

## **New developments regarding the 2019 Tax Plan package and the emergency repair of the fiscal unity**

On October 25, 2018, the Deputy Minister of Finance, Menno Snel, published the answers to the questions raised by the Lower House about the legislative proposals in the 2019 Tax Plan package (including ATAD1). Several Memoranda of Amendment were also sent to the Lower House. On October 26, 2018, the Memoranda of Amendment resulting from the government's reconsideration of the business climate package were also published. These include:

- the further reduction of the corporate income tax rate and no additional increase of the tax rate for a substantial interest;
- not abolishing dividend withholding tax;
- not introducing a conditional withholding tax on dividends;
- the reversal of the amendments to the FBl regime;
- transitional rules for limiting, for corporate income tax purposes, the depreciation of property in own use;
- transitional rules for the 30% ruling;
- the amendment of the emergency repair of the fiscal unity;
- the current account measure for director-major shareholders (DMS).

The most important aspects are addressed below.

### **1. Further reduction of the corporate income tax rate and increase of Box 2 rate**

The corporate income tax rate will be incrementally reduced as follows:

	Up to and including EUR 200,000	Above EUR 200,000
2019	19%	25%
2020	16.5%	22.55%
2021	15%	20.5%

The government has decided that there will be no additional increase in the tax rate for a substantial interest (Box 2) despite the further reduction of the corporate income tax rate. The Box 2 rate for the coming years will be:

2020	26.25%
2021	26.9%

### **2. Dividend withholding tax will not be abolished / conditional withholding tax on dividends will not be introduced / no amendment of FBIs in respect of Dutch property**

Dividend withholding tax will not be abolished. This means that the intended introduction of the conditional withholding tax will also not take place. The proposal to

no longer allow fiscal investment institutions (*fiscale beleggingsinstellingen*; FBI's) to invest in Dutch property has therefore also been abandoned.

### **3. Depreciation of property in own use - transitional rules**

It was proposed that as of January 1, 2019, property in own use can henceforth be depreciated, for corporate income tax purposes, up to a maximum of 100% of the WOZ value (this is currently 50% of the WOZ value). This measure now includes transitional rules for buildings that were brought into use before January 1, 2019 and that have not been depreciated for more than three years. Such buildings may still be depreciated for another three full financial years after the year in which they were brought into use, thereby taking a minimum value of 50% of the WOZ value into account. A BV with a financial year corresponding to a calendar year that acquired a building on July 1, 2018 can therefore still apply the old depreciation rule to the 2019, 2020 and 2021 financial years.

### **4. Emergency repair of fiscal unity**

In response to a judgment rendered by the Court of Justice of the European Union on February 22, 2018, a number of elements will, as of January 1, 2018, have to be treated as if the fiscal unity for corporate income tax purposes does not exist. The effective date had previously been set at 11:00 a.m. on October 25, 2017. This has thus been shifted to January 1, 2018. For most taxpayers this means that the emergency repair measures will not have to be taken into account in the 2017 tax return. The emergency repair will only play a role for taxpayers with a split 2017-2018 financial year.

### **5. Earnings stripping measure**

The proposed earnings stripping measure was discussed in section 1.3.1 of our [memorandum of September 18, 2018](#). As was mentioned there, the Memorandum of Amendment would include an exception for existing public-private partnership (PPP) projects. This Memorandum of Amendment was submitted on October 25, 2018. The exception applies to interest in respect of long-term public infrastructure projects, to be designated by ministerial regulation, already in place on October 25, 2018, for which a regular availability fee is payable by the government under an integrated contract for the design, construction, financing, maintenance or operation of the infrastructure. The benefits derived from such projects cannot be taken into account when determining the adjusted profit: the benefits thus do not increase the scope for the deduction of interest that does fall under the earnings stripping measure. According to the explanatory notes, an existing project is any project for which the tender procedure commenced before October 25, 2018. The activities of housing associations do not fall under this exception; according to the Memorandum in response to the Report, this includes roads, bridges and tunnels. The exception will first be presented to the European Commission because it could entail prohibited State aid. The measure will therefore only take effect on a date to be determined by Royal Decree, which means that the measure could have retroactive effect to January 1, 2019.

The Memorandum in response to the Report provides some clarity on the application of the earnings stripping measure. With regard to the balance of interest that is subject to

the deduction limitation, it is noted that operational lease payments do not fall within its scope. However, it does include handling fees and other costs. Interest income that is included in the tax base pursuant to the proposed CFC rule of Section 15ab Corporate Income Tax Act 1969 (CITA) is not part of the interest balance, although adjustments pursuant to Section 8b CITA are. With regard to the adjusted profit (the EBITDA) on which the 30% is calculated, it was noted that the creation of a reinvestment reserve results in a lower profit and thus a lower adjusted profit (EBITDA) and consequently a larger deduction limitation. The government confirmed that taxpayers using the Innovation Box may face a larger deduction limitation sooner.

## **6. 30% ruling**

The term of the 30% ruling will be shortened from eight to five years as of January 1, 2019. Transitional rules have been introduced for existing cases, which means that the 30% ruling will end on December 31, 2020, or sooner if the eight-year term ends before this date. A 10-year period sometimes still applies in old cases; the deadline here is also December 31, 2020. Although not explicitly stated, we assume that if the transitional rules are taken advantage of, it will also be possible to apply the rules for partial foreign taxpayer status during the transitional period.

## **7. DMS current account measure**

The Deputy Minister reiterated that the announced DMS current account measure will be relaxed (effective date January 1, 2022). In addition to existing home acquisition debt, new home acquisition debt will also be excepted. The joint indebtedness of the DMS and their partner to their companies will then be limited to a maximum of EUR 500,000. A draft bill will be opened for public consultation in the autumn of 2018 or the beginning of 2019, after which the definitive bill will be presented to the Lower House in the spring of 2019.

## **8. Gradual reduction of benefit derived from tax deduction items (including alimony)**

The 2019 Tax Plan states that it will eventually (in 2023) only be possible to deduct certain items, such as alimony and donations, at the low rate in the first bracket (37.05%) and no longer at the top rate of 49.5%. That represents a difference of 12.45%! As of January 1, 2020, the deduction will be gradually reduced. Many questions were raised about alimony in particular, because it can significantly affect income. It has been confirmed that when determining the alimony standards in new situations, account will be taken of the fact that the benefit derived from the deduction of alimony will be smaller. For existing situations, the tax amendment may be reason to revise current agreements. Parties can proceed to revise current agreements in mutual consultation either via a mediator, lawyer or court.

## **9. Remittance reduction for maritime shipping**

As of January 1, 2019, the maritime shipping remittance reduction for sail-powered commercial cruising vessels (CCV) will be aligned with the renewed approval granted by the European Commission. This renewed approval will apply through to December 31, 2022.

## **10. Expansion of VAT exemption for sport**

The transitional rules for the expansion of the VAT exemption for sport will be brought more in line with its intention: to avoid the recovery of VAT charged on the construction of sport accommodation having to be corrected as a result of the expansion of the VAT exemption for sport. This change means that no correction will take place for immovable and movable property, irrespective of the date on which it was or will be brought into use. That the correction can only be disregarded insofar as it is the result of the expansion of the VAT exemption for sport, will continue unchanged.

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