KPMG Meijburg & Co Tax Lawyers

Letter from Deputy Minister on reconsideration of package of business climate measures

As part of the 2019 Tax Plan package, the government proposed on Budget Day to abolish the current dividend tax as of January 1, 2020 and at the same time introduce a conditional withholding tax on dividends (see our previous report). In a letter dated October 15, 2018, the Deputy Minister of Finance announced that the government has decided to leave the dividend tax as is, and to improve the business climate through other measures. This letter is addressed below.

1. Dividend tax/withholding taxes

It can be concluded from the letter of October 15, 2018 that the government intends to integrate the current dividend tax and the aforementioned withholding tax on dividends. The withholding tax would have a higher rate and a broader tax base than the dividend tax. The integration and its implications will now first be examined; reason thus to postpone the introduction of the withholding tax on dividends for the time being. The year in which the conditional withholding taxes on interest and royalties to low-taxed jurisdictions and in abuse situations, as announced in the coalition agreement, were planned to take effect remains 2021.
Maintaining the dividend tax would mean that fiscal investment institutions (*fiscale beleggingsinstellingen*; FBIs) can continue to make use of the remittance reduction for dividend tax purposes.

2. Further reduction of corporate income tax rates

Profit up to and including EUR 200,000 is currently subject to a 20% corporate income tax rate. To the extent that profit exceeds this amount, it is currently taxed at 25%. On Budget Day it was proposed to gradually reduce these rates to ultimately 16% and 22.25% respectively in 2021. The proposal is now to further reduce these rates to ultimately 15% and 20.5% respectively in 2021. However, the previously proposed reduction of the top rate in 2019 (the first step) will be postponed. The letter is not clear about the extent to which the rates will be reduced in 2020.

3. Transitional rules limiting depreciation on buildings for corporate income tax purposes

On Budget Day it was proposed that, 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. Transitional rules were announced in the letter of October 15, 2018, to mitigate the effects of this limitation for buildings that have recently been put into use. The transitional rules mean that if a building has been put into use by the taxpayer before January 1, 2019 and that building has not yet been depreciated for three years, the taxpayer may continue to claim depreciation for these three years under the current regime (thus up to 50% of the WOZ value).

4. Direct investment in property by FBIs (for corporate income tax purposes)

In the 2019 Tax Plan package it was proposed that FBIs should no longer be allowed to invest directly in Dutch property (including any associated rights). This measure was related to the abolition of dividend tax. Because dividend tax will now be maintained, the immediate reason for this measure is now redundant. The government therefore announced that it will refrain from the proposed amendment of the FBI regime.

5. Limitation of retroactive effect for emergency repair of the fiscal unity for corporate income tax purposes

In response to EU case law, the government presented the bill on the Fiscal Unity Emergency Repair Act (*Wet spoedreparatie fiscale eenheid*) to the Lower House on June 4, 2018 (see our previous report). The bill stated that the emergency repair measures would, in principle, have retroactive effect to 11:00 a.m. on October 25, 2017. This would mean additional uncertainty and administrative costs, including with regard to the 2017 corporate income tax returns. The government now proposes to limit the retroactive effect to January 1, 2018.

6. Mitigation of announced limitation on borrowing from own BV by DMS

Together with the 2019 Tax Plan package, the government announced a measure that, as of January 1, 2022, will discourage director-major shareholders (DMS) from borrowing from their own BV. It was thereby announced that to the extent that the total balance of payables by the own BV exceeds EUR 500,000, this would be identified as income in Box 2. It was already known that transitional rules would be introduced for *existing* home acquisition debt. In the letter of October 15, 2018, the government announced that new home acquisition debt by a DMS will also be excepted. On top of the home acquisition debt, an additional cap of EUR 500,000 will apply to the DMS and their partner jointly.

7. Transitional rules for shortened 30% ruling

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. The government will now introduce transitional rules for the group for whom the 30% ruling would end in 2019 or 2020 as a result of this measure.

8. R&D remittance deduction increased

The Wages and Salaries Tax and National Insurance Contributions Reduced Remittances Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*) aims to stimulate research and development (R&D). In 2018, this remittance reduction is 32% (40% for start-ups) of the payroll costs and the other costs and expenses for R&D activities up to an amount of EUR 350,000 and 14% over the excess. The government now proposes to increase the latter percentage to 16% in 2020.

9. Employer social security contributions on labor reduced

To strength the business climate, an amount of EUR 200 million will be made available on a regular basis to reduce employer social security contributions on labor.

Follow-up
In anticipation of the letter of October 15, 2018, the Lower House had already decided to postpone asking questions about the Withholding Tax Act 2020, the 30% ruling and the adjustment of the Box 2 rate (the letter does not address this rate). The Deputy Minister has now asked the Lower House to submit these questions by Wednesday, October 24, 2018, at the latest. The government aims to send the Memorandums of Amendment to the Lower House on October 26, 2018, which provide more details about the new measures. We will of course inform you about this should there be reason to do so.

Meijburg & Co
October 2018