15 September 2020

Global Tax Alert

The Netherlands publishes 2021 budget proposals

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Executive summary

On 15 September 2020, the Dutch Government published the Dutch budget proposals (the Proposals) for fiscal year 2021.

The proposals announce a €2 billion workforce incentive plan for employers that will be a boost for workforce investment activities, both increasing new employment and securing the retention of employees. Additionally, the Dutch Government continues to combat perceived abusive tax structures in line with international tax proposals and has introduced further measures to support economic recovery from the COVID-19 crisis. In order to fund the incentives/ stimulus package, the planned reduction of the headline corporate income tax rate (CIT) to 21.7% will not be introduced in 2021. Furthermore, the Proposals include a tax agenda, outlining expected legislative measures for the coming periods.

The Proposals are currently subject to the review and discussions by the Dutch Parliament and as such may be subject to amendments. The final version of the Proposals are expected to be enacted in December 2020.

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Detailed discussion

CIT rate

As per fiscal year (FY) 2021, the Dutch CIT rate in the first bracket will be reduced to 15% and the amount of taxable income to which this applies will increase from €200,000 to €245,000 (FY 2022: €395,000). The top Dutch corporate income tax rate will remain at 25%, i.e., the earlier enacted reduction to 21.7% will not happen in 2021.

Innovation box regime effective tax rate

The effective applicable tax rate in the innovation box regime will increase from 7% to 9%.

Introduction of a Job-Related Investment Discount (BIK)

The BIK provides for a payroll tax reduction for companies investing in employment. The measure will be introduced as an amendment to the Proposals and is set to enter into force by 1 January 2021. The budgetary amount allocated is €2 billion.

COVID-19 related measures

Several COVID-19 measures previously taken by the Dutch Government have been set forth in the legislative proposals. This includes among other things, the possibility for Dutch taxpayers to have their "corona related losses" from FY 2020 settled against their profit of FY 2019 by introducing a "corona reserve" (instead of waiting for FY 2020's tax loss to carry back to FY 2019).

Utilization of tax losses

Under the announced measure, it is proposed that losses may be carried forward indefinitely. However, the offset of losses will be limited in a given year against the first €1 million of taxable profit. For taxable profit in excess of this amount, losses may only be offset up to 50% of this excess. The measure will be introduced as an amendment to the Proposals, and if enacted is set to enter into force by 1 January 2022.

Interest deduction limitations

Further guidance is proposed to address certain overlapping situations of the Dutch anti-hybrid rules and the other interest deduction limitation rules.

In addition, amendments to existing anti-base erosion rules have been announced. The anti-base erosion rules currently also apply to negative interest and foreign currency (FX) gains relating to tainted debt, as a result of which the corresponding income is effectively exempt. It is now proposed that this rule will not apply to such negative interest and FX gains to the extent it would otherwise reduce the taxable amount (i.e., after netting with interest expense). This should be determined per loan.

Liquidation loss rules

Under the liquidation loss rules, a Dutch taxpayer can – under certain conditions – deduct losses resulting from ceasing foreign businesses or liquidating subsidiaries. To the extent these losses exceed €5 million, these will be restricted to subsidiaries or permanent establishments in a European Union (EU)/European Economic Area (EEA) country and only if the interest in the subsidiary/permanent establishment is more than 50% instead of at least 5%.

Tax agenda of future tax measures

The Proposals include a tax agenda for certain future tax measures by the Dutch Government for which no proposed legislation is available. The measures include:

- Limitation on downward transfer pricing adjustments to the extent no corresponding upward adjustment is made. Under the proposed measure, a transfer pricing adjustment that results in a reduction of Dutch taxable profit is only allowed to the extent the corresponding income is included in taxable income at the recipient level. The legislative proposal to implement this change is expected by spring of 2021.
- Research into a more equal taxation of equity and debt. The Dutch Government is currently conducting research to introduce a taxable deduction on equity (NID), combined with a further limitation on the deduction of interest through an amendment of the existing earnings-stripping rule.
- Amendment of the credit for certain withholding taxes against Dutch CIT for certain investors. The Dutch Government intends to introduce legislation that limits the availability for a refund of dividend withholding tax (and gambling) tax for Dutch corporate taxpayers, pursuant to the *Sofina* court case of the European Court of Justice (C-575/17). While such legislation is pending, the Dutch Government aims to issue a Decree that will, under conditions, allow foreign taxpayers to obtain a refund of these withholding taxes. The decree is expected shortly.

- Introduction of a conditional withholding tax on dividends. The Dutch Government aims to introduce additional tax measures related to payments of dividends to shareholders resident in low-tax jurisdictions or in jurisdictions included on the EU's list of non-cooperative jurisdictions or in certain perceived abusive situations. The applicable tax rate will equal the headline CIT rate (i.e., currently 25%). The legislative proposal is expected by spring 2021, and if enacted, is set to enter into force by 1 January 2024.
- Fiscal unity regime – in June and July of 2019 an internet consultation took place regarding the future of the Netherlands fiscal unity regime following certain EU court cases. Given the complexity of the matter and the potential impact on the overall Dutch tax regime, any changes to the fiscal regime will be left at the discretion of the new Government (general elections will be in March 2021).

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EYG no. 006368-20Gbl

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