Last week the Dutch Budget proposals 2021 were approved by the Senate ("*Eerste Kamer*"). Approval of the Senate implies for IFRS and Dutch GAAP purposes "substantive enactment". For US GAAP purposes the date of enactment is considered to be the day after the formal publication of the law in the state gazette. Formal publication in the state gazette was carried out on 23 December 2020.

As the date of enactment lies before year-end, even though changes will come into effect only as of 1 January 2021 or thereafter, they may still affect the 2020 financial statements. Below we describe the potential tax accounting effects of the Budget 2021 in relation to Dutch corporate income tax.

CHANGE OF DUTCH CORPORATE INCOME TAX ("CIT") RATE AS OF 1 JANUARY 2021

The (substantive) enacted statutory head line CIT rate applicable as of 1 January 2021 is increased to 25% (was 21.7%). Furthermore, the rate threshold for the low CIT rate of 15% increases as from 1 January 2021 from EUR 200.000 to EUR 245.000, and as from 1 January 2022 to EUR 395.000. For more details regarding the thresholds we refer to our previous updates. As a result of (substantive) enactment on reporting date remeasurement of Deferred tax assets ("DTAs") and/or Deferred tax liabilities ("DTLs") is required. This remeasurement is expected to impact the effective tax rate ("ETR") in the 2020 financial statements.

Furthermore, as from 1 January 2021, also the effective tax rate of the innovation box increases. It increases from 7% to 9%. If your company currently recognizes DTAs and/or DTLs that are expected to reverse within the innovation box regime at a rate of 7%, a remeasurement is to be carried out that is expected to affect the ETR in the 2020 financial statements.

TAX LOSSES

1. UTILIZATION OF TAX LOSSES

Proposed changes in loss utilization legislation included a restriction and an extension. The restriction is that taxable profits in excess of EUR 1 million may only be offset up to 50%. The extension entails that tax losses can be carried forward indefinitely. Date of proposed effectiveness is 1 January 2022. Enactment has been postponed for this specific item, as assessment of implementation consequences in practice is considered necessary. It is expected that enactment of this item will take place in 2021.

2. LIQUIDATION LOSSES

Changes to liquidation loss rules may likewise affect recognition and measurement of DTAs. To the extent that it would no longer be appropriate to recognize a DTA on the basis of this new legislation, (partial) derecognition of the DTA is expected to result in an increase of the ETR in the 2020 financial statements.

CORONA RESERVE IN CIT RETURN 2019

Legislative changes provide the basis for the recognition of a "Corona Reserve" in the CIT return for FY 2019. In a nutshell, if certain requirements are met, this legislation allows a loss attributable to Corona and incurred in 2020, to be taken into account in 2019 for Dutch CIT-purposes. Although this item impacts the FY 2019 taxable amount, it will not impact the 2019 financial statements as legislation was (substantively) enacted only in 2020. Furthermore, as the Corona provision is to be released to taxable profit in FY 2020, no deferred position will be recognized at year-end 2020 in this respect. Please note this item could impact the current tax payable position as per year-end 2019.

FURTHER LIMITATIONS TO DEDUCTION OF INTEREST AND FX-RESULTS ON DEBT

To the extent that new legislation regarding article 10a CIT Act results in a change in tax treatment of interest and/or FX-results on debts, this can impact the ETR in the year in which these interest expenses and FX-results are incurred. As legislation will come into force as of 1 January 2021, this legislation is expected to impact the ETR as of that date.

CONDITIONAL WITHHOLDING TAX ON INTEREST AND ROYALTIES

The Dutch Government enacted previously, on 27 December 2019, a conditional withholding tax on interest payments and royalties to low tax jurisdictions and in abusive situations, to be effective as of 1 January 2021 at a rate of 21.7%. As a result of the change of the CIT rate as per 1 January 2021, this conditional withholding tax rate is increased from 21.7% to 25% . This may impact/increase the ETR at consolidation level (outside basis differences).

TREATMENT OF COMPENSATIONS (“TOGS AND “TVL”) AND ADDITIONAL INVESTMENT RELATED DEDUCTION (“BIK”) IN RELATION TO CORONA

Compensations received in relation to Covid 19, more specifically “TOGS” and “ TVL” are, based on (substantively) enacted legislation, to be excluded from the taxable profit for Dutch CIT purposes and considered non-taxable. As a result, these benefits are expected to impact the ETR. We note that such explicit “exclusion from profit” provision has not been included in legislation with regard to “Baangerelateerde investeringskorting (“BIK”). We therefore expect that the benefit derived from BIK is to be treated as a taxable item for CIT purposes that will not affect the ETR. However, please note that timing differences with regard to the recognition of this benefit could potentially occur and could result in the recognition of a deferred tax position for accounting purposes.

In addition to the above items that relate to the (substantive) enactment of the budget proposals 2021, we note the following.

CORONA/TP MODELS

Several multinationals updated company transfer pricing models in order to reflect Covid 19-implications in a more balanced way. In our experience, applying a change to an existing TP model is frequently challenged by the tax authorities. We therefore advise to consider to what extent updated TP positions could qualify as “uncertain tax positions” for accounting purposes and to consider whether underlying documentation is appropriate and readily available.

Should you have any questions or comments in relation to the above, please do not hesitate to contact us. Of course, we would happy to assist you, also in the area of tax accounting.

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