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The Government presents tax measures for 2019 on Budget Day

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On Budget Day, September 18, 2018, the government presented the 2019 Tax Plan to the Lower House. It contains the following bills:

- 2019 Tax Plan;
- 2019 Other tax measures;
- The Withholding Tax Act 2020;
- Green tax measures 2019;
- Article 1 Electronic Trade Directive Implementation Act;
- Small Businesses Scheme Modernization Act;
- Tax on games of chance for sports betting Amendment Act

This year the proposed tax measures focus on lower labor costs, combating tax avoidance and tax evasion, an attractive business climate, further environmental measures and practical feasibility. Many of the proposed measures will take effect on January 1, 2019. This memorandum outlines the main features of the 2019 Tax Plan. Where possible, we have also included other tax measures and developments under the various sub-topics, thereby indicating that these are not part of the 2019 Tax Plan package (please refer to the last chapter for more on this).

Contents

1 Corporate income tax

1.1 Reduction of corporate income tax rates

Corporate income tax will gradually be reduced. The normal rate will be reduced from 25% to 24,3% in 2019; to 23.9% in 2020 and finally to 22.25% in 2021. The reduced for profit up to and including EUR 200,000 will be reduced from 20% to 19% in 2019; to 17.5% in 2020 and finally to 16% in 2021.

1.2 Limitation of depreciation on building in own use

For corporate income tax purposes, as of 2019 it will only be possible to depreciate a building that is in own use up to a maximum of 100% of its WOZ value (was 50%). This means that the same rule will apply as that for buildings leased to third parties (buildings for investment). This will not lead to a taxable revaluation if the WOZ value is higher than the book value. This depreciation limitation may result in a substantial liquidity disadvantage.

1.3 First European Anti-Tax Avoidance Directive (ATAD1, not part of the 2019 Tax Plan)

The bill to implement the First European Anti-Tax Avoidance Directive (ATAD1), for which a public consultation had previously been held, was presented to the Lower House along with the 2019 Tax Plan package. Its various parts are addressed below.

1.3.1 Earnings stripping measure

A generic interest deduction limitation (earnings stripping measure) will be introduced as of financial years commencing on or after January 1, 2019. In connection with this, two interest deduction limitations and the limitation of the holding company loss set-off will be canceled (see below). The earnings stripping measure means that the net interest payable will only be deductible up to 30% of the taxpayer's EBITDA (in short: the gross operating result) or up to EUR 1 million, whichever is higher. The non-deductible interest can be carried forward without limitation to subsequent years.

The net interest is the difference between the interest expense and the interest income in respect of loans and comparable agreements (such as financial lease and hire purchase). The interest definition also covers exchange results on the principal and the interest installments on and results from instruments used to hedge interest and exchange risks on loans. The costs incurred on loans and on instruments to hedge interest and exchange risks on loans will be treated as interest expenses.

To determine the EBITDA, the profit determined according to tax standards (thus without the exempt benefits such as the exempt participation benefits and before the deduction of gifts) will be:

- increased by the total depreciation and write-downs of an asset taken into account in a year;
- decreased by any write-downs of an asset recaptured in a year; and
- increased by the net interest in the particular year.

The profit will not be adjusted for any interest to be capitalized in a year. This interest will however be taken into account for the purposes of the 30% rule. If the 30% criterion is exceeded, the limitation of the deduction of the other interest expense (i.e. the interest expense other than the interest to be capitalized) will take precedence. Insofar as the interest to be capitalized is less than 30% of the EBITDA, it will be capitalized; insofar as the interest to be capitalized exceeds 30% of the EBITDA no capitalization will take place, but the interest will be carried forward to a subsequent year.

The earnings stripping measure applies to the fiscal unity. The government does not consider it necessary to expand the bill on the Fiscal Unity Emergency Repair Act (*wetsvoorstel Wet spoedreparatie fiscale eenheid*) with a measure relating to the earnings stripping measure.

When a taxpayer is 'cut up' into various companies (that are not members of the fiscal unity) the threshold of EUR 1 million per company can be used. Should this possibility be widely used in practice, legal measures will be considered.

In line with previous reports, for the purposes of the earnings stripping measure the government has opted for the following possibilities offered by ATAD1:

- There will be no group exception.
- Stand-alone entities will not be excepted.
- Financial institutions will not be excepted.
- The option to postpone this until 2024 was rejected.
- There will be no grandfathering of loans in place on June 17, 2016.

The government has however decided to except existing Public-Private Partnership (PPP) projects related to public infrastructure projects from the earnings stripping measure. This exception will be elaborated on in a Memorandum of Amendment.

Some accompanying measures are proposed, for example, an anti-abuse provision to combat the trade in interest entities. This measure means that if the ultimate beneficial ownership in the taxpayer has changed by more than 30%, the carried-forward interest arising before the change, can no longer subsequently be taken into account. One of the other provisions to be included covers the rules for overlap between carried-forward interest and the fiscal unity regime (similar to the methodology for setting off losses past the date on which companies are included or removed from the fiscal unity).

1.3.2 Controlled Foreign Companies

A measure will be implemented to combat tax avoidance via low-taxed controlled foreign companies or permanent establishments (CFCs), whereby profits realized with mobile assets are transferred to these CFCs. In short, there is a CFC if a taxpayer (whether or not together with affiliated entities or natural persons) holds a direct or indirect interest of more than 50% in an entity or has a permanent establishment. This means that it will also be relevant for Dutch companies to know whether CFCs are held indirectly lower down in the arrangement. Under ATAD1, a choice generally has to be made between two models:

- Model A, on the basis of which a number of passive income categories of the CFC are included in the Dutch tax base (dividends, royalties, interest, etc.), if this income is not promptly distributed by the CFC; and
- Model B, where the profit reported by the CFC is allocated to the Netherlands (to the Dutch functions) on the basis of the arm's length principle.

The government considers that the fact that the arm's length principle has been entrenched in the Corporate Income Tax Act means that Netherlands already applies Model B. Strictly speaking, the government believes that the Netherlands already complies with the Directive's obligations.

However, the government would like to do more than is strictly necessary. For this reason the government has opted for Model A for CFCs established in:

- a State without profit taxes or with a statutory rate less than 7%; or
- a State appearing on the EU list of non-cooperative countries ('EU blacklist'); unless

However, the CFC income will not again be taken into account if the CFC performs an economic activity of substance.

The CFC's income will be determined according to Dutch standards. For example, an arm's length fee will be taken into account for an interest-free receivable.

The government wants this additional CFC measure to act as a deterrent so that arrangements used to avoid taxes by moving profit to the relevant States, will no longer occur in the Netherlands. To emphasize that the Netherlands no longer wants to be a pivot in such arrangements, the fact that double taxation can arise is explicitly accepted. For example, in situations where a CFC is held indirectly and CFC rules with regard to that CFC also apply on the level of a share-linked intermediary, the Netherlands does not take into account the tax payable by that share-linked intermediary.

An exhaustive list of states identified on the basis of the above criteria will be drawn up annually and laid down in a ministerial regulation. It will be based on the rate applying in October of the preceding calendar year or on the most recent EU blacklist for the preceding calendar year. An economic activity of substance is present if the substance requirements applying as of April 1, 2018 to the anti-abuse test for the purposes of the dividend withholding tax exemption are met. This includes the payroll costs criterion of at least EUR 100,000 and the requirement that office space was available for at least 24 months.

The additional CFC measure will not apply if the CFC mainly receives benefits other than the tainted benefits. An exception also applies in certain cases if the CFC is an entity (and not a permanent establishment), a financial business is carried on by the CFC and this CFC usually receives the tainted benefits mainly from third parties.

1.3.3 General anti-abuse provision

Under ATAD1, Member States must implement a general anti-abuse provision. In short, for the purposes of calculating corporate income tax an arrangement or a series of arrangements must be disregarded if these:

- are set up with the main purpose or one of the main purposes being to obtain tax benefits;
- undermine the purpose or application of the applicable tax legislation; and
- are artificial.

The government believes that this general anti-abuse provision has already been implemented by way of the fraus legis doctrine developed in case law. The government therefore does not consider it necessary to transpose this provision into national law.

1.3.4 Exit tax: change to payment deadline, less collateral required

Relocating the company seat outside the Netherlands, in principle, implies exit tax, regardless of whether capital gains have been realized. Exit tax also has to be paid on untaxed gains and reserves when assets are transferred to another State.

Under current Dutch law, a taxpayer can opt to pay the exit tax immediately or to defer the payment. In all cases where a deferral of payment is granted, the Tax Collector can require collateral. After the benefits are realized, the tax claim can either be settled immediately or the payment thereof can be spread over 10 years.

Under ATAD1, transfers within the EEA (the EU, Liechtenstein, Norway and Iceland) it is only possible to spread the payment over five years, and interest may be charged. Collateral can only be demanded if it can be shown that there is a real and present danger that the tax will not be recoverable. For entities subject to corporate income tax, Dutch legislation and regulations will be brought into line with ATAD1. These new rules will apply to all cases that are granted a deferral of payment on or after January 1, 2019.

Under the current tax system, the Netherlands will retain the right to tax capital gains in the event head office assets are transferred to a permanent establishment. In that case, ATAD1 does not require this to be taxed. Furthermore, the current Dutch rules for temporary transfers (a maximum of 12 months) is in accordance with ATAD1 and therefore they do not have to be amended.

1.4 Abolition of specific interest deduction limitations and limitation of holding company loss set-off

In connection with the introduction of the generic earnings stripping measure (see above) it has been proposed that the following specific limitations be abolished as of January 1, 2019:

- The deduction limitation for excessive participation interest (Section 13l Corporate Income Tax Act 1969)
- The deduction limitation for excessive acquisition interest (the acquisition holding company provision in Section 15ad Corporate Income Tax Act 1969)
- The limitation of the holding company loss set-off (Section 20(4) through (6) Corporate Income Tax Act 1969)

Two other specific interest deduction limitations: Section 10a Corporate Income Tax Act 1969 (targeting profit shifting) and Section 10b Corporate Income Tax Act 1969 (targeting international mismatches) will be maintained.

Acquisition interest that has not yet been set off will be added to the net interest to which the earnings stripping measure applies. Holding company and financing losses incurred in financial years commencing no later than the 2018 calendar year can only be set off after this date against holding company or financing profits.

1.5 Abolition of legal tax deduction of remuneration on additional Tier 1 capital instruments (COCOs).

In line with previous reports, it has been proposed that the legal tax deductibility of the coupon remuneration on additional Tier 1 capital instruments for banks and insurers be abolished as of January 1, 2019. These instruments, also referred to as contingent convertibles (COCOs) are negotiable and subordinated. The characteristics of these type of instruments means that they enlarge the loss-absorbing capital of a bank or insurer that issues such instruments. The government considers that this measure is consistent with government policy on a healthy financial sector, where banks and insurers are stimulated to retain more equity than payables. Abolishing the deduction will also meet the State aid objections of the European Commission.

1.6 Implementation of thin cap rule for banks and insurers (not part of the 2019 Tax Plan)

Because banks usually receive net interest, they will not be affected by an earnings stripping measure. For this reason the coalition agreement stated that a thin cap rule for banks and insurers would be introduced on January 1, 2020. This measure is not included in the 2019 Tax Plan. The government expects to present a bill containing this measure to the Lower House in 2019. The limitation of the interest deduction on that part of the debt that exceeds 92% of the balance sheet total for accounting purposes had previously been discussed.

1.7 Important changes for fiscal investment institutions (2020)

As of 2020, direct investment in Dutch property (including associated rights) by fiscal investment institutions (FBIs) will no longer be permitted. This measure is related to the abolition of dividend withholding tax. According to the government, the Netherlands' right to tax the results from property located in the Netherlands would otherwise be lost in situations involving foreign investors in FBIs. After all, FBIs are subject to a zero corporate income tax rate. However, it will still be possible for an FBI to directly invest in foreign property and indirectly invest in Dutch property (for example, via a normal taxed subsidiary). If an FBI does directly invest in Dutch property it will lose its FBI status and corporate income tax will be payable on the investment results. An alternative to this would be to convert to a transparent fund structure (for unlisted FBIs) or to sell off or reorganize the Dutch property. However, in that case the implications for real estate transfer tax would need to be examined. In consultation with representatives of real estate FBIs, the precise effects and any accompanying measures are being looked into in this respect.

The abolition of dividend withholding tax also means that the remittance reduction for FBIs for dividend withholding tax purposes will be canceled. This remittance reduction currently applies because FBIs cannot credit the dividend withholding tax and foreign withholding tax that was withheld on its account. The cancellation of the remittance reduction means that foreign withholding tax will continue to 'hover' at the level of the FBI.

1.8 Implementation of Second European Anti-Tax Avoidance Directive (ATAD2, not part of the 2019 Tax Plan)

To implement the Second European Anti-Tax Avoidance Directive (ATAD2, as of 2020) measures will be taken to avoid arrangements that make use of differences in the qualification between tax systems (hybrid mismatches). This implementation will, among other things, end the attractiveness of the CV/BV structure. The government intends to launch a consultation in 2018, followed by a bill at the beginning of 2019.

1.9 Fiscal unity: per element approach, emergency remedial measures and future-proof group regime (not part of the 2019 Tax Plan)

On February 22, 2018, the Court of Justice of the European Union (CJEU) rendered judgment on the per element approach in the context of the Dutch corporate income tax fiscal unity regime. In response to this, the previously announced bill on the Fiscal Unity Emergency Repair Act (*Wet spoedreparatie fiscale eenheid*) was presented to the Lower House on June 4, 2018, with its content being made known on June 6, 2018. As previously announced, most of the elements of the bill have retroactive effect to 11.00 a.m. on October 25, 2017. The measures in the bill mean that some Sections of the Corporate Income Tax Act 1969 and the Dividend Withholding Tax Act 1965 (having consideration for all associated rules) will have to be applied as if there is no fiscal unity. This specifically involves the following Sections:

- Section 10a Corporate Income Tax Act 1969 (anti-profit shifting);
- Section 13(9) through (15) Corporate Income Tax Act 1969 and Section13a Corporate Income Tax Act 1969 (the rules on investment participations);
- Section 13(17) Corporate Income Tax Act 1969 (the anti-hybrid measure for participation exemption purposes);
- Section 13l Corporate Income Tax Act 1969 (the interest deduction limitation for excessive participation interest);

- Section 20a Corporate Income Tax Act 1969 (combating the trade in loss-making and profitable companies);
- Section 11(4) Dividend Withholding Tax Act 1965 (the remittance reduction in the case of redistributions; this provision will be canceled).

The Supreme Court still needs to render its final judgment in the case that led to the aforementioned CJEU judgment. On June 22, 2018, the (supplemental) Opinion of the Advocate General was published. According to the Advocate General, the preliminary ruling is flawed, there is in principle no EU law issue and the case must be referred back to the lower court. At the beginning of August 2018, the Lower House submitted questions about the bill, including what the Advocate General's Opinion means for the bill. According to the Ministry of Finance's timetable, the answers to the questions can be expected this month.

In addition to the case presented to the CJEU, lower courts have previously ruled on the per element approach, with differing outcomes for taxpayers. Most recently the District Court in The Hague in this respect concluded that the Dutch provision on excessive participation interest was contrary to EU law.

Lastly we would like to point out that the government previously indicated that it intended to follow-up its emergency remedial measures with a future-proof group regime in the near future. The preparations for a draft bill that can be opened for internet consultation are expected to be completed in mid-2020.

1.10 Correction of omission of transitional rules for Innovation Box (not part of the 2019 Tax Plan)

The bill on the Fiscal Unity Emergency Repair Act (*Wet spoedreparatie fiscale eenheid*, see above) also contains a measure on the Innovation Box. This measure ensures that the effective 7% tax rate will also apply with retroactive effect to March 1, 2018 to benefits derived from intangible assets that fall under specific transitional rules.

2 Personal and corporate income tax

2.1 Curtailment of carry-forward loss set-off for corporate income tax and Box 2 purposes

For corporate income tax and Box 2 purposes, a loss can currently be set off against the profit or income of the preceding year ('carry-back') or against the nine following years ('carry-forward'). The carry-forward will be limited to six years. This will apply for the first time to losses incurred in financial years commencing in the 2019 calendar year (for corporate income tax purposes) and losses incurred as from 2019 (for Box 2 purposes). Older losses can continue to be set off for nine years. Because this means that 'old' losses from 2017 and 2018 can therefore be set off for longer than losses from 2019 and 2020, favorable transitional rules have been proposed. Under these transitional rules, a loss from 2019 will be set off before losses from 2017 and 2018 and a loss from 2020 will be set off before a loss from 2018.

2.2 Energy investment allowance reduced from 54.5% to 45%.

As of January 1, 2019, the energy investment allowance (EIA) will be reduced from 54.5% to 45%. The measure is the result of the evaluation of the EIA for the period 2012-2017. In response to the positive outcome of this evaluation, the government wants to continue the scheme, in any case, until January 1, 2024. One of the recommendations in the evaluation report was however to reduce the deduction percentage. Another suggestion in the report will also be adopted, i.e. from now on to have the Minister of Economic Affairs and Climate Policy designate the investments that are in the interest of efficient use of energy (the Energy List) and not the Minster of Finance.

2.3 Continuation of environmental investment allowance and free depreciation of environmental assets

Along with the EIA, it has been proposed to continue the environmental investment allowance (*milieu-investeringsaftrek*; MIA) and the free depreciation of environmental assets (*willekeurige afschrijving milieu-investeringen*; VAMIL) until January 1, 2024. Without an amendment of the law, these measures would automatically end on January 1, 2019.

3 Personal income tax

3.1 Limitation on DMS borrowing from own BV (2022)

Together with the 2019 Tax Plan, the government announced a measure that will discourage director-major shareholders (DMS) from borrowing from their own BV. The measure intends to avoid the deferral of tax in Box 2 by identifying income in Box 2 to the extent that the total balance of payables by the own BV exceeds EUR 500,000.

In order to reduce their excessive debts to their own BV in a timely manner, the measure will not take effect until January 1, 2022. There will be transitional rules for existing mortgages. It is not clear what qualifies as an existing mortgage. The government intends to present the bill to the Lower House in the spring of 2019.

3.2 Two-bracket regime Box 1 (social 'flat tax')

A two-bracket regime will gradually be introduced in Box 1. In the 2019 and 2020 calendar years, the three lowest rates will increasingly be brought in line until the basic rate (including national insurance contributions) reaches 37.05% in 2021. This basic rate will apply to income up to and including EUR 68,507. In addition, the current top rate will be reduced in three steps to 49.50% in 2021. The top rate will apply to income in excess of EUR 68,507 with its starting point being frozen until 2024. The flatter rate structure means that it becomes less important whether the household income is earned by one or two people. This makes the tax treatment of different types of households more balanced.

For state pension beneficiaries, income up to EUR 35,286 (2021) will be taxed at a rate of 19.15% (2021).

3.3 All deductible items in Box 1 gradually reduced to the basic rate (2020)

As of 2020, the rate at which expenses in Box 1 are deductible will be standardized for all deductible items at the mortgage interest deduction rate. Furthermore, the deduction rate will be reduced by three percentage points per year to the basic rate, which will be reached in 2023. The mortgage interest deduction will therefore be reduced more quickly from 2020 onwards, while it is now reduced in steps of 0.5% per annum. As already mentioned, this not only applies to mortgage interest, but also, for example, to the entrepreneur's allowance (e.g. tax relief for self-employed persons), alimony payments, educational expenses and deductible gifts.

3.4 Increased Box 2 rate (2020)

Due to the reduction in corporate income tax rates, the Box 2 personal income tax rate will be increased to 26.25% in 2020 and to 26.9% as of 2021. The increased rate will also apply to existing substantial interest claims.

3.5 Option for partial foreign taxpayer status reduced to five years

Under the 30% ruling, employees can opt for partial foreign taxpayer status. This means that for the purposes of taxation in Box 2 and Box 3, the employee is regarded as a foreign taxpayer and is only subject to tax in Box 2 on income from a substantial interest in a Dutch company and in Box 3 on income from property situated in the Netherlands. Due to the shortened duration of the 30% ruling, the period during which the option for partial foreign taxpayer status can be taken will also be shortened from eight to five years with effect from January 1, 2019.

4 Payroll taxes

4.1 30% ruling shortened to five years

The 30% ruling is a form of tax relief for employees coming to the Netherlands who are recruited from abroad and who possess specific expertise that is not present or is scarce in the Dutch labor market. Under this tax relief, employers can remunerate roughly 30% of the salary untaxed. The period for which the 30% ruling is granted will be shortened from eight to five years as of January 1, 2019. This also applies to employees who already make use of the 30% ruling. Due to the shortened duration of the 30% ruling, the possibility of tax-free reimbursement of the actual extraterritorial costs will also be limited to a period of five years. Tuition fees for an international school may be reimbursed tax-free under the 30% ruling. Tuition fees pertaining to the 2018/2019 school year may be reimbursed tax-free in 2019 to employees who could have benefited from the 30%-ruling had the term of the grant not been shortened as of January 1, 2019.

4.2 Limitation of tax credits for foreign taxpayers (not part of the 2019 Tax Plan)

As of January 1, 2019 the labor tax credit may be taken into account when calculating the payroll tax payable by employees who do not live in the Netherlands but in an EU or EEA Member State, Switzerland or on one of the BES islands. Employees who do not live in one of the abovementioned countries will no longer be eligible for this tax credit.

5 Withholding taxes

5.1 Abolition of current dividend withholding tax (2020) and introduction of withholding tax on dividends (2020) and interest and royalties (2021)

Dividend withholding tax will be abolished with effect from January 1, 2020. It will be replaced by a conditional withholding tax on dividends, interest and royalty payments to affiliated entities established in low-tax jurisdictions and in abuse situations. This measure is intended to prevent the Netherlands being used as a conduit to low-tax jurisdictions. The measure will be introduced in two steps: first for dividends (in 2020) and then for interest and royalties (in 2021). The bill now presented only refers to dividends.

Structure

Affiliation exists if the entity receiving the dividends is able to exert such an influence on decision-making that it can determine the activities of the affiliated company. This criterion is chosen to avoid application of the EU's free movement of capital legislation, which also applies to third countries.

A low-tax jurisdiction exists if entities are not subject to either a general statutory rate on business profits or to a rate of less than 7%, or if the jurisdiction appears on the EU blacklist. If a tax treaty precludes tax being levied, the Netherlands will approach the treaty partner to amend the treaty such that the treaty benefits only apply to the genuine business sector.

Withholding tax will also be levied if the entity receiving the dividends is not established in a low-tax jurisdiction, but the shares in the entity distributing the dividends are attributed to a permanent establishment in a low-tax jurisdiction. There are also rules for distributions to hybrid entities that are not established anywhere or are established in a low-tax jurisdiction.

Abuse occurs when an intermediate holding company in a non-low-tax jurisdiction is artificially interposed. In that case, too, withholding tax will be levied. If the intermediate holding company is established in an EU/EEA Member State, case law of the CJEU may be used for the interpretation of the anti-abuse provision.

The tax base is largely the same as that of the current dividend withholding tax. However, some rules will be tightened so that capital cannot be repaid untaxed if distributable profit (profit reserves, untaxed gains and reserves and/or goodwill) is present in the company. The fair market value will be the starting point for share buy-backs. Benefits will also be taxed when directly held interests are sold (insofar as these relate to distributable profit). In abuse situations, tax can also be levied on the indirect disposal of the interest. The rate will be set at the highest corporate income tax rate (23.9% in 2020 and 22.25% from 2021).

6 VAT

6.1 Low VAT rate to increase from 6% to 9%

As of 2019, the low VAT rate will increase from 6% to 9%. The low VAT rate applies to a wide range of goods and services, including those in respect of the basic necessities of life, medicines and medical aids, but also labor-intensive services. The standard VAT rate remains 21%. The government does not want to burden businesses with additional administrative costs when increasing the low VAT rate from 6 to 9 percent. For this reason, the Dutch tax authorities will not impose supplementary assessments for goods and services paid or prepaid in 2018 that will not take place until 2019. These include, for example, concerts or sporting events that are paid for this year but which will not take place until next year. This applies to all other goods and services to which the reduced rate applies.

6.2 Implementation of the VAT e-Commerce Directive

As of 2019, a VAT concession will be granted to smaller businesses that provide digital services over the internet to individuals in other Member States to a limited extent. Under the current rules, such digital services are subject to VAT in the individual's country of residence. The payment of VAT in the various EU countries leads to high administrative costs, especially for smaller businesses. With the proposed concession, VAT taxable persons with a cross-border turnover from digital services within the EU of less than EUR 10,000 must pay VAT in the Netherlands. The VAT taxable persons concerned may (continue to) opt to charge VAT in the individual's country of residence.

6.3 Change to zero VAT rate for seagoing vessels (not part of the 2019 Tax Plan)

The zero VAT rate for seagoing vessels will require that, from 2019, these seagoing vessels are actually used for navigation on the high seas. The Ministry of Finance is currently investigating the practical problems and possible solutions to this requirement.

7 Other tax developments

There are a number of other tax developments in the pipeline that are not part of the 2019 Tax Plan package. We will deal with some of these briefly below.

7.1 Multilateral instrument (MLI) against international tax evasion

The Netherlands wants all tax treaties to include a measure to ensure 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 multilateral instrument ('MLI'). By means of 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. The plenary debate in the Lower House of the Dutch Parliament is on the agenda for later this month. After that, the Upper House will still have to consider the bill. This means that the earliest the Netherlands can use the MLI for the purposes of taxation is with effect from 2020.

7.2 Mandatory Disclosure Directive

The Directive on the mandatory disclosure of cross-border – potentially aggressive – tax arrangements, obliging financial intermediaries (e.g. tax advisors, lawyers, notaries public or trust offices) to report information about such arrangements to the Dutch tax authorities, came into effect on June 25, 2018. More information about this can be found in our English language report.

7.3 Introduction of UBO register

On April 20, 2018, the Minister of Finance, Mr. Hoekstra, informed the Lower House that the implementation of the UBO register was being postponed. The reason for this is that on April 19, 2018, the European Parliament approved by an overwhelming majority the proposal to amend the 4th Anti-Money Laundering Directive, which contains the UBO register. The UBO register ensures that information about the ultimate beneficial owners (or 'UBOs') of a legal entity must be included in the Trade Register. The UBO register should have been ready in 2017, but the Netherlands has not succeeded in this. A bill to implement the UBO register is however being drafted. According to the Minister, the postponement means that the pending legislative process cannot proceed unchanged. It is expected that the bill will not be opened for consultation until the first half of 2019 at the earliest.

7.4 European Commission proposals for taxing the digital economy

On March 21, 2018, the European Commission published proposals for taxing the digital economy. The package consists of a temporary measure in the form of a 3% tax on certain income from digital activities (digital services tax, 'DST') as well as a long-term solution introducing the concept of a digital permanent establishment. In addition, the European Commission makes recommendations to the Member States about how to implement this concept in their tax treaties, so that it also applies to businesses that are not established in the EU. More information about this can be found in our English language report.

On September 7, 2018, the EU Finance Ministers reached an agreement in principle to introduce a DST as soon as possible. The Austrian Presidency of the EU Council is aiming for a final agreement before the end of this year. The idea is that this tax should only apply until a long-term solution is reached in the OECD context.

7.5 European Commission proposals for the CCCTB

In 2016, the European Commission published a revised proposal to harmonize corporate income tax within the EU: the Common Consolidated Corporate Tax Base ('CCCTB'). The proposal took the form of two draft directives (the two-step approach). The first directive focuses on the introduction of a single set of rules applied by all EU Member States ('CCTB'). At a later stage, a consolidation regime should be introduced by means of the second directive, designed to combine all profits and losses of all EU group companies from different Member States. The Netherlands has indicated that it is not in favor of these proposals, nor of the Commission's proposal to include the rules resulting from the long-term solution for taxing the digital economy (see above) in the CCCTB at the appropriate time. In order to speed up the adoption of the CCTB Directive, Germany and France issued a joint position paper in June 2018 with a number of simplifications and other adjustments, for example to align with anti-BEPS measures and ATAD1.

7.6 Ruling practice (advance certainty) and exchange of information

Following an internal investigation into the procedural aspects of the issuance of rulings, European guidelines about this, and government policy on tax avoidance, the Deputy Minister of Finance announced in February 2018 that he intended to review the ruling practice. In this context, an internet consultation was launched on August 30, 2018, which runs until September 20, 2018. The aim is to have a new ruling practice in place as of January 1, 2019. The review and the consultation only concern rulings with an international character. Input is requested on the components 'content' (including substance requirements), 'process' and 'transparency'. A report on the review of the ruling practice is expected in November 2018.

In February 2018, the Deputy Minister also stated in his policy intentions that, under certain circumstances, information should not only be exchanged about service providers (regardless of whether there is advance certainty), but also about international holding companies. The substance requirements in this context and in connection with obtaining advance certainty will also be brought into line with the requirements introduced by the Withholding Obligation for Holding Cooperatives and Expansion of the Withholding Exemption Act [*Wet inhoudingsplicht houdstercoöperatie en uitbreiding inhoudingsvrijstelling*].

7.7 Directive on tax dispute resolution mechanisms

On October 10, 2017, ECOFIN formally adopted Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union. The Directive applies to taxpayers confronted with double taxation on income and, where applicable, on capital. Member States must implement the Directive, but it will only apply to complaints submitted as of July 1, 2019 in respect of disputes concerning a tax year commencing on or after January 1, 2018. Member States may also provide for the earlier application of the Directive. To date, the government has not presented an implementation bill to the Lower House.

Meijburg & Co
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The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.