Overview of tax measures Tax Plan 2019

Changed tax measures

The Dutch government released the Budget 2019 containing its Tax Plan 2019 with certain amendments to Dutch tax law. The measures will enter into force as from 2019, unless mentioned otherwise. This chapter of the guide will explain the changes with regard to the corporate income tax, the dividend withholding tax, the tax at source on interest and royalties and finally the Dutch implementation of the Directive against tax avoidance (otherwise known as ATAD 1).

Corporate income tax

CORPORATE INCOME TAX RATE

The corporate income tax rate currently amounts 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:

RATE 2019
19% up to and including the first €200.000 and 25% above €200.000

RATE 2020
16.5% up to and including the first €200.000 and 22.5% above €200.000

RATE 2021
15% up to and including the first €200.000 and 20.5% above €200.000

LOSS SETOFF PERIOD

The corporate income tax loss carry-forward will be reduced from nine to six years. However, the loss carry-back period remains one year. It is important to know that losses incurred before 2019 can still be carried forward for nine years.

HOLDING COMPANY LOSSES

The setting off of losses of so-called holding and financing companies is currently subject to restrictions. These losses are namely only creditable against profits from such activities. This restriction is to be terminated as from 2019. The normal loss setoff periods will however continue to apply. Interest deduction limitations

Finally, the interest deduction limitation for acquisition holding companies and the deduction limitation on excessive participation interest is to be discontinued. These limitations are linked to the introduction of the earnings stripping rule. More about this later. The so-called base erosion interest deduction limit will continue to exist.

Withholding tax

DIVIDEND WITHHOLDING TAX

It was uncertain whether the dividend withholding tax was going to be abolished or not. After reconsideration the Cabinet has made a final decision that the withholding tax will remain. The previously announced introduction of a new dividend withholding tax for specific situations will be postponed. The Cabinet will first examine the relation to the current dividend withholding tax and to what extent the introduction of a new dividend withholding tax for specific situations is still necessary, now that the current dividend withholding tax continues to exist.

THE MEANING FOR YOUR COMPANY

The current rule with regard to the dividend withholding tax is as follows. A 15% dividend withholding tax is charged if your company pays dividend to its shareholders. The dividend withholding tax is payable by the shareholders of your company, but is withheld at source by the company that pays out the dividend. For example, company X pays a dividend of €100. Company X has to pay €15 dividend withholding tax to the tax authorities and the shareholders of company X receive €85 net. If the shareholders reside in the Netherlands, they can credit the dividend withholding tax against their corporate income tax or personal income tax. Now the current dividend withholding tax continues to exist, these rules do not change and remains as they were.

In the original plans a tax at source was going to be introduced as of 2020 on dividends paid to affiliated parties, residing in low tax jurisdictions. A jurisdiction is considered to be low taxed when a tax has a statutory rate of less than 7%, or is listed on the EU blacklist of non-cooperative jurisdictions and in certain abuse situations. As mentioned earlier, whether these rules are still necessary is currently under review. Therefore, the proposed new rules are currently postponed.

Other tax at source

TAX AT SOURCE ON INTEREST AND ROYALTIES

On 1 January 2021 a tax at source on interest and royalties will be introduced. The purpose of the new tax at source on interest and royalties is to prevent international tax avoidance. The Dutch government decided to charge tax on outgoing interest and royalty payments to countries with very low taxes (a statutory rate of less than 7%), countries listed on the EU blacklist of non-cooperative jurisdictions and in certain tax abuse situations. These proposals do not coincide with the abolition of the dividend withholding tax. Therefore, the intent to implement this kind of legislation remains. It is unclear how this legislation will take form. A legislative proposal is in the making. Because the details of the tax at source on outgoing interest and royalties are not yet known, it is possible that the low profit tax rate may be increased to 9% following the adjustment of the statutory tax rate in the CFC measure from 7% to 9%.

Dutch implementation of directive against tax avoidance (ATAD 1)

Furthermore on 1 January 2019 the new legislation regarding ATAD 1 will enter into force. Meanwhile the ATAD 1 legislative proposal has been submitted to the Dutch Parliament. The aim of this proposal is to implement ATAD 1 in Dutch legislation. ATAD 1 is part of the European Anti-Tax Avoidance Package. The European Commission aims to make corporate taxation in Europe more honest, easy and effective. The aim of the European Anti-Tax Avoidance Package is that the rules accomplish that companies pay their taxes where they create their income. More particularly, the aim of ATAD 1 is to ensure implementation of a certain minimum standard of anti-avoidance provisions across the

Member States of Europe. Many EU Member States will have to make some changes to their existing tax systems, among others the Netherlands. In addition, the implementation of ATAD 1 will have tax consequences for many companies. The measures in the proposal are related to corporate income tax and the most important measures are:

- the earnings stripping rule
- the CFC rules
- the exit taxation

EARNINGS STRIPPING RULE

The earnings stripping rule is a limitation of the deductibility of excess net interest expenses (the balance of interest expenses and interest income). This new interest deduction limitation makes excess interest expenses deductible only to 30% of the adjusted Dutch taxable profit, also known as the EBITDA. A tax-free allowance applies of €1.000.000. This means that up to and including €1.000.000 deduction of excess interest expenses is not restricted. As far as taxable entities are concerned, the earnings stripping rule applies at tax entity level. The earnings stripping rule also can be applied on a fiscal unity level. Excess interest expenses can be carried forward in time without any limitation, when part of the interest is not or no longer deductible during a year due to the application of the earnings stripping rule. The carried forward interest can be deducted from the profits in future years. However, only if and to the extent that the interest does not exceed the earnings stripping rule in the respective years. This is not the case in abusive situations where the ultimate ownership in the taxpayer changed for at least 30%. The proposed Dutch rules do not include any exception to the interest deduction limitation.

CFC RULES

The new CFC rules will apply, when a Dutch resident taxpayer has a direct or indirect interest of more than 50% in a low-taxed subsidiary or permanent establishment. This low-taxed subsidiary or permanent establishment is also called a controlled foreign company or CFC. In that case certain income components of the CFC will then be attributed to the profit of the Dutch taxpayer. The aim of the CFC rules is to combat tax evasion through the use of low-tax jurisdictions.

A subsidiary or permanent establishment is considered as low-taxed if it is:

- a tax resident in a jurisdiction without corporate income tax;
- a tax resident in a jurisdiction with a statutory tax rate of lower than 9%;
- a tax resident of a jurisdiction included in the EU-blacklist of non-cooperative jurisdictions.

The EU-blacklist of non-cooperative jurisdictions contains several criteria:

- fiscal transparency;
- no harmful tax competition;
- participation of the jurisdiction in the international process to combat further erosion of the tax base and profit shifting.

After the Ecofin Council of 13 March 2018 the non-cooperative jurisdictions are: the United States Virgin Islands, American Samoa, Bahamas, Guam, Namibia, Palau, Saint Kitts & Nevis, Samoa and Trinidad & Tobago.

If these requirements are met and the new CFC rule will apply, certain non-distributed income components of the CFC have to be attributed to the tax base of the Dutch parent company. In that case the income components are taxed against the standard Dutch corporate income tax rates. The non-distributed income components of the CFC (less related costs) are primarily:

- dividend or other benefits from the disposal/ sale of shares
- interest or other benefits of financial assets
- royalties or other benefits of intangible assets
- benefits of leasing income

Important to know is that an exception to the CFC rules is available. This exception is available in case the listed items of passive income derived by the subsidiary make up less than 30% of the total income. Another exception to the CFC rules is available in case the subsidiary carries out substantial economic activities in its country of establishment. We can speak of substantial economic activities if a subsidiary fulfills a number of substance requirements. These requirements are:

- wage costs of at least €100.000;
- having a office space at one's disposal for a period of at least 24 months.

EXIT TAXATION

An exit tax will be imposed when a Dutch taxable entity transfers assets or its tax residence to another country. A company can choose between immediate payment of this exit tax or payment in five equal annual instalments. The current Dutch tax system already has rules regarding exit taxes. However, these current rules allow the tax to be deferred to ten years under certain conditions.

OTHER ATAD MEASURES

In addition, ATAD 1 also contains a general anti abuse rule. This anti abuse rule is also know as GAAR. This rule is not included in the Dutch proposal. According to the Dutch Ministry of Finance the GAAR is in fact already effected in the Dutch legislative by the fraus legis dogma, which is a part of the Dutch tax system. Finally, ATAD 1 also contains measures against hybrid mismatches. These measures will be included in a later legislative proposal, the implementation of ATAD 2. This implementation should take effect as from 2020. A hybrid mismatch exists when the differences in tax rules between two countries are being used to reduce taxation.

Questions?

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go together