Budget Day 2020

Key proposals & measures for multinationals

Introduction
On 15 September 2020, the Dutch Cabinet published the annual Budget and Tax Plan. This plan includes a combination of new legislative proposals and the legal formalisation of schemes which have already been announced. Against the backdrop of the corona pandemic, the Cabinet is committed to supporting businesses. At the same time, however, there is increasing scrutiny on the taxation of multinational enterprises. In this newsletter, we will provide an overview of the key proposals with relevance to multinational businesses.

Proposed changes to loss relief rules
Under the Dutch Corporate Income Tax Act (CITA), losses can currently be offset against profits, with a carry-back period of 1 year and a carry-forward period of 6 years. There is no cap on the amount of loss relief. From 2022, the temporal restriction for carry-forward losses may be lifted. Carry forward is unrestricted in time for up to € 1 million per year; above that amount, offsetting is capped at 50% of profit. The proposed changes require further refinement.

Limitation of liquidation loss scheme
Stricter rules are proposed for liquidation and discontinuation losses, per 2021. Losses up to € 5 million remain deductible; losses above this threshold are only deductible in the case of (a) qualifying interests in (b) an EU/EEA participation, which (c) have been held for at least 5 years. Settlement of assets must be completed within 3 years of cessation of business, regardless of the amount of losses utilised.

Innovation box (R&D facility in the CIT)
The effective (lower) level of taxation of qualifying R&D income in the innovation box is set to be increased to 9% (currently: 7%).

Corporate income tax rates
Contrary to previous Cabinet announcements, the tax rate in the top bracket for the CIT will not be reduced from the present 25%. Changes have, however, been proposed to the threshold and rate of the first bracket.

Taxable amount	2020	2021	2022
< € 200 k	16,5%		
> € 200 k	25%		
< € 245 k		15%	
> € 245 k		25%	
< € 395 k			15%
> € 395 k			25%

New group regime in CIT (fiscal unity)
The Dutch fiscal unity scheme is currently under review from the perspective of EU law. Several scenario's are being considered, including the introduction of an altogether new regime, or reforms to the existing fiscal unity regime. The decision on this matter will be left to the new Cabinet (2021).

Corona reserve for CIT purposes
Businesses with a corona-related loss in 2020 may form a corona reserve in their 2019 CIT return. This proposal will lower taxes due in 2019 and increase taxation in 2020, creating a cashflow advantage. Additionally, a number of corona-related measures (e.g. wage and cost facilities) will be formalised.

Increase of property transfer tax rate
The Cabinet has proposed an increase of the property transfer tax rate from 6% to 8%, per 2021. This includes the transfer of commercial and investment properties. A lower tax rate or exemption applies for certain owner-occupied homes.

Transfer pricing: informal capital structures
In the spring of 2021, the Cabinet will present measures addressing so-called 'informal capital' situations. These are cases where a downward transfer pricing adjustment in the Netherlands is not met with a corresponding upward correction abroad.
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Interest deduction and negative costs
Deduction of the interest and costs paid on debts to associated companies or individuals may be restricted for Dutch corporate income tax (article 10a CITA). This can have unwanted side effects if the non-deductible costs include negative interest or currency losses, as this may effectively lead to an exemption of positive income. Per 2021, the net costs may not lead to an exemption of positive income. This is determined for each individual debt.

ATAD2 and earnings stripping measure
In 2020, the Netherlands implemented measures from the EU Anti Tax Avoidance Directive (ATAD2). These measures may cumulate with the Dutch earnings stripping measure (ESM). It has now been clarified that (i) interest deduction limited by ATAD2, may not also be limited by the ESM, and (ii) interest deduction not limited by ATAD2 may still be limited by the ESM.

New withholding tax on interest and royalties
A new withholding tax on interest and royalty payments to associated entities in low-tax jurisdictions (statutory rate of < 9% or included on specific list) will enter into force on 1 January 2021. Please note that this measure had already been approved prior to the 2021 Tax Plan.

Restriction on offsetting withholding taxes
Dutch taxpayers can currently offset (or reclaim) withheld Dutch gambling and dividend taxes; foreign entities not subject to CIT, cannot. These rules will change. From 2022, it will only be possible to offset these taxes up to the amount of CIT due. Pending this change, temporary measures will be announced, for the reclaiming of these withholding taxes until 2022.

Information exchange regarding substance
The Cabinet will announce further rules on the participation exemption and (holding) companies with insufficient substance in the Netherlands, in the spring of 2021. These rules are expected to include information exchange with source countries.

CO2 tax for large businesses
In compliance with EU rules, a progressive CO2 tax will be introduced in 2021. This tax will be based on a system of transferable emission allowances.

Ultimate Beneficial Owners (UBO) registration
As of 27 September 2020, all Dutch legal entities (excluding branch offices and foreign legal entities, e.g. GmbH or Ltd) must register their UBOs with the Dutch Chamber of Commerce. The deadline for registration is 27 March 2022.

Opposition party proposal for dividend exit tax
The Dutch Green party has recently submitted a legislative proposal for a 'dividend exit tax' on companies that relocate their head office to outside of the Netherlands. There is still significant uncertainty regarding the scope of the tax and its political viability. Potentially, a dividend exit tax could have far-reaching consequences for businesses considering relocation.

The measures and changes are legislative proposals, unless mentioned otherwise. Please note: the proposals have yet to be approved by the House of Representatives and the Senate, and may still be subject to changes. More information about all the Budget Day measures can be found on our website.

Any questions?
Your Baker Tilly tax advisor would be happy to discuss these measures and their impact on your business. Please do not hesitate to contact us if you have any questions.