

## Deputy Minister provides more insight into his future tax plans

### 1. Introduction

On February 23, 2018, the Deputy Minister of Finance explained his future tax plans in two letters. One letter contained his Tax Policy agenda, while the other elaborated on the first priority of this agenda: combating tax avoidance and tax evasion. In the Tax Policy agenda, the Cabinet identifies four more priorities: reducing the tax on labor (in accordance with the *coalition agreement*), a Dutch business climate that remains fiscally competitive for real economic activities, making the tax system more 'green' and a more enforceable tax system. The most important tax aspects in the letters are addressed below. Insofar as the content of the letters corresponds with the *coalition agreement*, we refer to [our previous report](#). Below we will suffice as much as possible with modified or new/renewed elements.

### 2. Combating tax avoidance and tax evasion

The Deputy Minister bases the combating of tax avoidance and tax evasion on two pillars: on the one hand he wants to protect the tax base, while on the other hand taking measures in the area of transparency and integrity.

#### 2.1 Tax base protection

##### ATAD 1

The Deputy Minister indicated that the implementation of the first Anti-Tax Avoidance Directive (ATAD 1, as of 2019) will go further than the Directive prescribes.

In accordance with the *coalition agreement*, the letters confirm that the '**earnings stripping measure**' will not include a group exception, that there will be no grandfathering of existing loans and that the threshold will be reduced from EUR 3 million to EUR 1 million. [See our previous report](#) on the ATAD 1 consultation. In addition to the earnings stripping measure, an interest deduction limitation in the form of a minimum capital rule will also be introduced for **banks and insurers**. The earnings stripping measure and the minimum capital rule together aim to reduce the difference in the tax treatment of equity and debt for all taxpayers.

Under ATAD 1, a measure will also have to be implemented against low-taxed controlled foreign companies (**CFCs**), which must be used to combat tax avoidance, whereby profits realized with mobile assets are transferred to such CFCs. After the [earlier consultation](#) on model A and B, the Deputy Minister has now opted for model A, whereby the income is determined by a number of specific, passive income categories. With regard to the 'subject-to-tax test', the Deputy Minister's focus is on countries with a low statutory tax rate and countries included on the EU list of non-cooperative countries (EU black list, see [link](#)). The Deputy Minister emphasizes that he is concerned here with entities in the above countries without a 'significant economic activity'. Such an activity is in any case present if the CFC meets the same substance requirements as those imposed for the application of the dividend withholding tax exemption (see [link](#)).

The Cabinet is still to consult with the business sector in order to reduce the administrative burden of this option as much as possible.

#### *ATAD 2*

To implement the second EU Anti-Tax Avoidance Directive (ATAD 2, as of 2020) measures will be taken to prevent structures that make use of qualification differences between tax systems (**hybrid mismatches**), see [link](#). This implementation will, among other things, end the attractiveness of the CV/BV structure. The Cabinet aims to launch a consultation as soon as possible in 2018, followed by a bill at the beginning of 2019.

#### *Multilateral Instrument (MLI) – treaties*

The Netherlands wants to have all tax treaties include a measure that ensures that treaty benefits are only granted if the income of a hybrid entity is taxed at the participants in that entity. One way to achieve this is, for example, via the [MLI](#). Via the MLI, the Netherlands includes more anti-abuse measures in tax treaties than many other countries. This is intended to prevent the extensive network of Dutch tax treaties being used improperly.

#### *Introduction of conditional withholding taxes and their impact on treaties*

As of 2021 (and not as of 2023, as implied in the *coalition agreement*) the Netherlands will introduce a **withholding tax** on outgoing *interest and royalty flows* to low tax jurisdictions and in abuse situations. This measure is intended to prevent the Netherlands being used as a conduit to tax havens. The bill will be presented to Parliament in 2019. A withholding tax on *dividends* to low tax jurisdictions and in abuse situations will also be introduced. This measure will take effect as of 2020 (at the same time that dividend withholding tax in its current form is abolished).

The withholding taxes will be payable if an entity established in the Netherlands pays dividends, interest or royalties to a group entity established in a country with a low statutory tax rate or a country that is included on the EU black list. This will include rules to combat abuse situations, such as when a payment ends up in a low-taxed or EU black-listed jurisdiction via a circuitous route.

If the Netherlands has a treaty with such a country, then the Netherlands may not be able to effect or only partly effect the withholding taxes on the basis of the current treaty. The Deputy Minister finds this undesirable. He will look into how treaty policy can be revised and how and when the relevant treaty partners can be approached in order to prevent this situation as much as possible. The Deputy Minister will send a letter to Parliament in the second half of 2018, in which he will discuss the changes in tax treaty policy since 2011 and how the conditional withholding taxes that are to be introduced will impact tax treaties. He will also use the letter to respond to a motion by the Lower House asking for tax treaties with jurisdictions on the EU black list to be reconsidered.

#### *Tightening and expansion of scope of substance requirements*

Partly at the urging of the Lower House, the Deputy Minister wants to tighten the requirements for substance in the Netherlands (**substance requirements**) so that information will be exchanged with other countries in more cases.

Firstly, the group of taxpayers about which information is exchanged will be expanded to cover **international holding companies**. In addition to this, he wants to strengthen the substance requirements as they currently apply to *the exchange of information* and bring them in line with the requirements that were introduced with the Withholding Obligation for Holding Cooperatives and Expansion of the Withholding Exemption Act (*Wet inhoudingsplicht houdstercoöperatie en uitbreiding inhoudingsvrijstelling*) (see [link](#)). This concerns a payroll requirement of EUR 100,000 and the requirement that office space is made available during at least 24 months. The Deputy Minister also wants to strengthen the substance requirements for *obtaining advance certainty* in the same way.

He wants to consider the necessity for another policy option, tightening the current provision that aims to discourage **interest and royalty conduits without sufficient substance** from establishing themselves in the Netherlands, together with the withholding taxes that are to be introduced on interest and royalties.

Finally, the Deputy Minister wants to examine whether the participation exemption can be changed in such a way that it will no longer be applied if a group's presence in the Netherlands is limited to one or more virtually 'substance-less' intermediate holding companies. He expects that the latter review will take place during the course of 2020.

#### *Transfer pricing*

In the new OECD Guidelines a methodology has been developed for analyzing and modifying the risk allocation for intra-group transactions. The Deputy Minister has now indicated that he intends to amend the **Transfer Pricing Decree** in 2018 in order to bring it into line with these new OECD guidelines.

Applying the **arm's length principle** may mean that the profit for tax purposes is adjusted upwards or downwards. According to the Deputy Minister, in particular the latter effect could prove problematic (in light of the Cabinet's proposed approach to tax avoidance). This is reason for him to examine whether the arm's length principle needs to be changed.

#### *Digital economy*

With regard to the taxation of profits in the digital economy, the Deputy Minister noted that in the run-up to the OECD report (spring 2018) and the proposal by the European Commission (beginning of 2018), the Cabinet will enter into discussions with academics, stakeholders and representatives of tech companies and digital platforms. [Please refer to our previous report for more information about this.](#)

## 2.2 Transparency and integrity

### *The right of non-disclosure and publication of penalties*

The Cabinet will clarify the scope of the statutory fiscal right of non-disclosure. Negligence penalties imposed on tax intermediaries will be made public.

### *Information decision*

The information decision offers legal protection to (potential) taxpayers in a dispute about whether the questions posed by a tax inspector are justified. According to the Dutch tax authorities, the information decision is however responsible for some delay to the tax assessment procedure. The evaluation report presents a balanced picture of the operation of the information decision. In the coming period, the Deputy Minister wants to see whether it is possible to take measures to tackle the lengthy tax procedures, while at the same time guaranteeing the desired legal protection.

### *Integrity of financial markets*

Under the 4th EU Anti-Money Laundering Directive, the Netherlands is obliged to establish a central register of ultimate beneficial owners, the **UBO register** (see [link](#)). Legislation on this is still being drafted. Current legislation on trust offices will also be tightened.

### *Pending EU initiatives*

The Cabinet supports the proposal of the European Commission for **mandatory disclosure** of cross-border – potentially aggressive – tax structures, whereby financial intermediaries (e.g. tax advisors, lawyers, notaries public, trust offices) are obliged to report information about such structures to the Dutch tax authorities (see [link](#)). It also supports the proposal for a directive on **public Country-by-Country reporting**, for the purposes of showing the extent to which internationally operating businesses comply with their tax obligations. Incidentally, the negotiations on this have currently come to a halt in the EU.

### *Exchange of information and advance certainty*

As stated above, the **substance requirements** for both the exchange of information and obtaining advance certainty will be tightened. The Deputy Minister also noted that another OECD peer review will take place in 2018 (in the context of BEPS) concerning the exchange of rulings and the exchange of information upon request. By letter dated February 18, 2018, the Deputy Minister had already reported on the investigation of rulings with an international character. In this letter he announced a revision of the **ruling practice**, effective January 1, 2019, that covers both the process under which rulings are issued as well as their content.

### *Structures hindering tax collection*

The current Cabinet will continue with the policy adopted by the previous Cabinet, including, among others, the legal measures announced against undesirable structures hindering tax collection. The tax collection measures for which a consultation procedure has already taken place, will be included in the 2019 Tax Plan.

### 3. Competitive tax business climate for real economic activities

The Deputy Minister emphasized that the Netherlands must remain attractive for businesses that are established here and for those that wish to come to the Netherlands. He referred to the intention in the *coalition agreement* to abolish dividend withholding tax in its current form (it is expected to be abolished in 2020) and to gradually reduce corporate income tax. See also our previous reports of [October 2017](#) and [November 2017](#).

The tax rate reduction will moreover be partly financed by curtailing the carry forward **loss set-off** to six years (currently: nine years). As a supplement to the *coalition agreement* he states that this measure will take effect on January 1, 2019.

### 4. Other tax measures

- Fiscal unity for corporate income tax purposes: further to his [letter dated February 22, 2018](#), the Deputy Minister noted that the Cabinet is aware that the emergency remedial measures can affect any existing fiscal unity and that this has major implementation consequences for the Dutch tax authorities. According to the Deputy Minister, these measures and the associated retroactive effect are however unavoidable if the Dutch tax base is to be protected.
- Self-employed persons without employees: the *coalition agreement* contains measures to replace the Assessment of Employment Relationships Deregulation Act (*Wet deregulerend beoordeling arbeidsrelaties*; DBA Act). One of the matters dealt with in a letter dated February 9, 2018, was the way in which enforcement takes place at malicious parties until the moment the new legislation is introduced ([also see our previous report](#)). The letter of February 23, 2018, states that the substantive choices of the Cabinet will be addressed in a 'Letter outlining Policy' that should be sent to the Lower House before the summer recess.
- Box 3: the Deputy Minister indicated that he will send a letter to the Lower House in the spring setting out the Cabinet's position on Box 3 on the basis of actual return on investment and the time frame for this.
- VAT:
  - The expansion of the VAT exemption for sport in response to EU case law will be included in the 2019 Tax Plan.
  - The Cabinet intends to update the special scheme for small businesses (*Kleine Ondernemersregeling*) and – after consultation – include it as a separate bill in the 2019 Tax Plan package. A turnover-related exemption, irrespective of legal form, is being considered.
  - E-commerce: [see our previous report](#).
- Green measures:
  - A CO<sub>2</sub> minimum price will be introduced for the generation of electricity by certain businesses.
  - As of 2019, the energy tax rate in the first tax bracket will be reduced for electricity, while the rate for natural gas will be increased.

- The waste tax rate for waste incineration and landfill will be increased as of 2019.
- The Cabinet is committed to European agreements on airline taxes.
- The phasing out of the tax incentives for zero-emission vehicles will be brought into line with the Cabinet's aim to have all new vehicles emission-free by 2030.
- Owner-occupied home: the home ownership scheme (*eigenwoningregeling*) will be evaluated in 2019.

## 5. Final remarks

The letters show the Deputy Minister's concern about the Netherlands being a conduit country or being regarded as such internationally. He stated that this is not good for the investment climate and thus intends to change this perception. The future will show whether and to what extent the measures he refers to will contribute to this.

In mid-April the Deputy Minister will invite various stakeholders to respond to the letter about tax avoidance and tax evasion, after which he will inform the Lower House about the outcome of this consultation.

Both letters will undoubtedly become the subject of debate. They will probably be included in the pending Lower House debates on the ruling practice and the outcome of the Parliamentary Committee of Enquiry into Tax Structures (*Parlementaire Onderzoekscommissie Fiscale Constructies*; POFC).

We will, of course, keep you informed of developments. Please feel free to contact your Meijburg advisor if you have any questions or would like to discuss the above matters.

Meijburg & Co  
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