's 2020 CbC report will be filed before year end.

☐ **Analyze impact more stringent substance requirements Dutch intra-group licensing and/or financing companies**

Dutch intra-group licensing and/or financing companies who claim benefits of a tax treaty or EU Directive need to meet certain minimum substance requirements. If they don't, the Dutch tax authorities may exchange information with the competent authorities of the relevant source countries. As of 1 January 2021, these substance requirements will be supplemented with: (i) the requirement to incur annual salary costs of at least EUR 100,000; and (ii) the requirement to avail of an own office space. It is further announced that similar rules will apply to intermediate holding companies as from 1 January 2022. We recommend checking the impact of these more stringent substance requirements.

☐ **File functional currency request for newly incorporated entities with book year ending on 31 December 2020**

A functional currency election allows a taxpayer to calculate its taxable profit in a currency other than EUR. This is generally recommendable if the Dutch entity will carry out the majority of its transactions in a currency other than EUR and/or will hold significant assets or liabilities in currencies other than EUR. In order to be allowed to apply a functional currency as of the date of incorporation, the Dutch entity has to file a request to the Dutch tax authorities before the end of its first financial year.

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