Meijburg & Co
Tax & Legal

Year end 2019 tax accounting considerations

Dutch tax measures for 2020

December 2019

Introduction

On December 17, 2019, the 2020 Tax Plan package has been accepted by the Dutch Senate and therefore substantively enacted under IFRS.

Many of the proposed measures will take effect on January 1, 2020 or as from the financial year that starts on or after January 1, 2020. However, this could still impact the tax position of your 2019 financial statements.

This memorandum outlines the main tax accounting consequences of the 2020 Tax Plan under IFRS and the impact it may have on the tax position of your financials. Reference is also made to our memorandum released on September 17, 2019 for a complete overview and description of the tax measures of the 2020 Tax Plan.

Content

1. Corporate income tax

1.1 Partial reduction of Corporate income tax rates

The government changed the gradual decrease of the Corporate income tax rates that was enacted in December 2018. Under the new updated legislation the tax rate will be reduced later and less than originally intended in the previous plan:

Enacted 2018	2019	2020	2021	Bill 2019	2019	2020	2021
≤ € 200,000	19%	16.5%	15%	≤ € 200,000	19%	16.5%	15%
> € 200,000	25%	22.5%	20.5%	> € 200,000	25%	25%	21.7%

This will have an impact on the reported deferred taxes, as these will have to be remeasured.

The effect of the rate changes should generally be recorded in the profit and loss account. The effect of the rate change is recorded through OCI or directly in equity if the underlying item (or transaction) to which the temporary difference relates is recognized outside profit and loss account.

Whether the change in the gradual decrease of the Corporate income tax rates results in an increase or decrease of the Effective Tax Rate (ETR) in 2019 depends on whether the company has recognized deferred taxes for deductible temporary difference (decrease ETR) or a taxable temporary difference (increase ETR).

Expected ETR impact

Actions needed

Update reversal schedule for remeasurement deferred tax asset ("DTA") / deferred tax liability ("DTL") on temporary differences and tax losses & credits

1.2 Introduction of possibility to revise earnings stripping decision

As of January 1, 2019 an earnings stripping measure was introduced for Corporate income tax purposes. Under these rules, any non deductible part of the interest may be carried forward indefinitely. The 2020 Tax Plan contains an option for the Dutch tax authorities to revise the initially carried forward interest if there is a new fact, bad faith or an error the tax payer should realistically have been aware of. In addition, the Dutch tax authorities will issue a formal decision when the carried forward interest balance of an earlier year is deducted for determining the profit of a later year.

1. Corporate income tax

Generally, a company would be able to recognize a DTA on temporary differences for the carried forward non deductible part of the interest. The recognition and measurement principles under IAS 12 have to be met before such a DTA can be recognized. When it is not probable that the company would be able to deduct the carried forward (non deductible part of the) interest in future years, a DTA cannot be recognized having a negative impact on the ETR.

Under the new measures the carried forward interest may be revised by the Dutch tax authorities and therefore impacting any previously (un)recognized DTA and potentially impacting uncertain tax positions.

Expected ETR impact

Actions needed

(Re)assess (un)recognized DTA for non deductible interest based on a.o. tax forecasts (fiscal EBITDA)

1.3 Introduction of interest deduction limitation rules for banks and insurers

In addition to the introduction of the generic interest deduction limitation rules in 2019, an additional interest deduction limitation rule is introduced for the financial sector industry as from 1 January 2020. In short, interest deduction is excluded if and insofar a bank's or insurer's leverage ratio is less than 8%. The leverage ratio is based on the capital requirements directive for the financial services industry.

Contrary to the generic interest deduction limitation rules, the interest deduction limitation rules for bank and insurers will not allow in a carry forward of non-deductible interest. Consequently, companies cannot recognize a deferred tax asset for the non-deductible interest. This will negatively impact the ETR.

Expected ETR impact

Actions needed

Update CIT determination for 2020 / reassess unrecognized DTA for deductible temporary differences, unused tax losses and unused tax credits.

1.4 Revised definition of permanent establishment as response to MLI against international tax evasion

The government will bring the national definition of the term 'permanent establishment' as used for personal income tax, payroll tax and Corporate income tax in line with the definition in the applicable tax treaty. As a result of the proposed changes, it is expected that a permanent establishment will be present in more situations.

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1. Corporate income tax

From a tax accounting perspective, the company has to record a current tax liability for the Dutch Corporate income tax liability on profits attributable to the Netherlands in the event a permanent establishment exists (source state taxation). The ETR impact will depend on the reduction of the current tax liability in the residency state based on the relief for double taxation. When no relief for double taxation applies the ETR generally goes up.

Expected ETR impact	Actions needed
	Perform PE-risk assessment Netherlands

1.5 Act implementing ATAD2 against hybrid mismatches: CIT consequences

On July 2, 2019, the Bill to implement the amendment to the EU Anti-Tax Avoidance Directive (ATAD2) was presented to the Lower House. In line with ATAD2, the consequences of hybrid mismatches in affiliated relationships will be neutralized. Depending on the mismatch and the treatment outside the Netherlands, this occurs by refusing the deduction or taxing the income in the Netherlands.

Such a denial of deduction or the inclusion of income will create a permanent book-to-tax difference having a negative impact on the ETR. These measures will get into force starting from January 1, 2020.

Expected ETR impact	Actions needed
	Perform ATAD2 risk assessment – hybrid mismatches

1.6 Limitation of the liquidation and cessation loss scheme (2021, not part of the 2020 tax plan package)

The government intends to amend the liquidation and cessation loss scheme for Corporate income tax purposes as of 2021, based on which a liquidation loss on a participation or PE will only be deductible if certain specific conditions have been met (e.g. participation is established in the Netherlands or in another EU/EEA state and the Dutch taxpayer holds a qualifying interest in the subsidiary).

Temporary differences will generally arise when, for example, investments on subsidiaries have been written off for book purposes, while for tax purposes no deduction has been claimed yet. In the event under the amended liquidation loss regime still a tax deduction can - and will - be claimed, a deferred tax asset is recognized when the general DTA recognition and measurement principles have been met (no impact on the ETR on stand alone level).

However, companies that already have recognized a DTA for liquidation losses relating to subsidiaries outside the EU could be impacted (negatively impacting the ETR).

Expected ETR impact

Actions needed

Assess limitation liquidation loss applies

Remeasure (un)recognized DTA accordingly

1.7 Increase of Innovation Box rate (2021, not part of the 2020 tax plan package)

The government intends to increase the effective rate in the Innovation Box from 7% to 9% as of 2021 by adjusting (i.e. decrease of) the qualifying exempt income.

After this increase is (substantively) enacted, the deferred tax positions on which the innovation box regime has an impact have to be remeasured.

The increase of the effective Innovation Box rate will effectively result in an increase of recognized deferred tax positions, therefore positively impacting the ETR in case of deferred tax assets while negatively impacting the ETR in case of deferred tax liabilities.

Expected ETR impact

Actions needed

Update reversal schedule for remeasurement DTA/DTL on temporary differences and tax losses & credits

2. Withholding taxes

2.1 Act implementing ATAD2 against hybrid mismatches: WHT consequence

In line with ATAD2, the consequences of hybrid mismatches in affiliated relationships will be neutralized. In relation to that, as of January 1, 2020 the Netherlands-US tax treaty may no longer lower the Dutch dividend withholding tax on distributions to Dutch CVs involved in CV/BV (limited partnership/private limited liability company) structures, due to the withdrawal of the policy statement on hybrid entities under the tax treaty with the United States as per that date (Policy Statement of July 6, 2005, IFZ2005/546M). This may require that at the level of the parent of the Dutch CV a deferred tax liability has to be recorded for its 'outside basis difference' measured against the general withholding tax rate for dividends of 15%.

Expected ETR impact

Actions needed

(Re)evaluate withholding tax rate on undistributed earnings and update DTL outside basis differences

2.2 Substance requirements for the purpose of dividend withholding tax exemption, foreign substantial interest rules and CFC

As a consequence of the February 2019 Case Law from the EU Court of Justice (Danish Cases), the government has proposed that as of January 1, 2020 the substance requirements used in the dividend withholding tax exemption and CFC rules can no longer be used as a 'safe harbor'. Instead, the substance requirements will only play a role in the division of the burden of proof. In other words, the tax inspector can still convincingly demonstrate that there is abuse, even when the substance requirements are met. This can have an impact on the company's current and/or deferred tax position:

— Dividend withholding tax obligation arises impacting for example deferred tax liabilities on outside basis differences;

— CFC income will be included in the taxable income of the Netherlands resulting in a current tax liability.

Expected ETR impact

Actions needed

Perform risk assessment WHT/CFC exemption

Assess existence of temporary difference that may require a DTL

2. Withholding taxes

2.3 Bill implementing a withholding tax on interest and royalties as of 2021

A withholding tax of 21.7% (higher Corporate income tax rate) on interest and royalties will be introduced as of January 1, 2021. This withholding tax will apply to interest and royalty payments from an entity established in the Netherlands, including PE's, to an affiliated entity established in a low-taxed country (Corporate tax rate of less than 9% or appearing on the EU list of non-cooperative jurisdictions) or in abusive situations. A three-year transitional period applies to treaty countries, to give the Netherlands and treaty partners the chance to start negotiations before the position of the taxpayer changes.

Following the proposed legislation the withholding tax is due on any accrued - for this act qualifying - interest and/or royalty charges as per 31 December. In other words, interest and royalties accrued during the year but not paid are deemed to be realized on 31 December of the relevant year and subject to withholding tax. Consequently, a liability for the withholding tax effect may have to be recognized for the accrued interest/royalty.

If the company classifies the withholding tax as an income tax, the ETR is negatively impacted by the withholding tax. Withholding taxes generally have to be recognized at the level of the entity receiving the interest or royalty.

Expected ETR impact

Actions needed

Perform WHT risk assessment

Assess whether withholding taxes are considered income taxes (IAS 12)

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