

CORPORATE TAX

**GLOBAL LEGAL INSIGHTS
CORPORATE TAX**

2021

NINTH EDITION

BE UNSTOPPABLE

BUREN

LEGAL | TAX | NOTARY

IMPORTANT NOTICE:

This publication is merely intended to provide general information. It does not aim to provide any legal advice and should not be taken as such. The information has been put together with the utmost care, but no guarantee can be given with regard to its accuracy and completeness. BUREN N.V. and its affiliated companies (BUREN) hereby expressly disclaims all liability whatsoever for the accuracy and completeness of the information in this publication.

All rights reserved. No part of this publication may be reproduced, distributed, disseminated or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the explicit written permission of BUREN.

CORPORATE TAX

**GLOBAL LEGAL
INSIGHTS
CORPORATE TAX**

2021

NINTH EDITION

CONTENTS

INTRODUCTION	5
1. overview of corporate tax work over last year	7
2. key developments affecting corporate tax law and practice	9
3. tax climate in the Netherlands	11
4. developments affecting attractiveness of the Netherlands for holding companies	12
5. industry sector focus	13
6. about BUREN	14

INTRODUCTION

The Global Legal Insights – Corporate Tax 2021 covers an overview of the most important tax developments in 18 jurisdictions over the last year such as the corporate tax work over the last year, key developments affecting tax law and practice, key EU law developments, BEPS, developments affecting the attractiveness of tax climate for holding companies and other sectors. The contributions were prepared by a group of leading tax practitioners from around the world. Authors were invited to offer their own perspective on the tax topics of interest in their own jurisdictions, explaining technical developments as well as any trends in tax policy. The aim is to provide tax directors, advisers and revenue authorities with analysis and comment on the chosen jurisdictions. For more information on GLI – Corporate Tax 2021, reference is made to <https://www.globallegalinsights.com/practice-areas/corporate-tax-laws-and-regulations>.

This brochure contains the Dutch chapter of the GLI – Corporate Tax 2021 which was prepared by Buren N.V. For more information on Buren N.V., reference is made to page 14 of this brochure. Please feel free to contact us in case you would have any questions or comments in relation to this brochure or otherwise.





1. OVERVIEW OF CORPORATE TAX WORK OVER LAST YEAR

Types of corporate tax work

The years 2020 and 2021 are and will be dominated by the worldwide COVID-19 pandemic. In the year before the start of the pandemic, 2019, the M&A market was stunning. Where we thought COVID-19 would break this trend, the Dutch M&A market in general saw a small pause in 2020, after which the M&A engine ran at full speed and did not stop in 2021.

Taking precautions, the Dutch government supported taxpayers by introducing favourable rules aimed at



mitigating the impact of the COVID-19 pandemic, which also improved the attractiveness of the tax environment. As a consequence, the Dutch economy experienced minimal contraction during 2020. In the year 2021, the Dutch economy recovered, which is earlier than previously expected.

Of course, there are threats that could break this relatively positive prospect. A prolonged COVID-19 pandemic, European tax measures, geopolitical concerns, monetary policy, volatility in capital markets and high valuation levels are all factors that could contribute to a downturn in deals and affect the Dutch M&A market.

The introduction of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), the second part of the Base Erosion and Profit Shifting project initiated by the G20/OECD Inclusive Framework, the adoption of new measures by the EU Member States aimed at preventing the use of artificial structures as well as an additional focus on substance and beneficial ownership, have created some uncertainty on the current and future application of the EU Parent Subsidiary Directive and tax treaties by companies engaged in international activities. This is in line with international developments. The Netherlands remains an attractive jurisdiction for international businesses and especially for companies actively engaged in operational activities.

Significant deals and themes

Returns of value to shareholders

One of the most significant recent developments in Dutch taxation was the publication of draft legislation by the Dutch Ministry of Finance to increase the scope of the conditional withholding tax on interest and royalties to dividend payments from 1 January 2024 onwards. The conditional withholding tax on dividend payments may be reduced with the amount of any Dutch dividend withholding tax (DWT) withheld on the same dividend payments. The legislative proposal is currently being discussed in Dutch parliament. The Dutch government also took

measures to improve the Dutch tax climate. Examples are the gradual reduction of the corporate income tax (CIT) rate and the increase of the threshold of the lower CIT rate. In 2020, the Dutch CIT rate was 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 decreased 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.

Real estate transactions

As from 1 January 2021, the real estate transfer tax (RETT) rates changed. The general RETT rate increased from 6% to 8%. This rate applies not only to the acquisition of non-residential properties but, from 1 January 2021 onwards, also to residential properties that are not or are only temporarily used as the main residential property of the acquirer. The rate of 2%, which was applicable to all residential properties, only applies to individuals acquiring the formal ownership of a residential property that is used as main residential property from 1 January 2021 onwards. For young buyers (up to 35 years old) under certain conditions a full exemption may apply.

Transfer pricing

On 4 March 2021, the Dutch Ministry of Finance presented a legislative proposal for consultation aimed at unilaterally neutralising certain mismatches that arise under the application of the arm's length principle.

Based on the current Dutch tax rules, the same terms and conditions must be applied to transactions between affiliated entities, as would be applied between non-affiliated entities under similar circumstances (the so-called "arm's length principle"). The arm's length principle implies, inter alia, that in case the terms and conditions of an affiliated party transaction are not at arm's length, the same terms and conditions will be re-qualified for Dutch tax purposes into terms and conditions that meet the arm's length principle.

Under the proposed new rules, downwards fiscal profit adjustments, recognition of higher tax losses and value increases of assets acquired from affiliated parties (value increases are also referred to as "informal capital contributions") under the application of the arm's length principle will be denied if, in short,

the taxpayer cannot reasonably prove that no corresponding upwards adjustment will be included in the tax base in the jurisdiction of the affiliated party.

However, these new rules do not apply to situations in which transfer pricing mismatches exist due to tax rate differences. Under the proposal, mismatches remain to exist if, for example, the corresponding upward adjustment is included in the tax base in the jurisdiction of the affiliated party, but is taxed at a lower rate.

In addition, a depreciation for tax purposes can be denied under the application of the proposed new rules if assets have been transferred to the Dutch taxpayer by an affiliated entity in book years starting on or after 1 January 2017 if the following conditions are met:

1. the Dutch taxpayer received an asset from an associated entity in book years starting on or after 1 January 2017;
2. there is still a basis for depreciation at the beginning of that first financial year; and
3. the asset would have been valued at a lower amount if the new rules would have been applied.

If the above conditions are all met, the depreciation of the asset from the first book year starting on or after 1 January 2022 will be determined based on the lowest of the following two amounts:

1. the value of the asset at the time of the transfer if the proposed new rules would have been applicable at that time; or
2. the book value of the asset at the time immediately before the first book year starting on or after 1 January 2022.

For the assessment of the amount of the downwards fiscal profit adjustment or recognition of higher losses, only the adjustment leading to the recognition of "business-like" profits or expenses in respect of transactions between affiliated entities is relevant. The beforementioned implies that so-called secondary adjustments are not taken into consideration. In other words, income from participations (deemed dividend) included in the fiscal profit as a consequence of the re-qualification under the application of the arm's length principle is disregarded for the assessment of the amount of the downwards fiscal profit adjustment or recognition of higher losses.

2. KEY DEVELOPMENTS AFFECTING CORPORATE TAX LAW AND PRACTICE

Domestic – cases and legislation

Exit tax for Dutch DWT purposes

In the near future, the Dutch tax rules regarding exit taxation may be amended with retroactive effect. There is, however, a lot of uncertainty with respect to this draft bill, which was submitted by a member of the Dutch parliament. His party is not one of the governing parties and the proposal received a lot of criticism. If adopted, the new rules would apply from 18 September 2020 onwards. Cross-border restructurings (including cross-border changes of seat, mergers, share mergers and de-mergers) by a Dutch resident company (Agent) would be subject to DWT under certain conditions including the condition that the Agent has profit reserves exceeding EUR 50 million. The DWT will be claimed if, after the cross-border restructuring, the Agent performs a distribution (such as a dividend distribution, liquidation proceeds, etc.).

Introduction of conditional withholding tax on interest and royalties

A conditional withholding tax on interest and royalty payments in abusive situations has been applicable since 1 January 2021. The applicable rate is 25%. The withholding tax applies to (direct and indirect) intra-group interest and royalty payments by Dutch resident companies to related entities residing in jurisdictions with no or low statutory tax rates (i.e. most likely less than 9%), in jurisdictions that are on the EU blacklist of non-cooperative jurisdictions or in hybrid situations. A new documentation requirement has been introduced based on which taxpayers are required to have information in their administration substantiating whether or not payments of interest or royalties would be subject to withholding tax.

Changes in loss carry-forward rules

The term of the loss carry-forward facility will be expanded from six years to unlimited future years from 1 January 2022. However, the loss carry-forward and backward facility will be fully deductible for profits up to an amount of EUR 1 million. For profits exceeding this amount, only 50% of the profit

can be reduced by the previous year's tax losses.

European – CJEU cases and EU law developments

Implementation of ATAD2

The Dutch law implementing the Anti-Tax Avoidance Directive II (ATAD2) preventing hybrid mismatches related to non-EU countries entered (partially) into force on 1 January 2020, except for the reverse hybrid rules that should apply from 1 January 2022. A legislative proposal is currently in consultation implementing the last part of ATAD2 requiring EU Member States to include certain provisions to combat hybrid structures and payments. Reverse hybrid situations concern entities that are treated as transparent in the jurisdiction of incorporation or registration (and are therefore not subject to tax) and as non-transparent in the jurisdiction(s) of their participants. Typically, a Dutch limited partnership (commanditaire vennootschap, or CV) may be part of a reverse hybrid situation.

Under the application of the proposed reverse hybrid rules, tax-transparent entities will under certain conditions be treated as opaque entities for Dutch tax purposes. As a consequence, such entities will become subject to Dutch CIT and their distributions subject to withholding taxes.

The reverse hybrid rules apply to entities incorporated or registered under Dutch law or residing in the Netherlands insofar as at least 50% of its voting rights, capital interests or rights to a share profit of such entity is directly or indirectly held by an “associated entity” and if the jurisdiction of the “associated entity” qualifies the entity as non-transparent.

In line with ATAD2, the reverse hybrid rules will not apply under the application of an escape rule for collective investment vehicles, subject to certain conditions.

BEPS

The Netherlands deposited its instrument of ratification for the MLI with the OECD on 29 March 2019. Therefore, the provisions of the MLI have been (partly) applicable to Dutch tax treaties since 1 January 2020. The MLI standards have been incorporated in the Dutch tax treaty policy.

COVID tax implications

Various Dutch tax rules have been and will be amended as a result of the COVID-19 pandemic. For instance, for CIT purposes, companies are allowed to charge the expected loss for the year 2020 related to COVID-19 as a fiscal corona reserve to reduce taxable profit over the year 2019.

Another example is the increase of the tax-free allowance for Dutch wage tax purposes, the so-called “work-related costs scheme” (Werkkostenregeling, or WKR). In the years 2020 and 2021, the tax-free allowance for the combined wage up to and including EUR 400,000 was increased from 1.7% to 3%. It was announced that from 1 January 2022, additional changes in the WKR will apply and that a wage tax exemption will be introduced in order to facilitate working from home. More detailed information in this regard will be published on Budget Day, 20 September 2021.

With regard to a company’s tax residency, in line with the OECD guidelines, the Ministry of Finance indicated that it would be unlikely that a tax residency would change as a result of the COVID-19 measures. When determining a company’s place of effective management, all relevant facts and circumstances should be examined and not only those that pertain to an exceptional and temporary period such as the COVID-19 pandemic. In addition, the Ministry of Finance indicated that the travel restrictions resulting from the COVID-19 pandemic will be considered when enforcing substance requirements that are included in national laws and regulations.

Mandatory disclosure rules update

Under DAC6, taxpayers and intermediaries such as tax advisers, accountants and trust offices that design, promote or implement tax planning schemes are required to report potentially aggressive tax arrangements to the tax authorities. In the event of non-compliance, these parties may be subject to a maximum penalty of EUR 830,000 or, in certain

situations, criminal prosecution. Reportable arrangements (on the basis of so-called hallmarks) also include arrangements that do not necessarily have obtaining a tax advantage as a main objective. The adopted legislative proposal refers to Annex IV of DAC6 for the definition of the reportable cross-border arrangements. From 1 January 2021 onwards, reportable arrangements should be reported within 30 days starting the day after (i) the reportable arrangement is made available for implementation, (ii) the reportable arrangement is ready for implementation, or (iii) when the first step of the implementation is made, whichever occurs first. An exception applies to “marketable arrangements”, which should be reported every three months. The reporting obligations pursuant to DAC6 applied retrospectively to transactions implemented as of 25 June 2018.

3. TAX CLIMATE IN THE NETHERLANDS

The Dutch government's current view of the tax climate is detailed, inter alia, in the 2019 fiscal policy agenda dated 27 May 2019 and in the overview of the legislative proposals for Budget Day 2022 dated 25 June 2021, which include the following goals.

Reduction of tax evasion and tax avoidance

Although the Dutch Ministry of Finance emphasises that tax evasion and tax avoidance are international phenomena that can best be addressed by unilateral measures by the EU and OECD, the Netherlands aims at taking the lead in the international process to combat both. Besides previous measures (such as the implementation of the Anti-Tax Avoidance Directives, the MLI, the introduction of a conditional withholding tax on interest and royalty payments on 1 January 2021 and on dividends on 1 January 2024, and the increase in the substance for intra-group financing and licensing companies on 1 January 2021), the Ministry of Finance plans to implement the last part of ATAD2 (see above under "European – CJEU cases and EU law developments") and changes to the arm's length principle (see above under "Significant deals and themes").

Increase appeal for companies engaged in operational activities

Besides the reduction of CIT rates (see above), the Dutch Ministry of Finance aims at further increasing the appeal of the Dutch tax system (especially for start-ups and scale-ups) by introducing new rules related to the levy of wage tax and personal income tax of option plans. Based on a draft legislative proposal, the moment of taxation of share options may be changed from the moment of exercise to the moment when the acquired stock on exercise is (deemed to be) available for trade, subject to certain conditions. The government intends that the entry into force of the legislative proposal will be 1 January 2022.

Other goals

Other policy goals include reducing taxes on employment, increasing the "greening" of the tax system in view of global climate goals, and increasing the efficiency of taxation.



4. DEVELOPMENTS AFFECTING ATTRACTIVENESS OF THE NETHERLANDS FOR HOLDING COMPANIES

Impact of developments on migration trends

Based on newly adopted rules, the Netherlands has become generally more attractive to international businesses, especially to companies engaged in active operational activities.

The introduction of various anti-abuse rules over the last few years affected some holding companies with limited presence in the Netherlands. As a consequence, some groups decided to increase their presence in the Netherlands. Examples of such anti-abuse rules are the changes in the liquidation loss rules and the expected information exchange rules for substance lacking holding companies.

The liquidation loss rules have been stricter from 1 January 2021 onwards. The deduction of losses incurred in connection with the liquidation of subsidiaries is subject to various rules. As from 1 January, the following additional requirements apply.

Losses incurred on the liquidation of subsidiaries will only be deductible up to an amount of EUR 5 million and for the excess only in cases of subsidiaries in which the taxpayer would have a controlling influence that reside in (i) the EU, (ii) the EEA, or (iii) a jurisdiction with which the EU concluded a specific cooperation agreement (i.e. Turkey). In addition, the time in which the loss can be deducted has been 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).

Furthermore, the Dutch government announced that substance-lacking intermediary holding companies that apply the Dutch participation exemption will be subject to certain disclosure rules and exchange of information rules. These rules would be in line with the current disclosure rules for Dutch financial service companies.



5. INDUSTRY SECTOR FOCUS

Funding and private equity sector

New rules have been published for consultation on 25 March 2021 that will have a big impact on the Dutch funding and private equity sector. Based on the new rules, the criteria determining the qualification of Dutch CVs and foreign entities as “transparent” or “non-transparent” for Dutch tax purposes will change.

Under the new rules, Dutch CVs will always be treated as transparent entities for Dutch tax purposes. In other words, the so-called consent requirement (based on which the transparency depends on whether or not both the admission and change of partners are subject to the approval of all partners) will no longer be relevant. This change is also relevant for the qualification of foreign entities that are comparable to a CV, such as a foreign limited liability partnership. Such foreign partnerships may be treated as transparent for Dutch tax purposes as well. Based on the legislative proposal, the general partner of a non-transparent CV is deemed to have transferred its assets on the moment directly prior to the conversion from a non-transparent entity to a transparent entity.

Since the consultation process with respect to this legislative proposal led to a lot of comments with respect to possible overkill, the introduction (which was first scheduled for 1 January 2022) was postponed and the proposal will be reviewed and possibly amended. It is now expected that the new rules will apply from 1 January 2023 onwards.

Start-up and scale-up companies

Companies in start-up or scale-up phases usually offer share options to remunerate and recruit key employees. The new rules related to the levy of wage tax and personal income tax of option plans (see above under “Tax climate in the Netherlands”) will be beneficial for these companies.

6. ABOUT BUREN

BUREN is an independent, internationally oriented firm of lawyers, notaries and tax lawyers with offices in Amsterdam, Beijing, The Hague, Luxembourg and Shanghai. The firm's heritage dates back to 1898.

BUREN has more than 70 legal professionals providing a full range of legal services to domestic and international business clients who conduct business nationally and globally. The firm works closely together with its clients to tailor solutions in alignment with their business goals. BUREN has carefully established a global network with premier and reputable law firms and other service providers.

In addition, it has dedicated regional practices (China, Japan, CIS/Russia, Germany, Hong Kong and Latin America) staffed by native speakers and professionals who have a profound knowledge of local business and culture.

Key contacts



Peter van Dijk

Partner

E p.vandijk@burenlegal.com

T +31 (0)70 318 4834



IJsbrand Uljee

Senior Associate | Tax Lawyer

E i.uljee@burenlegal.com

T +31 (0)70 318 4200

BUREN

LEGAL | TAX | NOTARY

burenlegal.com

Amsterdam

World Trade Center
Tower C - level 14
Strawinskylaan 1441
1077 XX Amsterdam
The Netherlands

PO Box 78058
1070 LP Amsterdam
The Netherlands

T +31 (0)20 333 8390
F +31 (0)20 333 8399

Beijing

Zhong Yu Plaza, Room 1602
No. 6, North Gongti Road
ChaoYang District
100027 Beijing
The People's Republic of China

T +86 (10) 8 5235 780
F +86 (10) 8 5235 770

The Hague

Johan de Wittlaan 15
2517 JR The Hague
The Netherlands

PO Box 18511
2502 EM The Hague
The Netherlands

T +31 (0)70 318 4200
F +31 (0)70 356 1340

Luxembourg

98, boulevard de la
Pétrusse
L-2320 Luxembourg

Luxembourg

T +352 (0)2644 0919
F +352 (0)2717 7700

Shanghai

Room 2505B, ICC-Tower
No. 3000, North Zhongshan Road
200063 Shanghai
The People's Republic of China

T +86 (21) 6 1730 388
F +86 (21) 6 1730 386