18 September 2018

Global Tax Alert

The Netherlands publishes 2019 Budget Proposals

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Executive summary

On 18 September 2018, the Dutch Government published its tax budget proposals (the Proposals) for fiscal year 2019.

The Proposals are generally in line with earlier announcements by the Dutch Government, the consultation documents that were opened for public consultation in 2017 and the fiscal policy agenda that was released in 2018.[1]

The Proposals include a gradual reduction of the headline corporate income tax rate to 22.25% (16% over the first €200,000) in 2021 and the abolishment of the Dutch dividend withholding tax as per 1 January 2020. Furthermore, the Proposals include several measures that the EU Anti-Tax Avoidance Directive (ATAD) requires to be implemented before 1 January 2019, including the introduction of earnings stripping rules and controlled foreign company (CFC) rules for low-taxed controlled foreign companies and permanent establishments.

Implementation of ATAD measures

The Proposals put forward legislation that introduces various ATAD measures in Dutch domestic legislation for fiscal years starting on or after 1 January 2019. The Dutch Government confirmed that the anti-hybrid rules will not be introduced before 1 January 2020.

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Earnings stripping rules

Pursuant to the Dutch implementation of earnings stripping rules, net borrowing costs on debt attracted from both related and unrelated parties by a Dutch taxpayer will only be deductible from Dutch corporate income tax (CIT) up to the higher of: (i) 30% of a taxpayer's adjusted taxable profit or (ii) a threshold of €1 million. The earnings stripping rules will not include the optional group-ratio exception, grandfathering provision or specific exemptions for financial institutions and infrastructure spending.

Together with the introduction of these earnings stripping rules, various other interest deduction limitation rules will be abolished, except for certain specific interest deduction limitation rules for related party debt, such as the anti-base erosion rules.[2]

CFC rules

Under the CFC rules, a foreign entity (or permanent establishment) is considered a CFC if the Dutch taxpayer has a direct or indirect interest of more than 50% (vote or value) in that foreign entity (control test) and the statutory tax rate in that jurisdiction is less than 7% (low-taxed test).

If the CFC is tax resident in a low-taxed jurisdiction (i.e., a jurisdiction with a statutory rate lower than 7% and included on a to-be-published exhaustive list by the Dutch Ministry for Finance) or in a jurisdiction that is included on the EU list of non-cooperative jurisdictions (EU Blacklist) undistributed tainted passive income[3] (calculated in accordance with Dutch tax standards) is included in the Dutch taxpayer's taxable income. The CFC rules will not apply to CFCs that carry out *genuine economic activity* in the foreign jurisdiction. In this context, a CFC can in any case be considered to carry out genuine economic activity if the CFC has sufficient relevant substance in the foreign jurisdiction.[4]

Exit taxation rules

The Dutch Government considers the Dutch exit taxation rules to be generally in line with the rules included in the ATAD. Therefore, the Proposals only include a minor change to bring the current 10-year deferral period allowed to pay the exit tax, in line with the 5-year deferral period prescribed by the ATAD for corporate taxpayers.

GAAR

The Dutch Government considers that the general Dutch abuse of law doctrine (*fraus legis*) already covers the intention of the general anti-abuse rules (GAAR) sufficiently. Therefore, no additional legislation with respect to the GAAR is introduced in the Proposals.

Other corporate income tax measures

Elimination of Dutch dividend withholding tax and introduction of a conditional dividend withholding tax

The Proposals set forth that the current 15% Dutch withholding tax on dividend distributions will be abolished as of 1 January 2020. At the same time a conditional dividend withholding tax will be introduced that only applies to distributions (and in certain cases capital gains) to related companies that are tax resident in a jurisdiction with a low-tax rate (i.e., a jurisdiction with a statutory rate lower than 7%), a jurisdiction listed on the EU Blacklist or in abusive situations. This rate will be similar to the CIT rate.

CIT rate reduction

The Proposals include a reduction of the current statutory Dutch CIT rate from 25% to 24.3% in 2019, to 23.9% in 2020 and to 22.25% as from 2021. Profits up to an amount of €200,000 are currently taxed against a lower step-up rate of 20%. The Proposals state that this step-up rate will be reduced from 20% to 19% in 2019, to 17.5% in 2020 and to 16% as from 2021.

Restrictions of carryforward loss compensation

Currently, tax losses may be carried back for one year and carried forward for nine years. The Proposals limit the carryforward of losses from nine years to six years for fiscal years starting on or after 1 January 2019. The rules that limit the possibility to set off holding and financing losses will be abolished for fiscal years starting on or after 1 January 2019.

Additional restrictions on depreciation on real estate

The Proposals set forth that for fiscal years starting on or after 1 January 2019, real estate may only be depreciated up to the value of the real estate in accordance with the *Real Estate Appraisal Act* (WOZ-value).

Next steps and timing

The Proposals are currently subject to the review and discussions by the Dutch Parliament and, as such, are still subject to further possible amendments. Voting is scheduled for 15 November 2018. If adopted, the Proposals are expected to take effect on fiscal years starting on or after 1 January 2019, with the exception of the elimination of the Dutch dividend withholding tax and introduction of a conditional dividend withholding tax which is expected to come into effect on 1 January 2020.

Future Fiscal Policy

Included in the Proposals and the various accompanying documents, the Dutch Government announced plans for various future tax changes that have already been announced on previous occasions and the timing thereof. Top priorities for the Netherlands are to remain an attractive jurisdiction for foreign investors, while being compliant with the implementation of certain anti-tax avoidance measures in line with the OECD and EU recommendations for abusive situations.

Anti-hybrid rules

The Dutch Government restates their aim to implement the anti-hybrid rules of the ATAD as of 1 January 2020. Because of the technical complexity of the legislation and wide variety of hybrid mismatches, the Dutch Government considers a public consultation necessary. This consultation is planned to start before the end of 2018.

Introduction of a conditional withholding tax on interest and royalty payments

The Dutch Government had already indicated an introduction of a conditional withholding tax on intercompany interest and royalty payments from Dutch taxpayers to low-tax jurisdictions or jurisdictions included on the EU Blacklist as of 2021.

Multilateral instrument

It is expected that the ratification process of the multilateral instrument (MLI) developed by the OECD will not be completed in 2018. Consequently, the MLI will in principle not take effect before 1 January 2020 with respect to withholding taxes.

Endnotes

1. An internet consultation about the implementation of the ATAD was held and draft legislation was published on 10 July 2017. Furthermore, the Dutch Government published its fiscal policy agenda for future years on 23 February 2018.
2. The interest deduction limitation rules that will be abolished include the interest deduction limitation for excessive participation debt and the leveraged buy-out rules.
3. (a) Interest and other income from financial assets; (b) royalties and other income from intangible property, (c) dividends and income on the disposal of shares, (d) income from financial leasing, (e) income from insurance, banking and other financial activities, (f) income from invoicing activities that earn sales and services income from goods and services purchased from and sold to associated enterprises that add no or little economic value, reduced with the costs relating to such income.
4. A CFC is considered to have relevant substance if it: (i) meets the Dutch minimum substance requirements in its country of residence; (ii) has at least €100,000 of (internally or externally rendered) labor costs; and (iii) owns or rents an office space that is used to perform its activities for at least 24 months.

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EYG no. 010826-18Gbl

1508-1600216 NY
ED None

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