Recent Developments in International Taxation

The Netherlands

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Corporate income tax

*Dutch corporate income tax rate increased to 25.8 per cent*

As of 1 January 2022, the Dutch corporate income tax (CIT) rates are 15 per cent for taxable profit up to €395,000 (2021: €245,000) and 25.8 per cent (2021: 25 per cent) for any excess.

*Changes to the controlled foreign corporation rules*

Since 2019, the so-called controlled foreign corporation (CFC) rules have been included in the CIT. In the event of genuine economic activity by a CFC (the so-called substance clause) the CFC rules, as an exception, are not applicable. As of 1 January 2022, foreign CIT must be set off against tax liabilities in the Netherlands in a mandatory order. Previously, it was possible to choose which part of the tax would be set off in a particular year and which part would be deferred to future years. This rule is an addition to the CFC rules.

*Earning stripping measure interest deduction lowered to 20 per cent*

The interest deduction has been limited to 20 per cent (2021: 30 per cent) of the earnings before interest, tax, depreciation and amortisation (EBITDA) for tax purposes. The €1m threshold remains unchanged.

*Transfer pricing mismatches*

A bill presented by the government aims to combat the avoidance of (Dutch) CIT through international interpretation differences on the arm’s length principle (transfer pricing mismatches). As of 1 January 2022, downward adjustments are no longer allowed in situations in which another state does not impose a corresponding upward adjustment. For example, a Dutch BV receives an interest-free loan from a foreign entity. In previous years, the BV would be allowed to deduct an arm’s length interest expense on the loan without consideration of whether the foreign entity has taken corresponding interest revenue into account. Now, the BV is only allowed to deduct interest to the extent that the foreign entity includes arm’s length interest revenue in its tax base (tax on profits).

*Limitation loss relief*

Corporate taxpayers are allowed to offset losses against profits. As of 1 January 2022, the period for carrying forward losses was increased from six years to unlimited. The carryback period remains unchanged and continues to be one year. However, the amount of net operating losses (NOL) utilisation is limited to 50 per cent of taxable income (in excess of €1m), for a given year. The remaining losses can be offset in the next years in which profits are made subject to the same limitations. These new loss relief rules apply to all losses that can still be offset on 1 January 2022 and all future losses.

*Offsetting withholding tax*

As of 1 January 2022, Dutch companies will only be able to offset dividend tax, and betting and lottery tax levied (withholding taxes) against CIT payable. If no CIT is owed in a year, then no refund will be made by the tax authorities in that year. The company can offset withholding taxes against CIT payable in a later year. This does not have to be done immediately in the next year. Withholding taxes that have not been settled can be carried forward to later years without limitation.
Dutch implementation of the European Union Anti-Tax Avoidance Directive (ATAD II)

Reverse hybrid entities treated as tax residents

From 1 January 2022, reverse hybrid entities may be subject to Dutch CIT. A reverse hybrid entity is defined as an entity that is organised under Dutch law or is resident in the Netherlands and would in principle be treated as a transparent entity in the Netherlands without applying the reverse hybrid rule. Such entity would for Dutch tax purposes nevertheless be treated as an opaque entity if at least 50 per cent of the voting rights, capital or profit entitlement in that entity is directly or indirectly held by one or more related corporate investors that consider the entity to be opaque.

This results in hybrid entities being fully subject to tax in the Netherlands. For double taxation avoidance purposes, a deduction rule is set in place. The rule applies to profits attributable to investors that treat the Dutch reverse hybrid entity as transparent under the condition that the profits are included in a profit-based tax in accordance with the definition used for the other ATAD II provisions. Consequently, reverse hybrid entities become subject to tax as the entity's income is not being taxed on an investor level. This rule does not affect regulated collective investment funds that are either a partnership established under Dutch law or a foreign based partnership that's based in the Netherlands.

Personal income tax

Box 1-adjustments

The two bracket regime in box 1, applicable to, for example, salary income, has seen a decrease of 0.03 per cent to 37.07 per cent (2021: 37.10 per cent) for its first bracket (income up to €69,399). The top rate of 49.5 per cent remains unchanged. Furthermore, several tax credits and deductions have either increased or decreased. The rate for tax credits has decreased to 40 per cent (2021: 43 per cent). The pandemic has made working from home more common. Working from home can lead to extra costs for employees, such as water and electricity usage, heating, coffee, tea and toilet paper. As of 1 January 2022, employers are allowed to give a tax-free allowance of €2 per working day at home to compensate employees who made the aforementioned costs. As of 1 January 2022, study costs are no longer deductible. A subsidy scheme of up to €1,000 for development and schooling has been implemented as a replacement. The rate for deductible items (mortgage interest deduction, self-employed deduction and personal deductions) has decreased to 40 per cent (2021: 43 per cent). This rate change only affects income that falls in the second bracket (more than €69,398).

Box 3-adjustments

As of 1 January 2022, the ceiling on tax-free assets has increased to €50,600 (2021: 50,000). The rates for notional returns are updated using the recent average returns on savings and investments. The new return on savings is -0.01 per cent (2021: 0.03 per cent) and the new return on investments is 5.53 per cent (2021: 5.69 per cent). Saving and investments are thus taxed on a notional basis only. The tax rate on income from savings and investments remains at 31 per cent.

Conditional withholding tax on interest and royalties

Withholding tax is levied on the company that makes the interest or royalty payment at a rate equal to the highest rate of Dutch CIT in the current year. As the highest rate of Dutch CIT has increased to 25.8 per cent, so will withholding tax. The withholding tax rate may be reduced by a tax treaty, if applicable.

VAT

VAT on energy

As of 1 July 2022, VAT on energy (natural gas, electricity and district heating) has decreased from 21 per cent to nine per cent. This reduction will remain in place until (and including) 31 December 2022.
Reduced VAT refund process simplified

It will be easier for EU entrepreneurs who do business in the Netherlands to get a VAT refund. Entrepreneurs will no longer have to file a separate request for a VAT refund after already having filed a negative VAT return. The change came into force on 1 January 2022, with retroactive effect from 1 July 2021.