The Netherlands: Tax Plan 2019

大成 DENTONS BOEKEL

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On October 15, the Dutch government published a letter containing a reconsideration of certain proposals that were published on Budget Day. Click here for the alert with the highlights of this reconsideration.

On September 18, 2018 the Dutch government released the Budget 2019 containing its Tax Plan 2019 with certain amendments to Dutch tax law. Please find the highlights below:

Corporate Income Tax

Reduction of Tax Rates

The corporate income tax rate currently amounts to 20% for the first €200,000 of profit and 25% for the profit exceeding €200,000. The legislative proposal includes reduction of the rates as follows:

Year	First €200.000	> €200.000
2019	19%	24.3%
2020	17.5%	23.9%
2021	16%	22.25%

Controlled Foreign Company (CFC) Taxation

The legislative proposal for implementation of the EU Anti-Tax Avoidance Directive (ATAD) includes CFC legislation. This means that a Dutch company that directly or indirectly controls a foreign company (CFC) may be taxed on the undistributed income of the CFC. The rule will only apply to certain undistributed passive income earned by the CFC, if the CFC is a resident of a jurisdiction where it is not subject to profit tax, or subject to a profit tax of less than 7% (statutory rate), or if the CFC is resident in a non-cooperative jurisdiction mentioned on the EU -list. The undistributed passive income is taxed in the Netherlands at the statutory rates, and a credit is provided for the underlying profit tax (if any).

Passive income means for example income from interest, royalty's, dividend, capital gains on shares, income from insurance or bank activities, and income from re-invoicing activities. Income from rented out real estate is not regarded as passive. Income means the positive result of passive income minus the attributable costs in a given year.

A CFC can be excluded from Dutch taxation on undistributed passive income if the CFC's income usually consist for 70% or more of other income than passive income, if the CFC qualifies as a financial institution, and also if the CFC carries out a meaningful economic activity. The term 'meaningful economic activity' will be defined in a special regulation. This test will likely be implemented in a similar manner to the minimum substance test in the current Dutch Dividend Withholding Tax Act for foreign holding companies. This means that the CFC must have its own duly equipped office space for at least 24 months, its own personnel with professional knowledge to carry out the day-today core activities independently, as well as a minimum salary expense of €100,000.

A similar rule will be introduced for foreign permanent establishments of a Dutch company.

General Interest Deduction Limitation – 30% EBITDA

The legislative proposal for ATAD implementation also includes a 30% Earnings Before Interest Tax Depreciation and Amortization (EBITDA) interest deduction limitation. The ‘Earnings’ do not include exempt income. An example: interest income is €1.5 million, interest expense is €3.5 million - the net interest is therefore - €2 million. If the Dutch company has an EBITDA of €5 million, it can deduct 30% of €5 million, which amounts to €1.5 million of interest expenses, and €500,000 may be carried forward indefinitely. The government proposes to introduce a general allowance of €1 million, even if the outcome of 30% of the EBITDA would be less than such amount.

Two existing interest deduction limitation rules (known as article 13l (financing of qualifying participations) and 15ad (acquisition holdings)) will be abolished as per January 1, 2019. Furthermore, the rule that confirms that interest due on certain Tier capital instruments issued by banks and insurers (contingent convertibles (coco’s)) is deductible will be abolished as per 1 January 2019.

Restriction of Depreciation of Real Estate for Own Use

Companies owning Dutch real estate that is used for the purpose of their own business, can annually depreciate the cost price of the real estate to its residual value, but not more than when the tax book value has reached 50% of its estimated market value. The estimated market value assessed annually by the municipality where the real estate is located. It is proposed to increase the threshold from 50% to 100% in 2019, which heavily restricts the possibility to depreciate the real estate for tax purposes. The 100% threshold already applies to Dutch real estate that is rented out to third parties.

Limitation of loss carry-forward

Currently, a tax loss can be carried back one year and can be carried forward nine years. It is proposed to shorten the tax loss carry forward period to six years in 2019.

The rule which restricts the use of losses suffered by companies in the period that they mainly had a holding and/or financing function will be abolished.

Dutch REITs: no longer allowed to directly own Dutch real estate - 2020

On basis of the fiscal Real Estate Investment Trust (REIT) regime, a company is subject to 0% Dutch corporate income tax provided it meets certain criteria. One of them is that all income (capital gains excluded) must be distributed to the investors within eight months following the close of the accounting year. In cross-border circumstances, the Netherlands can usually levy 5-15% dividend withholding tax. Now that the dividend withholding tax will be abolished (see hereafter), Dutch REITs will no longer be allowed to invest in Dutch real estate directly.

Thin Cap rule for Banks and Insurers - 2020

The government announces that it will issue draft legislation in the course of 2019 to introduce thin cap rules for banks and insurers.

Dividend Withholding Tax

Currently, dividend distributions are subject to 15% dividend withholding tax, unless an exemption applies or the rate is reduced on the basis of a tax treaty.

The government proposes to abolish the Dutch dividend withholding tax in its current form as per January 1, 2020. A new tax will be introduced, “Source Tax”. The tax rate will be 23.9% in 2020 and of 22.25% in 2021. In general, the tax is only due in case of dividend payments to a company that exercises (directly or indirectly) definitive influence over the Dutch company (e.g. >50% of the voting rights), and that is resident in a jurisdiction where it is not subject to profit tax, or subject to a profit tax of less than 7% (statutory rate), or in a jurisdiction that is mentioned on the list of non-cooperative jurisdictions listed by the EU. The Source Tax may also apply to sale proceeds to the extent the Dutch company has retained earnings and profits. A specific anti-abuse rule applies if a company is interposed to avoid the Source Tax (for example in case of an EU parent company) and in addition thereto such interposed company is not established for valid commercial reasons that reflect economic reality. The latter test will likely be implemented in a similar manner to the current test (minimum substance requirements). This likely means that the interposed holding company must have its own duly equipped office space for at least 24 months, own personnel with the professional knowledge to carry out the day-today core activities indepently, as well as minimum salary expense of €100,000.

A similar rule will be introduced for foreign permanent establishments to which the shares in a Dutch company are allocated.

The current proposals do not contain draft legislation to introduce a withholding tax on interest and royalty payments. The government may publish such proposal in the course of next year. It is envisaged that such tax will be introduced as per January 1, 2021.

Personal income tax

Box I: income from work and primary residence

Change in tax brackets and tax rates

The legislative proposal includes the following amendments with respect to the tax brackets and tax rates for 2019 applicable to income from work and primary residence for individuals below the retirement age:

Taxable amount as of	Taxable amount up to	Tax rate
	€20,384	36.65%
€20,384	€68,507	38.10%
€68,507		51.75%

The legislative proposal includes the following amendment with respect to the tax brackets and tax rates for 2020 applicable to income from work and primary residence for individuals below the retirement age:

Taxable amount as of	Taxable amount up to	Tax rate
	€20,751	37.05%
€20,751	€68,507	37.80%
€68,507		50.50%

A new two-bracket income tax system is proposed for income from work and primary residence. The legislative proposal includes the following tax brackets and tax rates for individual below the retirement age as of 2021:

Taxable amount as of	Taxable amount up to	Tax rate

Taxable amount as of	Taxable amount up to	Tax rate
	€68.507	37.05%
€68.507		49.50%

Limitation on deductions

It is proposed that any deductible expenses will only be deductible against the lower base rate of 37.05% instead of the highest applicable rate for the relevant taxpayer (as is currently the case). The limitation in the rate will be introduced gradually, with annual steps of 3% starting from 1 January 2020 to ultimately the rate of 37.05% in 2023.

Box II – income from substantial interest

Increase of tax rate

Income received by an individual that holds an interest of at least 5% in a company (i.e. a substantial interest) is currently taxed at a rate of 25%. The legislative proposal includes an increase of this tax rate to:

2020	26.25%
2021	26.9%

There will be no grandfathering for existing profit reserves.

Limitation of loss carry-forward

Currently, a tax loss can be carried forward nine years. It is proposed to shorten the tax loss carry forward period to six years.

Limitation on accounts payables

The Dutch government has proposed to limit the accounts payables of substantial interest owners to an amount of €500,000. It is mentioned that an account payables that exceed the amount of €500,000 will become subject to taxation in Box II. However, this measure is not part of the 2019 legislation package currently proposed and will probably be introduced as part of the 2020 Tax Plan.

Wage tax

30% ruling – Limitation of the period

The 30% ruling is granted to highly skilled expats with specific expertise working in the Netherlands provided certain conditions are met. With a 30% ruling, the expat can receive a tax free compensation from its employer of up to 30% of its gross salary. In addition, the expat may opt to be qualified as a non-resident taxpayer of the Netherlands with respect to income received in Box II and Box III (i.e. partial non-resident taxpayer). The 30% ruling is currently applied for a period of eight years. The government proposed to reduce the application period to five year as of January 1, 2019. The reduction of the application period will also apply to rulings that have been granted before January 1, 2019 without grandfathering rules (i.e. rulings that were valid for a period of at least five years will terminate as of January 1, 2019).

VAT

Change reduced VAT rate

In the Netherlands a reduced VAT rate of 6% applies to certain goods and services, such as food, water, books, art, healthcare and repair services of bikes, clothes and shoes. The legislative proposal includes an increase of the tax rate from 6% to 9% as per January 1, 2019.

Special rules for small enterprises – special VAT scheme

By means of a separate legislative proposal it is indicated that small enterprises -individuals and legal entities- are relieved from VAT obligations as of 2020. The relief will apply when the turnover per calendar year does not exceed the threshold of €20,000.

E-commerce – implementation of changed EU VAT Directive

The VAT on e-commerce Directive will be implemented in the Dutch VAT law as of 2019. These rules will simplify the regulation from an administrative and compliance perspective for entrepreneurs in the digital economy.

VAT exemption sports

The legislative proposal widens the scope of the VAT exemption for sports and implements provisions in line with the VAT Directive 2006/112/EC. Based on the new rules, both members and non-members should benefit from the sports exemption provided by non-profit-making organizations. Due to the wider scope of the exemption chances are that the VAT treatment of sports organisations will change and will alter from a VAT taxable exploitation to a VAT exempt service supply. In case the sports organization uses a sports accommodation that is newly build or not older than 10 years transitional law is arranged for in respect to the deductibility of VAT.

Your Key Contacts

Jurjen Bevers
Partner, Amsterdam
D +31 20 795 34 13
M +31 6 46 40 21 74
jurjen.bevers@dentons.com

Paul Halprin
Partner, Amsterdam
D +31 20 795 34 11
M +31 6 46 29 67 87
paul.halprin@dentons.com

Heico Reinoud
Partner, Amsterdam
D +31 20 795 34 14
heico.reinoud@dentons.com

Marnix Veldhuijzen
Partner, Amsterdam
D +31 20 795 34 10
M +31 6 46 23 31 27
Marnix.Veldhuijzen@dentons.com