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The Netherlands: Tax Plan 2019

On Budget Day (18 September 2018), the Dutch government published the new tax measures for 2019 and beyond. The package also includes the long-awaited proposals for the implementation of ATAD1, such as the earnings stripping rules and CFC. Other highlights are the highly debated abolishment of the dividend withholding tax (as of 2020), the introduction of a source tax on payments to low tax jurisdictions and the reduction of the corporate income tax rates.

The legislative proposals may change in the coming months during the parliamentary proceedings. The Dutch government is convinced the measures will further improve the business climate in the Netherlands, whereas they remain to combat tax avoidance and tax evasion.

Corporate income tax

Reduction corporate income tax rates

The corporate income tax rates will be reduced gradually to ultimately 16% for the first EUR 200,000 of profits (the first bracket) and 22.25% for profits exceeding EUR 200,000 (the second bracket) in 2021.

The reduction will take place in three years according to the following scheme:

	Taxable amount EUR 0 - 200.000	Taxable amount > EUR 200.000
2018	20.0%	25.0%
2019	19.0%	24.3%
2020	17.5%	23.9%
2021	16.0%	22.25%

Introduction earnings stripping rules

As from 1 January 2019, a general interest deduction limitation is introduced. This new limitation implements the earnings stripping rule of the EU Tax Avoidance Directive (ATAD 1) in Dutch legislation. Based on the new interest deduction limitation, excess net interest expenses, being the balance of interest expenses and interest income, is tax deductible up to 30% of the adjusted Dutch taxable profit (EBITDA).

An EUR 1 million threshold applies meaning that interest expenses up to EUR 1 million are always deductible under the earnings stripping rules. The non-deductible interest may be rolled-over without any limitation. No group escape will be introduced.

➔ Click here for more details of the ATAD1 implementation in Dutch tax law

Abolishment specific interest deduction limitations and holding and financing losses limitation

The counterpart of the introduction of the general interest limitation by way of the earnings stripping rule is that some specific interest deduction limitations will be abolished as from 1 January 2019. This is the case for the limitation for acquisition vehicles (article 15ad CITA) and the excessive participation financing rule (article 13l CITA). The interest deduction limitation targeting base erosion (article 10a CITA) remains applicable.

In addition, the current rule ring-fencing the utilization of losses incurred by holding and financing companies will be abolished as from 2019.

Implementation of Controlled Foreign Company (CFC) rules

The introduction of CFC rules (controlled foreign company) also follows from ATAD1. The CFC rules aim to combat tax evasion by way of the use of low-tax jurisdictions. The new CFC rules apply in the event a Dutch corporate taxpayer has a direct or indirect interest of more than 50% in a low-taxed foreign subsidiary or has a low-taxed permanent establishment. In case all requirements are met, certain non-distributed income components of the CFC (such as dividend, interest, royalties, benefits from the sale of shares and leasing income, less related costs) have to be attributed to the tax base of the Dutch parent company and taxed against the standard Dutch corporate income tax (“CIT”) rates. A number of requirements and exemptions apply.

➔ Click here for more details of the CFC rules following the ATAD1 implementation in Dutch tax law as from 1 January 2019

Exit tax

When a Dutch tax entity moves its residence from the Netherlands to another country, an exit tax applies for non-realized profits. The payment of the exit tax can be spread out. The possibility of the spread out payment plan will be reduced from ten to five years. The payment plan is terminated upon realization of the profits by the taxpayer. This amendment of the exit taxation is brought in line with the ATAD1 measures.

Limitation on term loss carry forward

Under the current provisions, tax losses can be carried back for a period of one year and carried forward for a period of nine years. As of 1 January 2019, the loss carry forward period will be reduced from nine to six years. Transitional rules are introduced for losses incurred before 2019. Therefore the current loss compensation rules will still apply to losses incurred before 2019.

Loss	Carry forward	Loss will evaporate after
2016	9 years	2025
2017	9 years	2026
2018	9 years	2027
2019	6 years	2025
2020	6 years	2026

Changes to Dutch REIT (FBI) system

A Dutch fiscal investment institution (in Dutch: *fiscale beleggingsinstelling*, “FBI”) is subject to 0% CIT. In connection with the abolishment of the Dutch dividend withholding tax, as of 2020 a FBI is no longer allowed to

directly invest in real estate located in the Netherlands. The scope of the eligible investment by the FBI will be tightened to avoid that no taxation can be levied on the investment in Dutch real estate by FBI's (no CIT and no dividend tax on distributions).

This entails that as from 2020 direct investment in Dutch real estate is excluded as permitted investments for a FBI. Nevertheless, FBIs will still be allowed to indirectly invest in Dutch real estate or directly in foreign real estate. As an additional consequence of the abolishment of the Dutch dividend withholding tax, the remittance reduction for FBIs shall no longer apply.

Non-listed FBI's may be converted into a fund for joint account to ensure a tax neutral collective investment in real estate.

Restriction depreciation real estate

In the corporate income tax, the depreciation on buildings for own use will be limited to 100% of the WOZ value. The WOZ value is the value annually determined by the local municipality. Currently, the depreciation is limited to 50% of WOZ value in case of a building in own use. The restriction to 100% of the WOZ value already applies to buildings held as investment. As from 2019, the difference in depreciation potential between buildings held for investment or for own use will no longer be applicable for corporate income tax payers (both limited to 100% of the WOZ value). It should be noted that this difference remain relevant for business taxes at individual level (personal income tax). In addition, it is under circumstances still possible to revaluate the building to fair market value.

Withholding taxes

Abolishment dividend withholding tax and introduction source tax in abusive structures

The current dividend withholding taxation (15% and frequently reduced to 0% based on domestic exemptions and/or DTT's) will be abolished as from 1 January 2020. This taxation will be replaced by a conditional withholding taxation of dividends at a rate equal to the standard Dutch corporate income tax rate. The conditional withholding tax will apply on payments made to corporate shareholders in low-tax jurisdictions or EU blacklisted countries. Anti-abuse rules will be introduced to certain structures involving interposed intermediary holding companies, branches or hybrid entities. Similar rules will be introduced for interest and royalty payments as from 1 January 2021.

➔ Click here for more details

VAT

Reduced VAT rate of 6% increases to 9%

Currently a reduced VAT rate of 6% is - amongst others- applicable to food & beverages (non-alcoholic), medicines, medical devices, entrance fees for cinemas, museum and concerts as well as to labor-intensive services like hairdressers and shoemakers. As of 1 January 2019 this percentage will increase to 9%. To the extent advance payments are made before 1 January 2019, the 6% will remain applicable thereon.

Electronic services

As of 1 January 2015, the place of supply of electronic services is the place where the customer is established, even when it is a private customer. Consequently, foreign (local) VAT needs to be charged for electronic services to private customers in the EU. Anticipating on further changes in 2021 to the VAT legislation on electronic services, already a simplification has been announced for 2019. This simplification means that only foreign (local) VAT needs to be charged if the threshold of EUR 10,000 per year on foreign electronic services is exceeded. Otherwise, these (small business) suppliers may choose to charge the

VAT of their country of establishment. If the supplier has chosen not to use this option, this choice remains for at least two years.

Personal income tax

Reduction personal income tax rates (Box 1)

As from 2021, the income tax rates in Box 1 (income from employment and housing) are to be limited to two brackets. For the coming years, the following rates apply for taxpayers under state pension age:

	2018	2019	2020	2021
Bracket 1	36.55%	36.65%	37.05%	37.05%
Bracket 2	40.85%	38.10%	37.80%	37.05%
Bracket 3	40.85%	38.10%	37.80%	37.05%
Bracket 4	51.95%	51.75%	50.50%	49.50%
Start bracket 1	€ 20,142	€ 20,384	€ 20,751	€ 21,167
Start bracket 2	€ 33,994	€ 34,300	€ 34,764	€ 35,286
Start bracket 3	€ 68,507	€ 68,507	€ 68,507	€ 68,507

Increase tax rate Box 2 (substantial shareholding)

The tax rates in Box 2 (income from substantial interests) which is currently 25% will be gradually increased to 26.90% in 2021. For the coming years, the rates for Box 2 are as follows:

Year	Tax rate
2019	25.00%
2020	26.25%
2021	26.90%

Tax loss set-off Box 2

The carry forward period for setting of Box 2 tax losses will be limited from nine to six years for tax losses from 2019 and further.

Deemed distribution in case of large current account debt between shareholder and BV

In the budget memorandum, the intention has been included to discourage tax deferral which is created by way of a debt rather than a dividend payment (the latter taxed against Box 2 rates) between the substantial shareholder and his or her BV. If the debt exceeds EUR 500,000, this income is deemed to be distributed and hence taxed against Box 2 rates. It should be noted that this measure is not included in one of the published legislative proposals. It is expected that this measure will be included in next year's Tax Plan and will likely enter into force in 2022. This deemed dividend would be taxed in Box 2 as income from substantial shareholding at (by that time) 26.90%.

Limitation of tax allowances

As of 2020, the deductibility of most of the tax allowances will be limited. The deductibility is to be annually reduced resulting in a maximum of the rate of the first bracket in 2023 (37.05%).

Limitation of mortgage interest deduction

As of 1 January 2014, the maximum deductibility of the mortgage interest deduction is annually decreased with 0.5% (49% in 2019). As of 1 January 2020, this decrease will be accelerated to 3% per year.

Wage tax

Changes to 30% scheme

The 30% ruling is a specific tax regime for foreign employees that meet certain criteria and who are temporarily assigned to, or hired from abroad by an employer in the Netherlands. When meeting certain requirements, 30% of the employee's salary can be paid out as a tax-free allowance to cover extraterritorial costs. As of 1 January 2019, the period for which the 30% ruling is granted is to be shortened from eight years to five years.