THE NETHERLANDS: REVISED TAX PLAN 2019

Atlas
Tax lawyers / Fiscalisten

On Budget Day (18 September 2018), the new tax measures for 2019 and further were published. Earlier this week, on 15 October 2018, the Dutch government announced that its initial budget proposals will already partially be revised. After heavy debates in Dutch parliament and beyond, the government decided not to abolish the dividend withholding tax as proposed earlier. The budgetary revenue will be used to further improve the Dutch investment climate. The revised plans will be summarized below.

Corporate income tax

Reduction corporate income tax rates

The corporate income tax rates will gradually be further reduced to ultimately 15% for the first EUR 200,000 of profits (the first bracket) and 20.5% 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 – EUR 200.000	Taxable amount > EUR 200.000
2018	20.0%	25.0%
2019	19.0%	25.0%
2020	*TBD*	*TBD*
2021	15.0%	20.50%

(No) 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 previously announced abolishment of the Dutch dividend withholding tax, the FBI was no longer allowed to directly invest in real estate located in the Netherlands and could no longer benefit from the dividend tax remittance reduction. Because the dividend tax will now be maintained, these changes to the FBI are no longer necessary.

Restriction depreciation real estate

For corporate income tax purposes, the depreciation on buildings in own use will be limited to 100% of the WOZ value. The WOZ value is the value annually determined by the local government. 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 revalue the building to fair market value.

To mitigate the impact of this limitation for buildings which have been recently put into use, transitional rules have now been announced. In case a building has been put into use by the taxpayer before 1 January 2019 and the building has not yet been depreciated for three years, the taxpayer may continue to claim depreciation for these three years under the current regime (i.e. up to 50% of the WOZ value).

Limitation of retroactive effect of emergency repair of the fiscal unity for corporate income tax purposes (*In Dutch: "Wet spoedreparatie fiscale eenheid"*)

In response to EU case law, the government presented the bill on the Fiscal Unity Emergency Repair to the Lower House. According to the bill, the emergency repair measures would have retroactive effect to 11:00 on 25 October 2017.

The government now purposes to limit the retroactive effect to 1 January 2018.

Withholding taxes

Maintaining the dividend withholding tax and introduction of source tax in abusive structures

On Budget Day, the government announced that 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. Idea was to replace this taxation by a conditional withholding tax on dividend payments to related entities in low-tax jurisdictions and in case of abuse. Similar rules will be introduced for interest and royalty payments as from 1 January 2021.

The Dutch government now decided not to abolish the Dutch dividend withholding tax. Although not certain yet, the proposed introduction of a conditional withholding tax on dividends will be withdrawn.

The announced conditional withholding taxes on interest and royalties to low-taxed jurisdictions and in abusive situations will not be affected by the fact that the Dutch dividend withholding tax will not be abolished. It is still the intention that this withholding tax will be introduced as of 1 January 2021.

Personal income tax

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

In the budget memorandum, it was proposed to discourage tax deferral created by way of substantial borrowings by individual substantial shareholders from their BV rather than a distributing a dividend (the latter taxed against 25%). Based on the proposal a current account that exceeds EUR 500,000, is deemed to be distributed for the excessive part and hence taxed against 25%. It was already known that transitional rules would be introduced for existing home acquisition debt.

It should be noted that this measure is not included in the published legislative proposals. It is expected that this measure will be included in next year's Tax Plan and will enter into force in 2022.

In the letter of 15 October 2018, the government announced that an exception will apply to new home acquisition debt. On top of the home acquisition debt, an additional cap of EUR 500,000 will apply to the substantial shareholders and their partner jointly.

Wage tax

Changes to 30% ruling regime

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. It has been proposed to shorten the period for which the 30% ruling is granted from eight years to five years as of 1 January 2019.

The government now proposes to introduce transitional rules for the employees whose 30% ruling would end in 2019 or 2020 as a result of this measure.