Bird & Bird

2018 Dutch Tax Plan & other recent Dutch tax developments

The Dutch government released, on September 19, 2017, the Dutch Budget, which includes proposals for amendments to the Dutch tax laws, i.e. the 2018 Dutch tax plan. In the upcoming months the proposed amendments will be discussed in the Dutch Parliament.[1]

Below we have summarized several key proposed amendments as included in the 2018 Dutch tax plan as well as other relevant recently proposed amendments to Dutch tax laws. We strongly focus on innovative and/or internationally active companies.

Corporate income tax

Deduction limitations

The Dutch Corporate Income Tax Act 1969 (CITA) contains several specific provisions aimed at combatting situations of perceived abuse. Even though the interest deduction rules will need to be amended based on ATAD 1 (see below), the 2018 Dutch tax plan proposes to make slight amendments to the following of those provisions.

Provision against base erosion (Art. 10a, CITA)

Art. 10a, CITA in principle denies deduction of interest on debt provided by a related entity or individual if such debt is legally or *de facto* connected with a 'tainted' transaction, being certain dividend distributions, capital contributions or (external) acquisitions. Exceptions to the denial may apply if the taxpayer can demonstrate that both the debt and connected transaction are predominantly entered into for business reasons (**Business Test**) or – in principle – that the interest received by the creditor is subject to a reasonable (compared to Dutch standards) income tax (i.e. effective tax rate of 10% over a comparable basis combined with business reasons).

The Dutch Supreme Court recently ruled that a safe haven exists for cases of parallel financing (i.e. the debt is, through parallel loans, given by a non-related entity or person). Based on that ruling, the Business Test would in principle be met, even if the taxpayer has not demonstrated that the tainted transaction was predominantly entered into for valid business reasons.

It is now proposed to more expressly stipulate in the provision of Art. 10a, CITA that a taxpayer should demonstrate that both the debt and the tainted transaction are predominantly entered into for business reasons.

If adopted by the Dutch Parliament, the amendment will have effect per January 1, 2018. No transitional law is proposed for existing loans, so it can impact existing situations.

Calculation of the liquidation loss after demerger from fiscal unity (Art. 13d, CITA)

Under the Dutch participation exemption, losses relating to shareholding interests in companies that form a participation, are in principle non-deductible (while profits are exempt). An exception is made if the participation is liquidated and the activities are no longer continued within the group. In such cases, the deductible liquidation loss is normally calculated by taking the cost price of the participation, minus the liquidation distributions.

However, if an intermediate holding company that was part of a fiscal unity (but at the time of the liquidation not anymore) is liquidated, the

[1] At the date of this publication no new government has been formed following the most recent elections. It is likely that such new government will release new proposals. It is expected however that the proposals as listed herein will remain as they are.

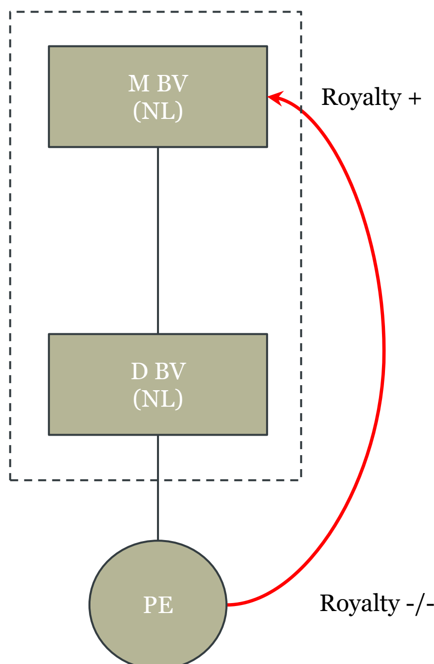
deductible liquidation loss (for the parent company) is calculated by taking the equity of the intermediate holding company and deducting the liquidation distributions. This could lead to double use of losses, e.g. if no impairment was made following a drop in value of the participations owned.

In recent case law, it was concluded that the wording of the liquidation loss rules is not in accordance with the intention of the legislator. Therefore, it is now proposed to calculate the equity of the intermediate holding company, taking into account the fair market value of participations held by the intermediate holding company, if such fair market value is lower than the book value.

If adopted, the amendment would have effect per January 1, 2018.

PE-profits and internal royalties (Art. 15ac, par. 5, CITA)

Profits derived from a permanent establishment (**PE**) are in principle taxed by the state in which the PE is situated. Therefore, the Netherlands provides for an exemption from Dutch corporate income tax with respect to profits derived by a PE (i.e. the object exemption). This led to perceived abuse in the following situation.



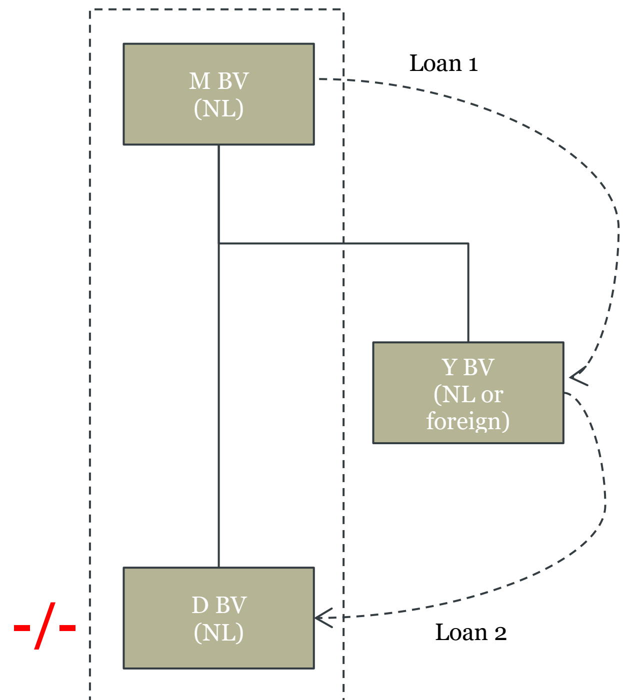
In the above structure, M BV provided a license to D BV, for which D BV pays a royalty to M BV. For the country where the PE operates, the license is attributable to the PE of D BV. M BV and D BV are consolidated in a fiscal unity. Therefore, royalty payments from D BV to M BV are in principle deemed to be non-existent for Dutch corporate income tax purposes. Consequently, the Netherlands does not deduct the royalty payment in calculating the exempt PE-profits. However, the state in which the PE is situated, would normally allow deduction of the royalty when calculating the PE's taxable profits. This could result in a situation where the tax exempt income in the Netherlands exceeds the taxable profit of the PE.

Dutch law already contains specific provisions aimed at combatting this structure with respect to interest payments within a fiscal unity only. Those provisions will now be extended to internal payments other than interest payments e.g. royalty payments.

If adopted, the amendment would have effect per January 1, 2018.

Double use of losses (Art. 15ac, par. 8, CITA)

If two Dutch taxpayers are consolidated in a fiscal unity and the parent company holds a receivable to a non-tax consolidated group company (Dutch or foreign), while that group company holds a receivable to the consolidated subsidiary, there is a possibility that this leads to a double use of losses.



In the above structure, M BV and D BV are consolidated in a fiscal unity. M BV has a receivable

on Y BV (Loan 1). Y BV has a receivable on D BV (Loan 2). If D BV would be loss-making, its losses could be off-set against the profits of the fiscal unity. The fact that D BV would be loss-making could lead Y BV to impair Loan 2. That could impact the financial position of Y BV, as a result of which M BV could also impair Loan 1. The impairment of Loan 1 could subsequently be off-set against the profits of the fiscal unity. Consequently, D BV's losses could have a double impact on the fiscal unity's taxable profits.

It is now proposed to extend the scope of existing anti-abuse rules. As a result, impairment of a receivable to a group company would not be deductible, to the extent that the impairment relates to losses that were already off-set against the profits of the fiscal unity.

If adopted, the amendment would have effect per January 1, 2018.

Introduction of ATAD II

On July 21, 2016 the European Council formally adopted the Anti-Tax Avoidance Directive (**ATAD I**), laying down minimum rules against avoidance of corporate tax within Member States. Reference is made to our 2016 article discussing ATAD I.

During 2017 the EU has taken a further step to prevent tax avoidance. On May 29, 2017 the European Council formally adopted a Directive (**ATAD II**) that will amend ATAD I by extending the scope of hybrid mismatches to also include hybrid mismatches between Member States and third countries.

ATAD II discusses several types of hybrids, i.e. hybrid entity mismatches, reverse hybrid mismatches, financial instrument mismatches, permanent establishment mismatches, tax residency mismatches as well as imported mismatches. ATAD II specifically refers to the examples and explanations as included in the OECD BEPS Action 2 Report.

In short ATAD II:

- Amends Art. 9 of ATAD I to extend the scope of hybrid mismatches (which are targeted by ATAD I) to also include hybrid mismatches between Member States and third countries (the **Hybrid Mismatch Provision** or **HMP**); and

- Introduces a new Art. 9a specifically aimed at reverse hybrid mismatches (the **Reverse Hybrid Mismatch Provision** or **RHMP**), e.g. the situation where an entity that is incorporated or established in a Member State is treated as transparent by such Member State while it is treated as non-transparent by the jurisdiction where the owners of such entity are located (e.g. the Dutch CV in relation to the US).

Situations falling within the scope of the RHMP are likely also falling within the scope of the HMP. It has been made clear that in such scenario the RHMP will take precedence over the HMP. Member States should implement:

- the HMP ultimately by December 31, 2019 and apply such provision as from January 1, 2020; and

- the RHMP ultimately by December 31, 2021 and apply such provision as from January 1, 2022.

Since the RHMP takes precedence over other provisions of the ATAD Directives, it is not clear whether Member States may or should apply the HMP in the period between January 1, 2020 and January 1, 2022 for situations that fall within the scope of the RHMP.

Dutch Internet Consultation for implementation of the Anti-Tax Avoidance Directive

On July 20, 2017 the Dutch Government published a preliminary proposal for the implementation of ATAD I and launched a public consultation in order to provide interested parties the opportunity to comment on the proposal (the **Proposal**). The consultation ended on August 21, 2017.

ATAD I consists of five main measures, being (i) rules on exit tax, (ii) a general anti-abuse rule (**GAAR**), (iii) earnings stripping rules (interest), (iv) controlled-foreign-company (**CFC**) rules and (v) hybrid mismatch rules. The Proposal only addresses items (i) up to and including (iv) above. With respect to hybrid mismatches reference is made to ATAD II, i.e. as a result of ATAD II the expanded rules should become effective only as of January 1, 2020, whereas the other items of ATAD I should be implemented per January 1, 2019. It is therefore made clear that the hybrid mismatches will be addressed in a separate proposal (including an internet consultation) at a later stage.

Exit Tax and the GAAR

The Proposal states that the Netherlands already has exit tax rules in place as prescribed by ATAD I. As such only one minor amendment is included in the Proposal in order to bring the current deferral period included in Dutch law in line with the prescribed five year deferral period of ATAD I.

Furthermore, the Proposal makes it clear that the GAAR will not be implemented since the Dutch abuse of law doctrine as developed in case law (*fraus legis*) already achieves the same goal.

Earnings Stripping (Interest)

The Netherlands did not make use of the option to introduce the earnings stripping rules as per January 1, 2024 (i.e. the Netherlands did not make a notification before July 1, 2017).

The Proposal includes the minimum standards as prescribed by ATAD I in relation to the interest deduction limitation. This means that deduction of net borrowing costs is only possible up to the higher of (i) 30% of the EBITDA and (ii) EUR 3 million. To the extent net borrowing cost would not be deductible as a result of aforementioned threshold, such remaining net borrowing costs can be carried forward for an indefinite time. Based on the Proposal it is not yet clear whether the Netherlands will include a worldwide group escape (and if so, which of the two alternative escapes as prescribed by ATAD I would be preferred).

Moreover, the Proposal does not exclude specific exemptions as allowed by ATAD I for financial institutions, existing loans and infrastructure funding.

It is not yet clear whether current existing specific interest deduction limitations will be abolished upon implementation of the general earnings stripping rule.

CFC Rules

ATAD I prescribes two options for Member States in relation to CFC rules, in essence being an income-based approach versus a transaction-based approach.

Currently, based on the preference as expressed by (part of) the Dutch Parliament, the Proposal includes the income-based approach as a result of which non-distributed low taxed passive income (such as interest, dividends, royalties, capital gains) of a CFC without economic activities would be taxed in the Netherlands. Economic activities can be supported by staff, equipment, assets and premises. The corporate tax paid by a CFC can be credited against the Dutch corporate income tax. The Proposal recognizes the need for additional rules to prevent double taxation. This position has been criticized in the press and in feedback comments that have been submitted.

Finally, the Proposal was published by the outgoing Government. They specifically stated that the Proposal in its current form only implements the bare minimum as prescribed in ATAD I. Therefore, uncertainty remains as the new Government (that is yet to be formed) might make other choices.

Dutch dividend withholding tax

On May 16, 2017 the Dutch Government published a preliminary proposal to amend the Dutch dividend withholding tax act and launched a public consultation in order to provide interested parties the opportunity to react to the proposal.[2] On September 19, 2017 an updated law proposal was published taking into account the input received in relation to the consultation.

In short the now published draft law proposal has two key objectives, namely:

- Dutch Cooperatives (**Dutch Coops**) that function as holding companies should be treated the same as Dutch entities with a capital divided into shares (e.g. the BV and NV) for Dutch dividend withholding tax (**DWHT**) purposes, i.e. eliminating the specific DWHT exemption for Dutch Coops.

- Expansion of the Dutch domestic DWHT-exemption to qualifying shareholders resident in a jurisdiction that has concluded a tax treaty with the Netherlands.

Besides, the proposal also contains amendments to the anti-abuse rules for non-resident corporate investors. These rules would also apply to existing structures.

DWHT treatment of Dutch Coops

Currently dividend distributions made by a Dutch Coop are in principle, if structured properly and certain requirements are met, not subject to DWHT. It is now proposed that dividends distributed by Dutch Coops that (usually) function as holding companies, in principle become subject to 15% DWHT to the extent such distributions relate to so-called 'qualifying membership rights'.[3] A Dutch Coop is considered to have a holding function if its actual activities usually and predominantly (70% or more) consist of holding participations and/or group financing activities (**Dutch Holding Coop**). This test is determined on a stand-alone basis, and not per fiscal unity, if

[2] Reference is also made to our publication in relation to the Consultation dated May 19, 2017
[3] Whereas 'qualifying membership rights' relates to the membership interest held by members that are considered to (directly or indirectly) on a stand-alone basis or as part of a collaborative group hold a membership interest in the Dutch Holding Coop of at least 5% (profit entitlement or entitlement to liquidation proceeds).

any. Whereas for instance it is specifically stated that within a private equity structure a Dutch Coop of which the balance for 70% or more consists of participations could still not be qualified as a Dutch Holding Coop based on other facts and circumstances such as employees, office space and active involvement in relation to the participations.

Distributions made by a Dutch Coop that does not qualify as a Dutch Holding Coop or by a Dutch Holding Coop to a minor investor (less than 5% profit entitlement) should still be exempt from DWHT (if structured properly), whereas of course DWHT in relation to dividends distributed by Dutch Holding Coops could still be reduced or exempt by means of treaties or DWHT exemptions included in domestic law.

Expansion of domestic DWHT-exemption

In short, it is proposed that BVs, NVs and Dutch Coops could be exempt from withholding DHWT if the shareholder or member (a) holds at least 5% of the shares/membership rights and (ii) is resident in the EU/EEA or in a country that has concluded a tax treaty with the Netherlands covering dividends and treated as non-transparent in such jurisdiction.

Basically, this would result in a dividend withholding tax exemption for investors in tax treaty jurisdictions regardless of the relevant tax treaty rate. Luxembourg and Belgium already have similar broadenings of the exemption for DWHT. The biggest difference in this proposal is that the Dutch threshold is generally lower (5% instead of 10%). In relation to the DWHT-exemption anti-abuse measures are proposed, having both an objective and a subjective test:

Subjective test: the shareholder/member should not hold the shares/membership rights with the main purpose or one of the main purposes to avoid DWHT.

Objective test: the arrangement (or series of arrangements) cannot be considered wholly artificial, whereas an arrangement (or series of arrangements) is considered artificial to the extent that they are not put into place for valid commercial reasons that reflect economic reality. This test is, again for EU or EEA or treaty country resident shareholders/members deemed to be met if:

- The shareholder/member has an active business enterprise in its country of residence and the shares/interests are attributable thereto;
- If the direct shareholder/member is an intermediate holding company and its shareholder would have a business enterprise, valid business reasons will be deemed to be present if the foreign intermediate holding company has 'relevant substance'. In addition to the existing substance requirements (e.g. in relation to board members, bank account and administration), this now also includes a requirement that the holding company has (i) its own office space to carry out the activities as a holding and (ii) incurs salary costs in relation to the holding functions (could be costs in relation to employees of related companies) of at least EUR 100,000 (the **New Substance Requirements**).

Taxpayers that currently have an advance tax ruling (which will no longer apply as of January 1, 2018 due to a change in law), are granted a 3 month period after January 1, 2018 to comply with the New Substance Requirements. Consequently, advance tax rulings obtained by those taxpayers *de facto* remain applicable until April 1, 2018.

Compared to the preliminary proposal a relevant change is that the current proposal introduces specific clauses addressing the position of hybrid shareholders of a Dutch entity. Those clauses provide the requirements for application of the expanded DWHT-exemption for hybrid entities.

Moreover, the current proposal also introduces the obligation for the Dutch entity to file a declaration with the Dutch tax authorities that the requirements for the DWHT-exemption are met. Such declaration should be filed within a month after the divided was made available.

VAT

Revision scheme for 'investment-services'

Dutch VAT contains a revision scheme for immovable property and movable property which are or can be amortized for income tax purposes. On May 18, 2017, a preliminary legislative proposal was published in the course of an internet consultation in which the Dutch government proposed to expand the scheme to services which are or can be amortized for income tax purposes (so-called 'investment services'). Examples would be costs for refurbishments or software development.

The revision scheme regulates the amount of input VAT relating to the property or services, which can be deducted. The amount of deductible input VAT is determined by the proportion *taxable activities/non-taxable activities* for which a property is being used. For instance, if a property or service will be used for 60% taxable activities, 60%

of the input VAT relating to the acquisition of the property or service should be deductible.

Based on the revision scheme, a VAT entrepreneur should annually determine whether the proportion *taxable activities/non-taxable activities* for which a property or service is used, is the same as it was at the moment of acquisition of the property or service. If the property or service is used for relatively more taxable activities than in the year of acquisition, an extra deduction if input VAT should be available. If the property or service is used for relatively more non-taxable activities, part of the input VAT should be repaid. Per revision, only the amount of VAT has to be revised that is attributable to the tax year in which the revision is made.

Immovable property and investment services relating thereto will be followed for ten tax years, while movable property and investment services relating thereto will be followed for five years.

Implementation of EU Vouchers Directive

On June 27, 2016, the European Union (EU) adopted a Directive which introduces measures regarding the VAT treatment of vouchers. Earlier this year the Dutch government submitted a legislative proposal to implement these measures.

The proposal distinguishes between 'single-purpose vouchers' and 'multi-purpose vouchers'. Single-purpose vouchers are vouchers for which at the moment of issuance it is known: (i) in which EU member state the goods or services against which the voucher may be exchanged, will be supplied and (ii) what the amount of VAT due will be with respect to supplying those goods or services. Multi-purpose vouchers are all other vouchers.

The taxable moment for single-purpose vouchers is the moment at which the vouchers are sold to the consumer and on every intermitted sale of the voucher. No VAT is charged upon exchanging the voucher for goods or services. With respect to multi-purpose vouchers VAT is charged upon the exchange of the voucher and not upon the sale of the voucher.

The new rules do not apply to discount-vouchers, but only to vouchers that could serve as an independent consideration for the goods or services supplied.

If the legislative proposal will be adopted, the new rules will enter into force January 1, 2019.

Mandatory reverse charge mechanism for (domestic) telecommunications services

Per September 1, 2017, providers of telecommunication services (**Telecom Providers**) that provide domestic telecommunication services to other Telecom Providers should reverse charge the VAT on such services to the recipient of the service. This reverse charge mechanism should thus not be applied to telecommunication services provided to the end-users of the services, being non-VAT entrepreneurs or VAT entrepreneurs that are not Telecom Providers. In advance of the mandatory application of the reverse charge mechanism, Telecom Providers were already allowed to voluntarily apply the reverse charge mechanism since June 2, 2017.

This measure should help to prevent VAT (carousel) fraud. If VAT is reverse charged, the provider of a service does not charge VAT on the service. Instead, the invoice should indicate that the VAT was reverse charged to the recipient of the service. The recipient should include the VAT (as output VAT) in the VAT return, but in the same VAT return can deduct the VAT (as input VAT). As a result, on balance no VAT is paid or reclaimed. Therefore application of the reverse charge mechanism should make VAT (carousel) fraud impossible with respect to telecommunication services between Telecom Providers.

The prevention of VAT fraud is (also) in the interest of entrepreneurs involved. Based on case law from the European Court of Justice, an entrepreneur can be denied the deduction of input VAT, if (i) fraud was committed somewhere in the services chain and (ii) the entrepreneur knew or should have known of such fraud.

Tightening of definition of 'medicines' for VAT purposes

It is proposed to amend the definition of medicines, as included in the Dutch Turnover Tax Act 1968, by adding the requirement that a (parallel) marketing authorization was granted for the product in question. Such (parallel) marketing authorizations are granted by the Dutch Medicines Evaluation Board or the European Medicines Agency.

The proposed amendment mainly has relevance for the application of the lowered Dutch VAT of 6%, which applies to goods that qualify as medicines. Recent case law showed that under the current definition, certain goods for which such is unintended, such as sunscreen, can qualify as medicines. This is considered to be a loophole, which is repaired under the proposal. No (parallel) marketing authorization is required in order for the 6%-rate to apply, for medicines that, based on the Dutch Medicines Act, can be placed on the market without (parallel) marketing authorization because a specific exemption applies (e.g. medicines intended for scientific research). Furthermore, no (parallel) marketing authorization is required for contraceptives, solution for infusion, kidney dialysis concentrate and inhaled gasses apparently used for medical applications.

Prior to the current proposal, an internet consultation was launched on July 17, 2017. If adopted by the Dutch Parliament, the definition of medicines in the Dutch Turnover Tax Act 1968 will be amended per January 1, 2018.

Wage withholding tax

Employee status non-executive board members of listed companies abolished

Board members of listed companies are qualified as employees for wage tax purposes, whereas for private law purposes they are deemed not to be employees. A proposal was made to abolish this distinction for non-executive board members, in order to effect equal treatment compared with two-tier boards. This means wage tax will generally no longer need to be withheld for such board members.

In two-tier boards, supervisory board members were similarly qualified as employees for tax purposes, but this was changed as of January 2017. Non-executive board members of *non*-listed companies may still qualify as employees.

Additional tax on excessive severance payments

75% additional wage tax must be paid by the employer (i.e. without withholding) on compensations qualifying as 'excessive severance payments'. More strict rules have now been proposed with regard to share options. The proposal puts such options within the scope of the additional 75% tax even if they were awarded several years earlier, if the award became unconditional within 1-2 years after the employment relationship ended.

DBA Act developments (hiring of independent contractors)

As from May 2016, the so-called **VAR** (*Verklaring Arbeidsrelatie*, Declaration of Income Tax Status) was abolished by a bill known as the **DBA Act**.

The VAR was a confirmation by the tax authorities of an individual's status as either an employee or an independent contractor, which could be requested by the relevant individual. Under the VAR regime, the party hiring the independent contractor could protect itself from retroactive payroll tax assessments if the independent contractor should legally qualify as an employee, by asking for a copy of the contractor's positive VAR and meeting certain formal requirements.

Under the DBA Act, the VAR regime was replaced by a system of model agreements published by the tax authorities which a client can enter into with a contractor. The parties, then, are not subject to payroll taxes provided they carry out their activities in accordance with the agreement. As an alternative to the published agreements, parties may also submit their own agreement to the tax authorities for approval.

The abolition of the VAR regime by the DBA Act resulted in uncertainty for many companies making use of services from independent contractors. Because of this, it was announced before the DBA Act entered into effect that enforcement of the new situation by means of retroactive tax assessments for hiring parties would generally be postponed (the **Implementation Phase**). Initially, the Implementation Phase was intended to end May 1, 2017.

As a result of considerable political debate, several developments have taken place during this Implementation Phase of the DBA Act. Below, we have listed the most important recent developments.

- In December 2016, a committee of employment and tax law specialists appointed by the government published their recommendations for amendments to the (implementation of) the DBA Act;
- The government subsequently announced a joint investigation by several Ministries into the possibility of changes to the main criteria for legal qualification of an agreement as an employment agreement
- In May 2017, the Ministries published a report setting out ten options for amendments to the DBA Act, to be used for negotiations in the formation of a new government.
- In the context of these announcements and publications, the Implementation Phase of the DBA Act was extended first to January 1, then to July 1, 2018. In principle, no retroactive payroll tax assessments will be imposed in this regard before that date.

No concrete announcements on whether and how the DBA Act will change are expected until after a new government has been established. In the meantime, all businesses hiring contractors in the Netherlands will need to consider whether and how to implement an approved agreement before July 1, 2018.

Furthermore, a caveat exists with regard to the implementation phase, being that tax assessments may still be imposed before July 1, 2018, with regard to 'malicious parties' (*kwaadwillenden*). Malicious parties have been defined as parties that intentionally cause or allow a situation of obvious

pseudo-self-employment. The government has stated that the number of malicious parties nationwide is within an order of magnitude of around ten cases. However, internal policy documents of the tax authorities suggest their scope for identifying malicious parties may be somewhat broader, in that they are looking more closely at parties that refuse to take action to comply with the DBA Act, as well as cases where an agreement had already been qualified as an employment agreement by the tax authorities under the VAR regime.

Lowered wage withholding tax on option benefits for employees of innovative start-ups

Per January 1, 2018, 25% (with a maximum of € 12,500) of the benefit derived from the exercise of option rights relating to shares in innovative start-ups will be exempted from Dutch wage withholding tax.

In order for this exemption to apply, the start-up must have obtained an R&D certificate (*S&O-verklaring*) for R&D activities that were carried out in the year in which an option right was granted and fall under the research and development tax rebate for start-ups. Additionally, the option right must be exercised between one year and five years after the option right was granted to the employee involved. Since there is a risk that this facility constitutes (illegal) state aid, it should be checked whether the exempted amount remains below the threshold for so-called *de minimis* aid.

This exemption was already included in the 2017 tax plan, but will enter into effect per January 1, 2018.

Other

Other relevant upcoming Dutch tax developments:

Signing of the multilateral instrument

On June 7, 2017 the Netherlands and 66 other states signed the Multilateral Instrument (**MLI**). The MLI is part of the OECD's project against Base Erosion and Profit Shifting (**BEPS**). The aim of the MLI is to effectively amend bilateral tax treaties concluded by states that are party to the MLI, in order to automatically implement a number action plans belonging to the BEPS project.

A tax treaty is only amended if both treaty partners (i) are or become signatories to the MLI and (ii) choose to bring the treaty under the scope of the MLI. The MLI contains certain minimum standards that should be implemented. One of the minimum standards relates to the prevention of treaty abuse. Following this minimum standard, a principal purpose test (**PPT**) will be included in tax treaties concluded by the Netherlands, provided that the relevant treaty partner opted for the PPT to comply with the minimum standard on the prevention of treaty abuse. The PPT is a general anti abuse rule, which could impact many international structures.

In addition to the minimum standards, the MLI includes a variety of optional rules. The Netherlands accepted most of these. However, only if both treaty-parties opt for a provision will the provision apply. Many relevant treaty partners did not opt for all of the optional provisions.

The MLI is not expected to enter into effect before January 1, 2019.

Lowering of Dutch corporate income tax rate

Currently the Netherlands levies corporate income tax (**CIT**) at a rate of 20% for the first € 200,000 (the **First Bracket**) and 25% for taxable profits exceeding € 200,000. In order for the Netherlands to remain an attractive investment jurisdiction, able compete with other jurisdictions, per January 1, 2018 the Dutch CIT rate will be effectively lowered by means of:

- increasing, starting 2018, the First Bracket to € 250,000;
- further increasing the First Bracket to € 300,000 in 2020; and
- further increasing the First Bracket to € 350,000 in 2021.

This measure was already included in the 2017 tax plan, but will sort effect per January 1, 2018.

Approval of the Dutch innovation box

On June 28, 2017 the Dutch government announced that the European Code of Conduct group approved the Dutch innovation box. The Dutch innovation box, which is a tax facility aimed at stimulating R&D activities in the Netherlands, was amended per January 1, 2017. The amendment was necessary in order to implement the rules agreed on in the OECD's BEPS project. The European Code of Conduct group decided the Netherlands correctly implemented those rules and

decided the amended innovation box does not lead to harmful tax competition.

Additionally, biological crop protection products are per January 1, 2017 (retroactively) eligible for the innovation box regime.

Disclaimer

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