LEGAL AND TAX ALERT

Alert - Tax Plan 2020

Dec. 30, 2019

1. Introduction

On 17 September 2019, the Dutch government published its Tax Plan 2020 package. On 17 December 2019, the Dutch Senate adopted the following bills:

- Tax Plan 2020;
- EU Anti-Tax Avoidance Directive II (**"ATAD II"**), and;
- DAC6 (EU directive on administrative cooperation in the field of taxation).

Most of the measures will become effective on 1 January 2020. However, the DAC6 takes effect on July 1, 2020. Please find a brief overview and summary of the measures below.

2. Tax Plan 2020

2.1. Corporate Income Tax ("CIT")

Change in corporate income tax rates

Taxable profits amounting to EUR 200,000 are currently taxed at 19% (first bracket). Profits exceeding EUR 200,000 are taxed at 25% (second bracket). For 2020, the first bracket shall be reduced from 19% to 16,5% - and to 15% as of 1 January 2021. The second bracket will remain 25% in 2020 and shall be reduced to 21.7% as of January 1, 2021.

In summary:

Taxable profits	**2019**	**2020**	**2021**
≤ EUR 200,000	19.0%	16.5%	15.0%
> EUR 200,000	25.0%	25.0%	21.7%

Change in effective tax rate for the innovation box (2021)

The effective tax rate on income attributable to the innovation box regime will increase from 7% to 9% as of 2021.

Change of the safe harbour rules on substance

In light of several European Court of Justice judgments, the Dutch safe harbour rules on substance in the corporate income tax and dividend withholding tax will be amended. This has been confirmed in the Tax Plan 2020, which states that the use of intermediate holding companies – despite meeting the current substance criteria – may still be challenged by the Dutch tax authorities as abusive. This may be the case if it can be proven that the motive for interposing the intermediate holding company was the avoidance/reduction of Dutch dividend withholding tax or personal income tax, and in addition that the structure was not established on valid business reasons that reflect an economic reality.

New permanent establishment definition

A uniform definition of the concept of permanent establishment will be added to the Dutch Corporate Income Tax Act. The adjustment includes certain permanent establishment situations in domestic law which are in line with the provisions of the 2017 OECD Model Tax Convention. In case a double tax treaty is applicable, the permanent establishment definition of that tax treaty will apply for domestic tax purposes.

Minimum capital rule for banks and insurers

A new interest deduction limitation will be introduced that targets Dutch tax-resident regulated banks and insurance companies or Dutch branches of foreign banks and insurance companies, insofar as they are not sufficiently capitalized with equity. The measure will limit interest deductions for banks and insurers in case of an equity gap, i.e., a limitation of the interest deduction insofar as the ratio of loan to equity exceeds 92% of the total balance sheet.

2.2. Real estate transfer tax (2021)

The Dutch government proposes to increase the standard rate of the real estate transfer tax from 6% to 7% as of January 1, 2021. The standard tax rate applies to the transfer of non-residential properties and this includes office buildings, commercial premises and land intended for residential construction and hotels and guesthouses. The reduced tax rate of 2% will remain applicable to the transfer of residential properties.

3. ATAD II (hybrid mismatches)

On July 2, 2019, the Dutch government published a legislative proposal on the implementation of the EU Anti-Tax Avoidance Directive 2 in Dutch tax law. Entities, (financial) instruments, permanent establishments or the location of an entity can sometimes be qualified differently for tax purposes by different (EU) countries. As a result, a situation may arise that, for example, a payment is deducted in two countries, or is deducted in one country but is not taxed in another country. The ATAD 2 – by way of implementing these rules into national (tax) legislation - is aimed at preventing such situations. The ATAD2 and the new Dutch legislation applies to situations between the EU member states and to situations between EU member states and third countries.

4. DAC6

The EU Directive on mandatory disclosure rules, formally known as Council Directive (EU) 2018/822 amending Council Directive 2011/16/EU on administrative cooperation in the field of taxation European (DAC6 Directive) must be implemented by all Member States before 31 December, 2019. This Directive requires (tax) advisers and in some cases tax payers to provide the Tax Administration with information about certain (tax) arrangements. The main purpose of the Mandatory Disclosure rules of DAC6 is to fight aggressive tax planning by strengthening tax transparency.

Should you have any questions on how the above will affect your business, please do not hesitate to contact us.

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