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Global Tax Alert

Dutch Government proposes changes to *Mining Act* to expand tax incentives for investments in mining works

Executive summary

After a consultation last summer, the bill to amend the *Dutch Mining Act* was recently submitted to the Lower House of Parliament on 19 May 2020. The bill includes, among others, an increase and broadening of the investment tax allowance for State Profit Tax purposes, to stimulate investments in the Dutch mining industry. The bill also introduces compulsory decommissioning agreements and could potentially provide for new opportunities for market players to re-assess their Dutch Exploration and Production (E&P) asset portfolio.

Detailed discussion

Need for changes to the *Mining Act*

Although the use of renewable energy sources is increasing during the energy transition, the Dutch Government recognizes that the Netherlands will still have to rely on natural gas resources in the coming years as well. Own natural gas production in this respect is preferred by the Government over import of gas. Considering the accelerated drop and anticipated stop of production from the Groningen gas field, the production in future years should also come from smaller (and undiscovered/undeveloped) fields.

On the other hand, a lot of gas fields are moving towards the late life stage of production. Considering the total estimated decommissioning costs of around €7 billion, the Government now has also introduced additional legislation to make sure that (financial) obligations regarding the decommissioning are being met by the parties involved.

Investment tax allowance increased and broadened

In order to further stimulate investments in the Dutch Mining industry, and to avoid that natural gas reserves are left behind when existing infrastructure is being decommissioned, is the bill proposes to increase the current investment allowance for State Profit Share purposes from 25% to 40%. In addition to the rate increase, the scope of the investment facility is broadened in the following manner:

- The conditional small field investment allowance is changed to a generic investment allowance (upfront approval to claim the allowance is therefore no longer required, said approval process took a year on average).
- The investment allowance now also applies to onshore investments (which for example also includes investments in geothermal infrastructures and salt extraction).
- The scope is broadened to investments in all "Mining works" as defined in the *Mining Act*.
- The investment allowance is broadened to also include amendments and improvements of existing mining works (but still excluding maintenance).

The proposal, if enacted, should make new investments in the Netherlands financially more attractive, as compared to other countries around the North Sea, and should result in an increase of the annual production of Dutch natural gas in future years.

Introduction of obligatory decommission agreements

A set of two agreements with respect to decommissioning obligations were developed for offshore production licensees. It will become compulsory for production licensees to enter into a set of agreements:

- Decommissioning Security Agreement (or DSA)
- Decommissioning Security Monitoring Agreement (or DSMA)

The DSA is to be agreed upon between the operator and the other licensees and arranges the timing and the form of financial security between licensees to ensure the operator can successfully charge the decommissioning costs to the other license holders. The DSA will be re-assessed annually.

Based on the DSMA, an agreement between Energie Beheer Nederland BV (or EBN) and all license holders, the execution of the DSA agreement will be monitored by EBN to safeguard the financial securities and to inform and advise the Minister of Economic Affairs and Climate Policy accordingly.

Further to the above introduction of decommissioning agreements, some other updates and amendments are included in the bill as well. In principle, decommissioning of mining works should take place if the mining work is no longer in use. Based on the bill, a decommissioning plan has to be filed within one year for mining works that are no longer in use. An exemption may apply if the mining works may be re-used (e.g., for CO_2 storage).

Implications

Tax costs can be a deal breaker in the sale of Dutch E&P assets considering the release of the fiscal abandonment provision for the seller (in principle resulting in a taxable event for both Corporate Income Tax as well as State Profit Share tax).

With the introduction of the Decommissioning agreements to further strengthen financial securities of parties regarding their decommissioning obligations, it should be considered whether this might also provide for new opportunities for parties to re-assess their current (late life assets) portfolio and may provide possibilities for new parties such as Oil Field Service companies to enter the Dutch E&P market.

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