KPMG Meijburg & Co Tax & Legal

2022 Tax Plan package amended again via Memorandums of Amendment

On Friday, October 15, 2021, the caretaker government once again presented Memorandums of Amendment to the Lower House of Parliament. These Memorandums had already been announced when the previous Memorandums of Amendment were presented (see our memorandum dated October 6, 2021). The proposals include raising the top corporate income tax rate to 25.8% and tightening the generic interest deduction limitation by reducing the deduction percentage from 30% to 20% of the EBITDA for tax purposes.

These (proposed) measures are discussed below.

1. Increase of corporate income tax rate

It is proposed that the top corporate income tax rate be increased with effect from January 1, 2022 to 25.8% (was: 25.0%). The low rate of 15% for profits up to EUR 395,000 (as of January 1, 2022) will be maintained. For 2022, this results in the following:

For the part of the taxable amount	Rate
up to and including EUR 395,000	15%
higher than EUR 395,000	25.8%

The withholding tax rate on interest and royalties is linked to the top corporate income tax rate. The withholding tax rate will therefore also amount to 25.8% as from January 1, 2022.

2. Tightening of generic interest deduction limitation

It is proposed to tighten the generic interest deduction limitation ('earnings stripping measure') for corporate income tax. This interest deduction limitation currently means that the interest, on balance, payable by a taxpayer can only be deducted up to 30% of the EBITDA for tax purposes, or up to EUR 1 million if that is higher. It is proposed that the interest payable on balance will only be deductible up to 20% of the EBITDA for tax purposes. The threshold of EUR 1 million remains unchanged. The tightening will apply for the first time to financial years commencing on or after January 1, 2022.

The explanatory memorandum to the proposed amendment acknowledges that reducing the deduction percentage to 20% of the EBITDA for tax purposes may reinforce the already existing incentive to 'split up' companies in order to make use of the EUR 1 million threshold. In this regard, two possibilities are suggested to reduce this incentive: (i) reduce the EUR 1 million threshold and (ii) include a specific and complex anti-abuse rule to combat fragmentation. Neither of these measures will be introduced for the time being. In the coming period, the government will, however, examine whether there is reason to take legal measures to combat this undesirable fragmentation.

3. Various

In addition, it is proposed, among other things, that:

- the maximum general tax credit be increased by EUR 14 as of January 1, 2022;
- the landlord levy rate be further reduced to 0.332% in 2022 (instead of the reduction to 0.485% proposed on Budget Day);
- the period for establishing a (review) decision on the withholding tax to be carried forward (see section 2.1 of our Budget Day memorandum) be aligned in certain cases with the extended deadline for imposing additional assessments of twelve years;
- transitional rules be introduced if the private motor vehicle and motorcycle tax rate changes in order to ensure a level playing field between parallel imports and the domestic market.

Comments by KPMG Meijburg & Co

The first two of the abovementioned (proposed) measures could significantly impact the business sector. Increasing the top corporate income tax rate will affect the timing of recognizing costs and income. The earnings stripping and withholding tax measures (see our memorandum of October 6, 2020 in this regard) prompt a reconsideration of the means of financing, especially in the case of non-resident investment funds that invest in Dutch property.

We will of course keep you up-to-date on these and any other important developments regarding the 2022 Tax Plan package.

KPMG Meijburg & Co
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