Tax Alert January 2019

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On December 18, 2018 the Dutch Senate adopted the Tax Bill 2019 and the Bill implementing the European Union (EU) Anti-Tax Avoidance Directive (ATAD). These Bills came into force on January 1, 2019 and apply in general to tax years starting on or after January 1, 2019. Certain amendments will become effective at a later stage. Please find the highlights below:

1. Corporate Income Tax

Tax Rates

The corporate income tax rate for the tax years 2019, 2020 and 2021 will be as follows:

Year	First €200.000	> €200.000
2019	19%	25%
2020	16.5%	22.55%
2021	15%	20.5%

Controlled Foreign Company (CFC) Taxation

In general, the participation exemption applies to dividends and capital gains derived by a Dutch company from investments representing 5% or more in the nominal paid-up share capital. Investments in certain low taxed portfolio companies, however, must be valued at market value and the resulting gain or loss must be included in the taxable income of the Dutch company. In that case, the Dutch company generally receives a tax credit and not the exemption. Furthermore, and in general, the above applies mutatis mutandis to profits that are earned through a foreign branch of a Dutch company.

For tax years starting on or after January 1, 2019, the Netherlands implements the controlled foreign company (CFC) rule included in the ATAD in addition to and supplementing the above mentioned rules.

Under this new rule, in certain cases, undistributed passive income derived from a CFC will be taxed in the Netherlands at the statutory rates (see above), and relief for double taxation is granted if already taxed passive income is actually distributed to the Dutch company. A foreign company qualifies as a CFC if the Dutch company owns directly or indirectly more than 50% of the votes or capital of the foreign company. A similar rule applies to a foreign permanent establishment of a Dutch company.

The rule only applies if the CFC is a tax resident in a jurisdiction that is included in a list annually reviewed by the Ministry of Finance. In October of each year, the Ministry of Finance will publish a draft list for discussion.

Jurisdictions are included on this list in case they do not have a profit tax or a profit tax that has a rate of less than 9% or if the CFC is resident in a non-cooperative jurisdiction mentioned on the EU-list.

The first list –which applies for the 2019 tax year– has been published on 31 December 2018 and includes the following countries: Anguilla, Bahama's, Bahrein, Belize, Bermuda, British Virgin Islands, Guernsey, Isle of Man, Jersey, Cayman Islands, Kuwait, Qatar, Saudi-Arabia, Turks- and Caicos Islands, Vanuatu and the United Arabic Emirates.

The following countries are included on the EU-list of non-cooperative countries: American Samoa, American Virgin Islands, Guam, Samoa and Trinidad and Tobago.

Passive income means interest, royalties, dividend, capital gains on shares, income from insurance or bank activities, and income from certain 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 (a) the CFC's income usually consist for 70% or more of other income than passive income, (b) the CFC qualifies as a financial undertaking, or (c) if the CFC carries out a meaningful economic activity.

Carrying out a meaningful economic activity is defined as a list of substance elements, which is included in a ministerial regulation. If all these substance elements are met, the meaningful economic activity test is met. The substance elements include local decision taking, independency in the day-to-day operations, qualified local personnel, own bank accounts, own bookkeeping, minimum wage costs of €100.000, own suitably equipped office space that is at the disposal for at least 24 months.

The CFC-income that is included in the taxable income of a Dutch Real Estate Investment Company (Fiscale Beleggingsinstelling) is eliminated to determine the amount of mandatory dividend distribution. Otherwise such company would not be able to meet the distribution obligation.

Interest Deduction Rules

30% Earnings Before Interest Depreciation Amortization (EBITDA)

A general anti-abuse rule is introduced with respect to the taxpayer's net interest costs. Net interest costs means deductible interest expenses minus taxable interest income, and cannot be negative. Interest expenses that are excluded from deduction on basis of specific interest deduction limitation rules do not have to be taken into account again for the 30% EBITDA rule. Further, if the net interest costs amount to €1.000.000 (de minimis allowance) or less, the rule does not limit the deduction of interest either. The rule applies to intercompany debt as well as third party debt.

The taxable interest income includes interest income and forex gains from loan agreements, but also from financial lease and similar agreements. It further includes results from interest rate and forex swaps related to these agreements. The deductible interest expenses includes interest expenses and forex losses from aforementioned agreements, as well as negative results from interest rate and forex swaps related to these agreements.

The maximum deductible net interest costs is calculated as 30% of the adjusted taxable income. The adjusted taxable income is the taxable income increased by (i) the amount of deducted depreciations, (ii) the amount of deducted net interest costs, (iii) the amount of deducted devaluations of business assets, and reduced by (iv) the amount of reversed devaluations made in previous years. For capitalized interest a specific rule applies.

Interest costs that cannot be deducted due to the above limitation can be carried forward indefinitely to later years and can be used in the next years, subject again to the same rule. This carry forward is subject to an anti-abuse rule which aims to disallow the carry forward in case 30% or more of the shares in the Dutch company are sold to a third party and the Dutch company's assets largely consist of portfolio investments or it (intends to) significantly reduce or cease its operations.

If the company forms part of a Dutch fiscal unity, the EBITDA rule applies to the fiscal unity as a whole and not to each single entity that forms part of the fiscal unity.

The non-deductible EBITDA interest expenses of a Dutch Real Estate Investment Company (Fiscale Beleggingsinstelling) are eliminated when determining the amount of mandatory dividend distribution. Otherwise such company would not be able to meet the distribution obligation.

Abolishment of two specific interest deduction limitation rules

Two interest expenses deduction limitation rules are abolished: article 13l (financing of qualifying participations) and article 15ad (acquisition holdings)).

Tier-1 capital instruments

Furthermore, the rule that confirms that interest due on certain Tier-1 capital instruments issued by banks and insurers (contingent convertibles (coco's)) is deductible is abolished.

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 100% (2018: 50%) of the so-called bottom value, which is the value annually assessed by the municipality in which the real estate is located adjusted for certain elements.

A transition rule has been provided for Dutch real estate that has been taken into use by the company less than 3 years prior to the date on which the new rule becomes effective (in principle, January 1, 2019). In such case, the taxpayer can still utilize 50% of the bottom value instead of 100% when depreciating the real estate, until it has used the real estate for three years.

Tax Losses

Limitation of loss carry-forward

The loss carry forward period is reduced from nine to six years. For example, a loss suffered in 2018 can be used up to and including 2027, a loss suffered in 2019 can be used up to and including 2025.

Holding & Financing companies

A loss suffered by a group holding and financing company could only be used by that company if the profit in the next year(s) stemmed from similar activities. This rule is abolished. A transition rule applies to holding and financing losses that still exist on December 31, 2018.

2. 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	Until	Tax rates
	€20.384	36.65%
€20.384	€34.300	38.10%
€34.300	€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	Until	Tax rates
	€20.751	37.05%
€20.751	€34.764	37.80%
€34.764	€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	Until	Tax rates
	€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 January 1, 2020 to ultimately the rate of 37.05% in 2023.

Box II – income from substantial interest

Increase of tax rate

Dividends and capital gains derived by an individual that owns an interest of at least 5% of the capital in a company (i.e. a substantial interest) is currently taxed at a rate of 25%. The rate will be increased as follows:

Year	Tax rates
2020	26.25%

Year	Tax rates
2021	26.9%

There will be no grandfathering for existing profit reserves.

Limitation of loss carry-forward

The loss carry forward period is reduced from nine to six years. For example, a loss suffered in 2018 can be used up to and including 2027, a loss suffered in 2019 can be used up to and including 2025.

Limitation on accounts payable

The Dutch government has proposed to limit the accounts payable of substantial interest owners to an amount of €500,000. Existing debts and new debts incurred to purchase an own house are excluded for the substantial interest owner and the partner. 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.

3. 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 was valid for a period of eight years. The government reduced the validity period to five year as of January 1, 2019. The reduction of the validity period will also apply to rulings that have been granted before January 1, 2019, with grandfathering rules as follows:

- If the original end date of the ruling regarding the 30% facility is between January 1, 2019 and December 31, 2020: the original end date will remain unchanged.
- If the original end date of the ruling is between January 1, 2021 and December 31, 2023: transitory rules will be applicable and the ruling will end as of December 31, 2020 at the latest.
- If the original end date of the ruling is in 2024 or after 2024: the maximum term of the ruling will be 5 years.

4. VAT

For value-added tax, the Tax Bill 2019 mentions the following amendments:

Amended reduced VAT rate

The reduced VAT rate is increased from 6% to 9% as per January 1, 2019. This VAT rate applies to food & beverages, pharmaceuticals and specific labor-intensive provision of services.

VAT exemption for sports

In the Netherlands, the Dutch VAT exemption for sports is brought in line with the VAT Directive 2006/112/EC. Due to the wider scope of the exemption, the VAT treatment of sports organizations will alter from VAT taxable to VAT exempted. This results in non-deductibility of input

VAT regarding costs for sports accommodations.

Special rules for small enterprises – special VAT scheme

The rules for small enterprises change per January 1, 2020. Small enterprises can choose to be relieved from VAT reporting and VAT administration obligations. The relief applies in the event the turnover per calendar year does not exceed the threshold of €20.000. The flipside is that input VAT incurred on costs is not recoverable. In case small entrepreneurs like to apply the new VAT scheme per January 1, 2020 an application needs to be send to the Dutch Tax Authorities between June 1, 2019 and November 20th, 2019.

Apart from the Tax Bill 2019, by means of separate bills amending the Dutch VAT Act or related lower legislation, the following amendments entered into force as per January 1, 2019:

Vouchers – implementation of changed EU VAT Directive

As per January 1, 2019, the EU Vouchers Directive is implemented in the Dutch VAT Act. Along with this implementation, a related Royal Decree has been brought up to date. These rules simplify the levying of VAT in case the consideration for supply of goods and provision of services are paid for by means of vouchers, gift cards or phone cards. The regulation pursues a level playing field for the EU Member States and prevent from double or no VAT taxation.

Zero rate for sea vessels

Per January 1, 2019 the Dutch VAT Act, as well as the related Royal Decree, are amended for the application of the zero percent rate for sea vessels. The current VAT rules require for the application of the zero rate that the sea vessel is used for navigation on the high seas.

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