DUTCH GOVERNMENT PUBLISHES 2021 TAX PACKAGE

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On 15 September 2020 for the occasion of Budget Day the Dutch government presented the 2021 Tax Package. Please below the main highlights of the proposed tax measures that are relevant for corporate income tax (**CIT**) payers involved in cross border corporate structures.

Reduction of CIT rates

In 2020, the Dutch CIT rate is 16.5% for taxable profits up to and including EUR 200,000 and 25% for taxable profits exceeding this amount. To enhance the Dutch tax climate, the rates will decrease to 15% for taxable profits up to and including EUR 245,000 on 1 January 2021. The CIT rate for taxable profits exceeding this amount will remain 25%. It is expected that the threshold for the 15% rate will be increased to EUR 395,000 on 1 January 2022.

Loss carry forward rules

The term of the loss carry forward facility will be expanded from 6 years to unlimited future years as per 1 January 2022. However, the loss carry forward and backward facility would only will be fully applicable for profits up to an amount of EUR 1,000,000. For profits exceeding this amount, only 50% of the profit can be set-off against tax losses.

Liquidation loss rules

The liquidation loss rules will be stricter from 1 January 2021 onwards. According to the legislative proposal, losses incurred on the liquidation of subsidiaries will only be deductible up to an amount of EUR 5,000,000 and for the excess only in case of subsidiaries in which the tax payer would have a controlling influence which reside in (i) the EU, (ii) the EEA or (iii) a jurisdiction with which the EU concluded a specific cooperation agreement (i.e. Turkey). Furthermore, the time in which the loss can be deducted will be limited: losses can only be deducted if the liquidation is completed within three years of the cessation or completion of the decision to do so (unless the term would be longer based on business reasons).

Dutch participation exemption – possible information exchange for substance lacking intermediary holding companies

It was announced that the availability of the participation exemption in case of a CIT payer acting as an intermediary holding company with insufficient presence in the Netherlands shall not be made conditional on substance requirements. According to the Dutch government it will be further investigated whether legislation will be introduced in 2022 which enables the automatic exchange of information to relevant source countries for substance lacking intermediary holding companies. This is in line with the current disclosure rules for financial service companies.

ATAD2 / Earning stripping rules

Rules are introduced to avoid double non-deduction or double deduction under the application of the anti-hybrid rules which were introduced as part of the amended anti-tax avoidance Directive (**ATAD2**) and the earning stripping rules.

Anti-base erosion rules

Additional measures will be introduced preventing undesired application of the anti-base erosion rules. Currently, the application of the anti-base erosion rules on negative interest rates and positive currency exchange income may result in a tax exemption. Under the new measures, the application of the anti-base erosion rules can no longer result in an exemption of Dutch CIT.

Changes in real estate transfer tax rates

As per 1 January 2021, the real estate transfer tax (**RETT**) rates will change:

- The general RETT rate will be increased from 6% to 8%. This rate will not only apply to the acquisition of non-residential properties but from 1 January 2021 onwards also to residential properties which are not or only temporarily used as main residential property of the acquirer.
- The rate of 2%, which is currently applicable to all residential properties, will only apply to individuals acquiring the formal ownership of a residential property which is used as main residential property.
- A temporal conditional exemption from RETT will be introduced for 'starters' which would apply in the period 1 January 2021 up to and including 31 December 2025. The exemption is available for (i) individuals aged 18 up to 35 years (ii) whom acquire a residential property, (iii) use it as their main property, and (iv) whom did not apply the exemption in the past.

Fiscal corona reserve

For CIT purposes, companies are allowed to charge the expected loss for the year 2020 related to the corona crisis as a fiscal corona reserve to reduce taxable profit over the year 2019. This is in line with the earlier announced Dutch tax measures to mitigate the economic effects of the corona pandemic .

Please note that the proposed legislation still has to be adopted by the House of Representatives and the Senate.

Other rules which enter into effect on 1 January 2021

Besides the proposals sent on Budget Day, also other legislative changes will enter into effect on 1 January which are relevant for CIT payers involved in cross border corporate structures such as DAC6 (i.e. mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements), the conditional interest & royalty withholding tax and increased substance rules for financial service companies.

Take away

In the past years significant legislative changes have taken place in Dutch tax laws aimed at preventing the use of artificial structures and arrangements and anti-tax avoidance. At the same time, the Dutch government tries to improve the business climate for companies with operational activities in the Netherlands by reducing the tax rates in order to benefit companies. The tax measures as described above are in line with these developments.

We recommend assessing whether your structure meets the current and future requirements. If you have any questions regarding the above, please do not hesitate to contact us.

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