Abolishment dividend withholding tax, reduction CIT rate and ATAD implementation

September 2018

On Budget day, September 18, 2018 the Dutch government published its tax plan for 2019 as well as various tax law proposals. This tax alert contains the most important tax law proposals with regard to the corporate income tax act, (dividend) withholding tax as well as the implementation of ATAD. Main goal of the proposed changes is to strengthen the Dutch investment climate for real economic activities and holding companies with substance.

Abolishment dividend withholding tax

Currently, outbound dividend distributions by a Dutch entity are in principle subject to 15% Dutch dividend withholding tax. Although this percentage is often reduced or even exempted based on domestic law or tax treaties, the Dutch government has published a proposal to **abolish dividend withholding tax** as per January 1, 2020.

Introduction conditional withholding tax on dividends, royalties and interest

Instead of the dividend withholding tax, the government has introduced a **conditional withholding tax regime on dividends (and certain capital gains),** to low-tax jurisdictions (i.e. countries with a statutory tax rate of 7% or less) or countries listed on the EU black list. The withholding tax on dividends will also apply in certain abusive situations. Such dividends will in principle be taxed against a tax rate of 23.9% in 2020 and 22.25% as from 2021. Dividend distributions to individuals will not be subject to withholding tax.

The conditional withholding tax on dividends will most likely be applicable as from January 1, 2020

The government will also introduce a conditional withholding tax on interest and royalties for interest and royalty payments to low tax jurisdictions and in case of abuse. The law proposal of the withholding tax on interest and royalties will be published in the course of 2019. The conditional withholding tax on interest and royalties will most likely be applicable as from January 1, 2021.

Corporate income tax

Corporate income tax rate

The general corporate income tax rate **will be reduced** in steps over a three year period. The first bracket will be reduced from 20% to 17% in 2021 (2019: 19% and 2020: 17.5%).The second bracket will be reduced from 25% to 22.5% in 2021 (2019: 24.3% and 2020: 23.9%).

Losses – carry forward term

Currently, Dutch taxpayers can carry forward their losses for nine years and carry back their losses for one year. For budget reasons, the carry forward of losses **will be limited** from nine years to six years.

This legislative change is expected to come into effect on 1 January 2019 and will be applicable on losses suffered in 2019 and onwards.

Holding and financing losses

Currently holding and financing losses can only be of sett against profits incurred by holding and financing activities. This loss restriction will be abolished per 2019. Note that the loss restriction will remain applicable on losses sustained before 2019.

Implementation ATAD

Earningsstripping rule

In line with the adoption of the Anti-Tax Avoidance Directive ('ATAD') by the Council of the European Union, the government envisages **a new interest deduction limitation measure** because of which the net borrowing costs will only be tax-deductible up to either: (i) 30% of a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA); or (ii) a threshold of €1 million.

The earningsstripping rule will be applied per taxpayer. In this respect is a fiscal unity regarded as a single taxpayer.

The proposal does not provide for a grandfathering rule for existing loans nor for a group escape.

It is envisaged that the earningsstripping rule will enter into force as per January 1, 2019.

Partly because of the introduction of the earningsstripping rule other interest deduction limitation rules will be abolished. It is important to verify whether interest paid by your company is still or becomes deductible as from 2019.

CFC- rules

As part of the implementation of ATAD, if a Dutch taxpayer holds directly or indirectly an interest of at least 50% in a low taxed subsidiary (a controlled foreign company or permanent establishment: CFC), new CFC-rules will be applicable. Specific categories of income (such as dividends, interest, financial lease income and royalties) of certain CFCs are **included in the Dutch shareholder's taxable income**, unless the CFC is involved in "substantial economic activities". The CFCs that are targeted are CFCs in either low-taxed jurisdictions or in jurisdictions (jurisdictions with a statutory rate of 7% or less) that are on the EU Black List.

The CFC rules will most likely enter into force as per January 1, 2019.

Concluding remarks

The Netherlands improves its investment climate by reducing the corporate income tax rate and by abolishing the dividend withholding tax as of January 1, 2020. Companies with real economic activities and holding companies with substance should in particular benefit from these amendments.

On the other hand, various anti-abuse provisions are introduced. The implication of the new introduced conditional withholding tax, earningsstripping rule and CFC-rules should be taken into account as these measures could have adverse tax consequences.

With these future tax amendments ahead, tax planning is of the essence.

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