

Draft decree on transitional tax rules in the case of no-deal Brexit

On March 8, 2019, the Deputy Minister of Finance sent a draft decree with transitional tax rules in connection with Brexit to the Lower House of the Dutch Parliament. The draft decree must provide for transitional rules with regard to a number of (elements of) Dutch tax laws in the event of a withdrawal of the United Kingdom (UK) from the European Union (EU) without a withdrawal agreement (no-deal Brexit). The draft decree had already been announced by the Deputy Minister in a letter dated February 4, 2019 and has now been sent in draft form to the Lower House, so that it can take note thereof in good time prior to its potential adoption and publication and, if necessary, respond to it.

Background and broad outlines of the draft decree

It remains unclear to both citizens and businesses what to focus on in the run-up to the date of the UK's planned withdrawal from the EU at midnight on March 29, 2019, which will make the UK a third country. Because of this lack of clarity about the tax implications, particularly during the course of a tax or financial year, the Deputy Minister considers it desirable to arrive at a form of (short-term) transitional tax rules, other than customs legislation, in the event of a no-deal Brexit.

In anticipation of statutory transitional rules, the draft decree *inter alia* contains a general approval in which the UK is still regarded as a Member State of the European Union for certain tax laws during the tax year 2019 or the current financial year that commenced before March 30, 2019. This should ensure that the current regime would continue to apply to these tax laws, usually during the remainder of the year. Acute tax consequences and the administrative burden as a result of a change during the financial year are thus avoided.

The approvals in more detail

The draft decree contains two types of approvals:

1. A general approval with which, for a number of tax laws, including income tax as well as personal and corporate income tax, the UK would still be considered to be part of the EU for the current 2019 tax year or for the current tax year commencing before March 30, 2019;
2. A number of specific approvals that relate to a specific element of a tax law.

Itemized according to the various taxes, the following rules are included.

- Personal income tax: under certain conditions, residents from a certain group of countries (including the EU Member States) – so-called qualifying foreign taxpayers – are eligible to deduct negative income from their own home, expenditure on income insurance and personal allowances (e.g. alimony), to the extent that they have not been able to implement these allowances in their country of residence. The draft decree stipulates that a no-deal Brexit would not entail any changes in this respect for UK residents throughout 2019.

- Payroll tax:
 - *Tax component labor tax credit:* as a result of the general approval by virtue of the draft decree, employees living in the UK with wages taxed in the Netherlands are (also) entitled to this part of the labor tax credit, which in 2019 will amount to a maximum of EUR 835, through to December 31, 2019.
 - *Anonymous persons rate/identification obligation:* as a result of the UK's withdrawal from the EU, UK citizens and their family members will in principle become aliens within the meaning of the *Vreemdelingenwet* (Aliens Act). In order to avoid the application of the anonymous persons rate, a residence permit and work permit is then in principle required (in connection with the identification obligation). Transitional rules have recently been introduced for the 15 months following the Brexit pertaining to the right of residence of UK citizens and their family members who are residing and/or working in the Netherlands at the time of the Brexit ([see our previous memorandum on this](#)). Under the draft decree, this line is extended to personal income tax, so that with regard to UK citizens and their family members who were entitled to reside and work in the Netherlands on the Brexit date, the previous situation will continue for employers until June 29, 2020 where the identification obligation and the (non-application of the) anonymous persons rate is concerned. During this transitional period, these persons have time to apply for the required permits from the Immigration and Naturalisation Service.

- Remittance reduction for payroll tax and national insurance contributions:
 - *Remittance reduction for maritime shipping:* the 40% remittance reduction rate applicable to seafarers resident in the EU (instead of 10% for non-EU seafarers) continues to apply under the draft decree until January 1, 2020.
 - *Research and development (R&D):* this remittance reduction also applies when the work is performed in another EU Member State. Based on the draft decree, R&D work in the UK will also be included until January 1, 2020.

- Corporate income tax:
 - *Participation exemption:* for EU participations, in addition to a minimum holding of 5% in the nominal capital of the subsidiary, the alternative holding criterion of 5% of the voting rights (among other conditions) also applies. In order to avoid an exemption transition during the financial year and related attribution issues, this voting right criterion under the draft decree also applies to participations in the UK until the end of the current financial year that commenced before March 30, 2019.
 - *Fiscal unity:* Sister and Papillon fiscal unities with a top or intermediate company in the UK will not, on the basis of the draft decree, terminate before the end of the current financial year (which commenced before March 30, 2019) due to a no-deal Brexit. The aim is to give time, where appropriate, to make adjustments to the group structure.

- Subject-to-tax fiction for the avoidance of double taxation: until the end of 2019, UK employers will continue to qualify as EU employers, which is important for employees resident in the Netherlands who are employed by such an employer under private law and who have been working for at least three consecutive months in a State with which the Netherlands has no tax treaty in place.
- BPM refund scheme: if a motor vehicle is registered in another EU Member State within 13 weeks of the expiry of the registration in the Dutch vehicle registration system, there is an entitlement to a refund of BPM. If the motor vehicle is registered in the UK within 13 weeks of the expiry of the registration, but no later than June 28, 2019, there will be an entitlement to a refund on the basis of a specific approval in the draft decree (if the other conditions are also met), even if the UK is no longer a member of the EU at that time and there is or was a no-deal Brexit.
- The deferral for protective personal income tax assessments on pension and annuity, as well as in connection with substantial interest, can – without the provision of security – be continued on the basis of the draft decree for assessments for tax years through 2019. This approval also applies, for the years through calendar year 2019, to protective personal income tax assessments in respect of certain life insurance entitlements or a pension plan that have been or will be administered by an authorized UK-based insurer.
- Under the draft decree, payment arrangements for exit taxes in personal and corporate income tax for taxpayers who have emigrated to the UK will continue for those taxes for the tax years through 2019, as if they had remained residents of an EU Member State.

Tonnage regime

The proposed transitional rules would result in the UK and Gibraltar flags being considered to qualify as EU flags for the purposes of the tonnage regime flag requirement until the end of the current 2019 financial year.

VAT

For turnover tax, more specifically for goods en route to or from the UK at the time of the UK's withdrawal from the EU, it is not yet possible to establish transitional rules. These transitional rules must be based on European Commission guidelines, which have not yet been adopted. This is expected by mid-March. The (draft) decree will then be supplemented.

Effective date

The draft decree currently includes a date of entry into force of March 30, 2019. However, the decree will only be finalized and – then according to the current expectation on March 28, 2019 – published if it is clear that a no-deal Brexit will indeed take place at midnight on March 29, 2019.

In addition, the transitional rules are primarily intended for existing cases, but for technical implementation reasons, the rules also apply to new cases.

Meijburg & Co comments

Although it is currently uncertain whether the condition for publication of the decree – a no-deal Brexit – will be met, and whether that condition will only be met after an extension has been requested and received, this is a very welcome (draft) decree. After all, it gives taxpayers (more) time to anticipate the tax implications of a no-deal Brexit, from the moment it is clear that this will indeed take place. Tax implications which, moreover, do not result from choices made by taxpayers themselves. Furthermore, the (draft) decree prevents transitional problems – and the associated administrative burdens – during the tax or financial year.

Because the transitional rules apply to companies until the end of the current financial year (i.e. financial years that include the date of March 29, 2019), the transitional period may be (very) short, for example if the financial year (only) runs until the end of March 2019 or the end of April 2019.

Finally, we note that the draft decree does not address the scenario of a no-deal Brexit on a later date than March 29, 2019. However, following the rejection of the 'Withdrawal Agreement' by the British House of Commons on March 12, 2019, this scenario is also possible. In any case, this rejection means that the draft decree remains relevant for now, regardless of the outcome of the follow-up vote on March 13, 2019 on whether or not to endorse a no-deal Brexit.

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

Meijburg & Co
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