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Recent developments in international taxation – The Netherlands

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Corporate income tax

Dutch corporate income tax rate lowered to 15 per cent and 21.7 per cent

The Dutch corporate income tax (CIT) rates are currently 16.5 per cent for a taxable profit up to EUR200,000 and 25 per cent for any excess. It has been announced that the Dutch CIT rate will be lowered to 15 per cent for taxable profits up to EUR200,000 and 21.7 per cent for any excess.

Changes to the CFC rules

Since 2019 the so-called 'CFC rules' have been included in the CIT. In the event of genuine economic activities by a controlled foreign corporation (CFC) (the so-called 'substance clause'), the CFC rules will, as an exception, not be applicable. However, as from (fiscal years that start on or after 1 January) 2020 the CFC rules will still apply to the CFC, if the inspector demonstrates that the main purpose, or one of the main purposes, is to be eligible for the exception.

Conversely, if the CFC does not fulfil the Dutch substance requirements, the taxpayer will have the opportunity to demonstrate that the CFC carries out genuine economic activities. If they succeed in doing so, the CFC rules will not be applicable after all.

Amendments to the substantial interest rule

Under the substantial interest rule a foreign entity with a substantial interest (ie, five per cent or more) in a Dutch entity may be subject to CIT on capital gains and dividend payments from this entity. The substantial interest rule in the CIT has been amended. Even though the foreign entity fulfils the Dutch substance requirements, the tax authorities can still demonstrate that there is tax abuse based on the specific circumstances and levy corporate income tax on capital gains and dividend payments.

Conversely, if the foreign entity does not fulfil the Dutch substance requirements, it may still establish that there is no tax abuse.

In both cases, the tax authorities and the taxpayer can rely on the indicators of abuse included in the so-called 'Danish beneficial ownership cases' of the Court of Justice of the European Union (CJEU).

Dutch implementation of EU Anti-Tax Avoidance Directive (ATAD II)

Hybrid mismatches

As of 1 January 2020, the neutralising measures of the EU Anti-Tax Avoidance Directive (ATAD II) were implemented to combat the tax effects of hybrid mismatches between associated enterprises (interests of at least 25 per cent) and to structured arrangements both between EU Member States and third countries. The neutralising hybrid mismatch measures consist of two separate rules:

- a primary rule: in the case where the income or reimbursement is not taxed at the level of the recipient, the payer will be denied a deduction of the payment; and

- a secondary rule: If the payment is deductible at the level of the payer, the income or reimbursement will be taxed at the level of the recipient.

Dutch implementation of Mandatory Disclosure Rules/DAC-6

As of 1 July 2020, DAC-6 will enter into force, which introduces disclosure obligations for intermediaries (ie, tax advisers) and in some cases for taxpayers. As a consequence, intermediaries should report certain potential aggressive cross-border tax structures to the Dutch tax authorities.

There are two exceptions to the notification obligation where such a construction does not have to be reported, namely:

- another intermediary has already reported the construction and the intermediary has provided evidence of the reference number under which the construction was reported; or

- the intermediary can invoke the legal right of non-disclosure (privilege).

In some cases, the taxpayer for whom the construction is intended must report it himself. This occurs in the following cases:

- an intermediary from outside the EU is involved in the construction;

- the intermediary invokes his legal right of non-disclosure and therefore does not have to report the construction;

- no intermediary is involved in the construction; and

- DAC-6 has a retrospective notification obligation – this means that all transactions from 25 June 2018 to 1 July 2020 with a cross-border tax arrangement, must be reported before 28 January 2021 by the intermediary that is involved.

Conditional withholding tax on interest and royalties

From 1 January 2021, a conditional withholding tax will be levied on interest and royalty payments to affiliated companies in low-taxed and non-cooperative jurisdictions.

A country is a low-taxed jurisdiction for Dutch tax purposes if its statutory CIT rate is below nine per cent. The Dutch list of low-taxed jurisdictions will be revised on 1 October every year for the following year. Currently, the following states are listed: Anguilla; the Bahamas; Bahrain; Barbados; Bermuda; the British Virgin Islands; Guernsey; the Isle of Man; Jersey; the Cayman Islands; Kuwait; Qatar; Turkmenistan; the Turks and Caicos Islands; Vanuatu and United Arab Emirates. The EU list of non-cooperative jurisdictions for tax purposes contains the following countries: American Samoa; the Cayman Islands; Fiji; Guam; Oman; Palau; Panama; Samoa; the Seychelles; Trinidad and Tobago; the US Virgin Islands and Vanuatu.

An interest or royalty payment is made to an affiliated company, when the interest/royalty paying company has a ‘qualifying interest’ in the interest/royalty receiving company. A qualifying interest exists in two cases: 1. the shareholder can, directly or indirectly, exercise a decision-making influence, most of the time by owning at least 50 per cent of the voting rights in the participation; and 2. the interest/royalty paying and receiving companies are part of the same cooperative group of shareholders by participating in the same coordinated investment.

Withholding tax will also apply in abusive situations. There is an abusive situation if: 1. an intermediary company is placed with the main purpose or one of the main purposes of avoiding Dutch withholding tax; and 2. the arrangement is artificial. The withholding tax will be levied from the company that makes the interest or royalty payment at a rate equal to the highest rate of Dutch CIT in the current year. The withholding tax rate may be reduced by a tax treaty, if applicable.

Personal income tax

Box 1 – adjustments

The previous four-bracket regime in box 1, applicable to, for example, salary income, has been replaced by a two-bracket regime with a basic rate of 37.35 per cent for income up to EUR68,507 and a top rate of 49.5 per cent. To this effect, the rates of the four brackets incrementally shift towards these rates. Furthermore, the general tax credit and employed person's tax credit (on balance) has been increased.

As of 2020, there will be an accelerated reduction of the interest deduction on mortgage secured loans to acquire a primary residence (‘mortgage interest’), namely in four steps of approximately three per cent. This results in 2023 in a mortgage interest deduction at the proposed basic rate of box 1 of 37.1 per cent. This accelerated reduction solely applies to individuals with an income exceeding EUR 68,507.

The imputed income from *eigenwoningforfait* (homeownership) for primary residences with a value of more than EUR75,000 has been reduced from 0.65 per cent to 0.6 per cent in 2020. The imputed income from homeownership is a percentage of the *Waardering Onroerende Zaken* (WOZ) value of the owner-occupied home and is considered a fictional source of income for income tax purposes.

Individuals who do not have a loan secured by a mortgage (or a small loan) for the owner-occupied home can currently deduct an amount equal to the imputed income from homeownership (under the Hillen Act). This deduction will be gradually phased out in equal steps over thirty years.

Box 2 – adjustments

The box 2 rate applicable to income and gains derived from substantial shareholdings (≥ five per cent) has been increased in 2020 from 25 per cent to 26.25 per cent and will be further increased to 26.9 per cent as of 2021.
The increased rate will also apply to existing box 2 claims.

VAT

VAT identification number and ICP declaration mandatory for zero per cent rate cross-border B2B

In order to be able to continue application of the zero per cent rate for cross-border business-to-business (B2B) trade in goods within the European Union, the use of the customer's VAT identification number and the submission of a correct periodic intra-Community transactions (ICP) declaration are mandatory.

Reduced VAT rate for supply and lending of digital publications

As of 1 January 2020, the supply and lending of digital publications, for example, online books, online newspapers, online magazines and online books for educational purposes are subject to the lower VAT rate. The low VAT rate will also apply to paid access to, among others, online newspapers and magazines.

Renewed small business scheme

The *kleineondernemingsregeling* (KOR; small business scheme) has been modified.

Under the new small business scheme, entrepreneurs do not charge VAT on their deliveries. They are not allowed to deduct the VAT on costs either. They are permitted to keep a limited VAT administration and they do not have to file a VAT return.

To be able to opt for the new small business scheme the entrepreneur must satisfy certain criteria which includes having a turnover that should not exceed the amount of EUR20,000.

The exemption will last for at least three years unless the turnover exceeds the amount of EUR 20,000.

Any entrepreneur, regardless of the legal form, can opt for the new small business scheme (this scheme also applies to an association or a foundation).