On 19 September 2017, the Dutch Ministry of Finance published its tax budget proposals for fiscal year 2018 and future fiscal years. This Budget Day is rather unusual since the caretaker Government has left many topics to the future Government. Nevertheless, various tax measures have been presented, most of which were already expected and are hardly surprising. This article gives you an overview of the most important proposals of the Tax Plan 2018 and additional bills.

CORPORATE INCOME TAX AND DIVIDEND WITHHOLDING TAX

Corporate income tax

Tax rate

The threshold for the reduced corporate income tax ("CIT") of 20% will be increased from the first EUR 200,000 of taxable profit in 2017 to the first EUR 250,000 in 2018, to EUR 300,000 in 2020 and to EUR 350,000 in 2021. The CIT tax rate for the remainder (in 2018 profits exceeding EUR 250,000) will continue to be 25%.

Amendment foreign taxpayer rules and dividend withholding tax

The Netherlands proposes legislation to abolish dividend withholding tax in treaty situations and to amend dividend withholding tax position for cooperatives as from 1 January 2018. However, The withholding exemption for shareholders (or members) with a participation in a company (or holding cooperative) no longer applies in the case of abuse. We refer to our separate newsalert on this topic.

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Dutch anti-base erosion provisions

The Dutch anti-base erosion provisions of article 10a CIT Act ("CITA") provide that interest expenses incurred by a Dutch taxpayer on payables to a related entity (in short, a company is considered to be a related entity if it has an interest of at least 33.33% in the taxpayer or vice versa, or the company and the taxpayer have a common shareholder with an interest of at least 33.33% in both entities) or a related person are not deductible to the extent these are directly or indirectly connected with one of the following transactions with a related entity:

- a distribution or a repayment of capital;
- a capital contribution; or
- an acquisition.

These provisions aim to prevent that equity is converted into debt with a view to create tax-deductible interest expenses that erode the Dutch tax base. The restriction does, amongst others, not apply if the Dutch taxpayer can demonstrate that the transaction and the financing are each predominantly driven by business reasons ('business motive exception'). Based on recent case law of the Supreme Court, the business motive exception always applied if the borrowings were in fact directly or indirectly owed to a third (unrelated) party. This was, for example, the case where the borrowing was obtained from a related party which in turn borrowed from a third party under the same conditions. As a result hereof, the Dutch taxpayer did no longer have to demonstrate that the transaction was predominantly driven by business reasons. As from 1 January 2018, the business motive exception will be narrowed such that even if the borrowings are, in fact, owed to a third party, the taxpayer must still demonstrate that there were business reasons underlying the transaction.

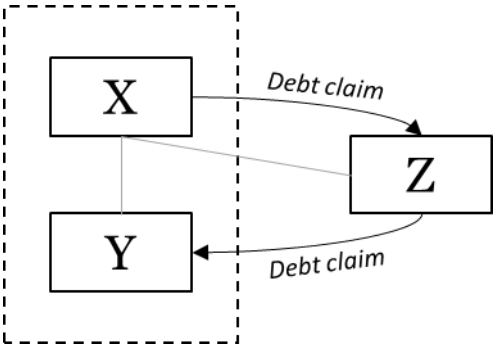
Restriction on object exemption for internal user transactions within fiscal unity
Transactions between members of a fiscal unity are not recognized for Dutch CIT purposes. As such, if a fiscal unity member receives interest from a permanent establishment ("PE") of an entity which is part of the same fiscal unity, the interest received is not taken into account at the level of the fiscal unity. On the other hand, typically the interest expenses are tax deductible in the PE country. Consequently, the Netherlands would exempt more profits of the PE than would be taxed in the PE country. The CITA already includes a provision which neutralizes this effect for interest payments. However, the same issue also applies for other internal user transactions, such as royalties and rental income. In the proposed legislation, this provision is now extended to also include the income from the other internal transactions. As a result hereof, such income is not taken into account for the PE exemption and the PE profits are calculated as if there had not been a fiscal unity.

Finally, the current provision does not apply if the Dutch taxpayer can demonstrate that the interest expenses are not deductible in the PE country. However, this counter evidence provision will be abolished as of 1 January 2018.

Limitation loss deduction on debt claim fiscal unity
Loss deductions on debt claims (or similar) held by entities within a fiscal unity on related entities (NL or foreign) which are not part of the fiscal unity will be limited.

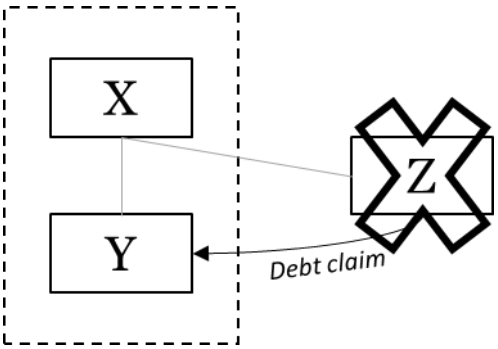
In the situation that an entity within the CIT fiscal unity incurs a loss on a debt claim on a related entity which is outside the fiscal unity, this loss cannot be deducted to the extent that the loss will be/is incurred by another entity within the fiscal unity.

For example, this is the case in the following situation:



If losses are incurred at the level of Y, these are taken into account at the level of the fiscal unity. Due to the losses, the value of the debt claim Z has on Y might be decreased. The debt claim X has on Z subsequently decreases to the same extent. In case X takes this decrease into account, the loss would be taken into account twice at the level of the fiscal unity. This double loss taking is not possible.

Limitation liquidation loss fiscal unity
A likewise restriction also applies with regard to losses incurred by the liquidation of a subsidiary which is outside a fiscal unity if the parent company claims a liquidation loss (which is deductible) and the liquidated subsidiary had a debt claim (or similar) on another entity within the fiscal unity.



The liquidation loss is the difference between the sacrificed amount for the subsidiary and the amount of the liquidation proceeds.

The sacrificed amount for the subsidiary will only be taken into account to the extent this amount exceeds the losses of the related entity within the fiscal unity on which it had a debt claim.

Liquidation loss when leaving the fiscal unity
The calculation of the sacrificed amount for a subsidiary which is liquidated after it has left the fiscal unity, changes. The sacrificed amount for the subsidiary is determined at the lower of the actual value and the book value at the time of leaving the fiscal unity. This means that the liquidation loss that can be deducted at the parent company will be restricted.

Country-by-Country ("CbC") reporting in the Netherlands – parent surrogate filing
The Netherlands introduced CbC-reporting as of 1 January 2016 for entities part of a multinational group with a consolidated revenue exceeding EUR 750 million. In principle, the ultimate parent entity of this multinational group is required to file the CbC-report.

Under circumstances (i.e. when the CbC-reporting legal framework is not implemented in the jurisdiction of the ultimate parent entity) this requirement shifts to the other local group entities. Therefore, as not all countries have implemented CbC-reporting as of this date, it could occur that local group entities are (temporarily) obliged to file a CbC. However, jurisdictions that will not be able to implement with respect to fiscal periods from 1 January 2016 may be able to accommodate voluntary filing for ultimate parent entities resident in their jurisdiction. Under Dutch CbC legislation, it was in this situation not possible to file the CbC-report in the jurisdiction of the ultimate parent entity. In line with OECD recommendations, the Netherlands have now issued draft legislation allowing for 'parent surrogate filing'. This means that the ultimate parent entity files (even though no CbC-reporting requirement exists in this country) a CbC-report which will be exchanged with the Dutch tax authorities.

PERSONAL INCOME TAX

Tax rates Box 1 and Box 3
The income tax rates in Box 1 (income from employment and housing) and box 3 (income from savings and investments) will be slightly adjusted.

Tax rate Box 1 for a taxpayer under state pension age			Tax rate Box 1 for a taxpayer at state pension age or older, born after 1 January 1946		
Start tax bracket	End tax bracket	Income tax rate	*Start tax bracket*	*End tax bracket*	*Income tax rate*
€ 0	€ 20,142	36.55%	*€ 0*	*€ 20,142*	*18.65%*
€ 20,143	€ 33,994	40.85%	*€ 20,143*	*€ 33,994*	*22.95%*
€ 33,995	€ 68,507	40.85%	*€ 33,995*	*€ 68,507*	*40.85%*
€ 68,508	-	51.95%	*€ 68,508*		*51.95%*

As of 1 January 2018, Box 1 tax rates are composed as follows:

The deemed income in Box 3 will be adjusted as of 1 January 2018. This fictitious annual yield will still be taxed at a rate of 30%. In 2017, tax brackets were introduced for the deemed income in Box 3. As of 1 January 2018, these tax brackets will be composed as follows:

Tax bracket	Equity in Box 3	Deemed return	Effective annual tax rate
1st	€25k – €100k	2.65%	0.794%
2nd	€100k – €1M	4.52%	1.357%
3rd	> €1M	5.38%	1.614%

Abolishment of the Dutch voluntary disclosure scheme
As of 1 January 2018, the Dutch voluntary disclosure scheme will come to an end. As a consequence of the abolishment of the voluntary disclosure scheme, the tax inspector may impose a fine of up to 300% of the tax that should have been due in case income tax is avoided by not declaring Box 3-assets (income from savings and investments).

WAGE TAX

Non-executive board members no longer deemed to be employee
Currently, for Dutch wage tax purposes, non-executive board members are deemed to be an employee of a Dutch resident listed company with a one-tier board. This means that the company is obliged to withhold wage tax on their remuneration. As of 1 January 2018, this legal fiction no longer exists for Dutch wage tax purposes. As a result, non-executive board members who are liable to tax in the Netherlands will pay tax and contributions for the national health care insurance through their personal income tax assessment instead of through the company. This was already the case for non-executive board members of Dutch resident non-listed companies. No changes have been made in this perspective.

Under the wage tax regime, certain benefits and reimbursements can be received tax free. Furthermore, the wage tax regime provides a 30% facility for incoming employees who meet certain requirements.

As a result of this facility, 30% of the wages, including the reimbursements, can be received without taxation.

Non-executive board members can still opt for wage tax withholding as of 1 January 2018, via the so-called wage tax 'opting-in' facility. Note that this might not always be beneficial for non-executive board members, e.g. if the income would otherwise not have been taxable in the Netherlands under the applicable tax treaties.

Executive board members still remain (deemed) employees for wage tax purposes and therefore wage tax must still be withheld from their remuneration.

Limitation exception excessive severance payment
In the Netherlands, employers must pay a high final ley of 75% on excessive severance payments to high income (i.e. € 540.000 in 2017) employees. A severance payment is categorized excessive if it exceeds the yearly salary. This includes salary increases and bonuses in the year of and prior to that of the dismissal.

Until 1 January 2018, employee options, which were granted in an earlier year than the year prior to the year of dismissal, are not included when determining the excessive severance payment. As of 2018, this exemption is limited to options which were granted unconditionally or vested in an earlier year than the year preceding the termination of employment.