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Recent Developments in International Taxation

The Netherlands

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1 Corporate income tax

Dutch corporate income tax rate in stages lowered to 15% and 20.5%

- The Dutch corporate income tax ("**CIT**") rate will be lowered in three steps to 15% for taxable profits up to € 200,000 and 20.5% for any excess:
    - 2019: 19% for taxable profits up to € 200,000; 25% for the excess.
    - 2020: 16.5% for taxable profits up to € 200,000; 22.55% for the excess.
    - 2021: 15% for taxable profits up to € 200,000; 20.5% for the excess.

Use of CIT carry forward losses limited to six years

- Currently, CIT losses may be offset against taxable profits of the previous year and the following six years. This restriction was implemented per 1 January 2019. Before this period CIT losses were allowed to be carried forward for nine years.
- The loss carry-back period of 1 year will continue to apply.
- Grandfathering provisions will apply for losses incurred up to and including 2018, ensuring that these losses may still be carried forward for nine years.

Limitation of depreciation on real estate

- Starting the 1st of January 2019, depreciation of real estate that is being used within the company's enterprise will be restricted to the extent the tax book value exceeds the WOZ value. Before 2019, depreciation was allowed up to 50% of the WOZ value. With this newly implemented measure, the depreciation system for real estate used within the company's enterprise and real estate leased to third parties will be the same.

2 Dutch implementation EU Anti Tax Avoidance Directive (ATADI)

Limitation on interest deduction (30% EBITDA-rule)

- As a consequence of the earnings stripping rule included in ATADI, from 2019 onwards, interest payments will not be deductible for Dutch CIT purposes if the balance of interest payable and received (both group and third party interest) is higher than 30% of the taxpayer's EBITDA.
- Interest that is non-deductible pursuant to this limitation may be carried forward indefinitely.
- The Netherlands has chosen to implement a strict version of the earning stripping rule and this version lacks various options provided by the ATAD:
    - The earnings stripping rule will only apply insofar interest costs exceed € 1 million;
    - There is no group ratio escape;
    - There is no grandfathering rule for existing loans;
    - There is no exemption for financial businesses;
    - There is no exemption for stand-alone entities;
- There is an exception included for existing Public-Private Partnerships (PPPs) related to public infrastructure projects.
- The earnings stripping rule (including the € 1 million threshold) will apply per taxpayer, or, if applicable, at the level of a CIT fiscal unity. Existing CIT fiscal unities may have to be terminated to benefit from the per-company threshold.
- In conjunction with the introduction of the earnings stripping rule, the following specific interest deductibility limitations and loss carry forward provisions will be abolished per 1 January 2019:
    - Article 13L of the Dutch Corporate Income Tax Act ("**CITA**"): limitation on deduction of excessive participation debt interest; and
    - Article 15AD CITA: limitation on deduction of acquisition debt interest; and
    - Article 20(4)-(6) CITA: limitation on carry forward of so-called 'holding company losses' incurred by companies of which the activities consist for $\geq$ 90% of holding of subsidiaries or financing of group entities.

Introduction of a CFC-rule

- From 1 January 2019 onwards, the Netherlands has opted to introduce Model A of the CFC-measures included in the ATAD in order to combat tax evasion by companies using controlled (>50%) foreign entities or permanent establishments in low taxed jurisdictions ("**CFCs**") to shift profits generated using mobile assets.
- As a result of the CFC-rule, passive income received by a CFC that is not (timely) taxable in CFC's jurisdiction, will be taxable in the Netherlands, even though it is not distributed to the Netherlands.
- Income that would be exempt under the participation exemption, had the CFC been resident in the Netherlands, will not be included in the Dutch taxable base as a result of this measure.
- A list of low tax jurisdictions will be published by the Ministry of Finance and includes jurisdictions that:
  - levy a profit tax on companies at a rate of less than 9% on the 1st of October of the previous calendar year; or
  - are included in the common EU list of third country non-cooperative jurisdictions for tax purposes of the previous calendar year.
- The CFC-rule will not apply if said CFC is incorporated or established on the basis of valid business reasons that reflect economic reality.

3 Dividend withholding tax

- On Budget Day, 18 September 2018, the Netherlands government presented the 2019 Tax Plan package, which included the announcement that the Netherlands dividend withholding tax would be abolished as from 1 January 2020. Simultaneously, the Netherlands proposed to introduce a conditional withholding tax on dividends paid to affiliated entities established in ‘low tax jurisdictions’ or in abuse situations.

- The abolition of the Netherlands dividend withholding tax was subject to fierce debate in the Netherlands parliament as a result of which the Netherlands government announced on 15 October 2018 that the Netherlands dividend withholding tax will not be abolished. It is currently unclear what the impact will be on the conditional withholding taxes on dividends, interest and royalty payments

- Although the aforementioned abolishment of dividend withholding tax has been thwarted, a possible tax at source is still a reality per 1 January 2021. This withholding tax regards interest and royalty payments to countries with very low taxes, countries on the EU list of non-cooperative jurisdictions and in certain tax abuse situations. An elucidating legislative proposal has - as of yet - not been published.

4 Personal income tax

Box 1-adjustments

- The existing four bracket regime in box 1, applicable to e.g. salary income, will be replaced by a two bracket regime with a basic rate of 37.05% and a top rate of 49.5% in 2021. 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 3%. This results in 2023 in a mortgage interest deduction at the proposed basic rate of box 1 of 37.05%.
- The imputed income from homeownership (*eigenwoningforfait*) has been reduced from 0.70% to 0.65% in 2019. The imputed income from homeownership is a percentage of the 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 (*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 ($\geq$ 5%) will be increased starting in 2020 from 25% to 26.25% and to 26.9% as of 2021.
- The increased rate will also apply to existing box 2 claims.

Limitation term of 30%-ruling regime for expats

- The maximum period that a 30%-ruling for expatriate employees can be used will be shortened from eight to five years per 1 January 2019.
- The limitation will also apply to employees that previously possessed a 30%-ruling; by means of a transitional arrangement. Employees who are presently in possession of a 30%-ruling and who would have previously enjoyed said ruling until 2021, 2022 or 2023 can make use this ruling until the 31st of December 2020. In case the 30%-ruling was supposed to be employed until 2024 or later, the end-date of the ruling will be shortened by 3 years.

5 VAT

Increase of the low VAT rate of 6% to 9%

- As of 2019, the low VAT rate has increased from 6% to 9%. The low VAT rate applies to primary necessities of life such as food, agricultural products and medicines. Furthermore, the low VAT rate applies to cultural and recreational services as access to movies, museums, music and dance performances and the supply of books and magazines.
- The general high VAT rate will remain at 21%.