On September 15, 2020, the Dutch government published its tax proposals for 2021 and onwards. In addition to the tax proposals, certain other tax measures which we have included in this Tax Alert that were adopted last year will enter into effect as of January 1, 2021.

The measures that are relevant for companies doing business in the Netherlands are the following:

In the area of direct taxes:
- Amendment of the liquidation and discontinuation loss regime.
- Change in the effective tax rate for the innovation box.
- Change in the corporate income tax rates.
- Change to interest deduction rules.
- Introduction of a conditional withholding tax on interest and royalties.
- Increase in substance requirements for financial services entities.

Several other anticipated measures that have been announced, such as the introduction of a job-related investment relief, the introduction of a conditional withholding tax on dividends have not been included in the 2021 Dutch Budget package and will likely be published at a later moment.

The opposition proposal for the conditional exit tax for Dutch dividend withholding tax purposes is expected to be proposed at a later moment.

The Dutch government has announced that two proposals from the Advisory Committee on the Taxation of Multinationals will be proposed:
- A limitation on the utilization of tax losses that have not yet been utilized (NOLs); and
- The abolishment of informal capital structures (i.e., structures where the Netherlands grants a step-up, but there is no corresponding adjustment in the other jurisdiction) as of 2022.

The Dutch government has announced that NOLs can only be utilized to reduce the taxable profits fully up to EUR1 million and up to 50% of the taxable profits before losses are offset can be offset with NOLs. In conjunction with the limitation on the utilization of NOLs, the carry-forward period will be made indefinite (from six years) as of January 1, 2022.

In the area of indirect taxes:
- Increase in standard real estate transfer tax rate.
- Expansion of scope of standard real estate transfer tax rate.
- Introduction of a real estate transfer tax exemption for starters.
- Postponement of value added tax e-commerce package.

Currently, the tax proposals are subject to discussion in the Dutch House of Representatives (Tweede Kamer der Staten Generaal). The below infographic shows the legislative procedure.
Measures in the area of direct taxes (proposed)

Liquidation and discontinuation loss regime
Following a widely supported draft legislative proposal released by the members of the opposition, the Dutch government has proposed an amendment to the liquidation (liquidatieverliesregeling) and discontinuation (stakingsverliesregeling) loss regimes.

The liquidation and discontinuation loss regimes allow taxpayers to take into account losses when liquidating a subsidiary (the liquidation loss regime) or a permanent establishment (the discontinuation loss regime).

Based on the information available at the time of publishing, the proposed amendment to the liquidation and discontinuation loss regime limits the scope of these rules geographically, temporally and materially.

- **Geographically** the liquidation and discontinuation loss regime will be limited to the EU and the EEA.
- **Temporally** the liquidation and discontinuation loss regime will be limited to three years after the calendar year in which the business of the subsidiary (or permanent establishment) was ceased or the decision to cease the business was taken, unless the taxpayer can substantiate that it took longer for business reasons.
- **Materially** the liquidation loss regime will be limited to subsidiaries in which the taxpayer has a holding in the capital of the company that confers it a definite influence over the company’s decision and allows it to determine its activities.

Please note that a EUR5 million threshold applies to the liquidation loss regime. Therefore, a liquidation loss under this amount will not be covered by the above limitations proposed by the Dutch government.

Effective tax rate innovation box
The effective tax rate for the innovation box regime will be increased to 9% (from 7%).

Corporate income tax rates
The Dutch government has announced it will change the corporate income tax rates as indicated in the table below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Lower rate and threshold</th>
<th>Upper rate and threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>16.5% over the first EUR200,000 in taxable profits</td>
<td>25% over the profits in excess of EUR200,000</td>
</tr>
</tbody>
</table>
Change to interest deduction rules

The first change proposed by the Dutch government is a change in Article 10a of the Dutch Corporate Income Tax Act of 1969. Article 10a provides that interest expenses, including foreign exchange results and other costs on related party debt is excluded from the taxable basis if the debt is connected with certain ‘tainted’ transactions. These tainted transactions include:

- a distribution of profit or return of capital by the taxpayer (or certain related entities) to a related party;
- a capital contribution by the taxpayer (or certain related entities) to a related entity; and
- an acquisition by the taxpayer (or certain related entities) or expansion of an interest of shares, in a company that is a related entity after this acquisition or expansion.

Interest expenses are nonetheless deductible if the taxpayer can successfully apply one of the following exceptions:

- the debt payable and the tainted transaction are based on sound business reasons, or
- the interest income is subject to an effective tax rate of at least 10% established on the basis of a profit computation in accordance with Dutch tax law, provided certain criteria are met.

In Article 10a, a new provision will be included to deal with the specific situation whereby a positive result on a related party debt (e.g., foreign exchange results) results in an exemption from Dutch corporate income tax. To the extent the positive result on a related party debt exceeds the amount of interest expenses on that specific loan, such positive result is excluded from Article 10a and is therefore added to the taxable basis.

The specific interest deduction rules for banks and insurance companies will be changed to limit the interest deduction of banks and insurance companies, following a ruling by the Dutch Supreme Court that additional tier 1 capital instruments qualify as a debt obligation for Dutch tax purposes. Insofar the leverage ratio (for banks) or the equity ratio (for insurance companies) is below 9%, interest is non-deductible.

Introduction of a conditional withholding tax on interest and royalties

As of January 1, 2021, the Netherlands will levy a withholding tax on interest and royalties paid to associated enterprises (controlling interest, which is deemed to be the case if 50% of the shares are held) that are resident for tax purposes in a so-called low-tax jurisdiction or non-cooperative jurisdiction and in certain abusive situations (jurisdictions included on the “Dutch list”). The rate of the conditional withholding tax is linked to the highest corporate income tax rate, which remains 25% in 2021.

The following jurisdictions are currently (for financial year 2020) included on the Dutch list of low tax jurisdictions and non-cooperative jurisdictions:

<table>
<thead>
<tr>
<th>American Samoa</th>
<th>Barbados</th>
<th>Guam</th>
<th>Samoa</th>
<th>Vanuatu</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Virgin Islands</td>
<td>Bermuda</td>
<td>Guernsey</td>
<td>Turkmenistan</td>
<td></td>
</tr>
<tr>
<td>Anguilla</td>
<td>British Virgin Islands</td>
<td>Isle of Man</td>
<td>Turks and Caicos Islands</td>
<td></td>
</tr>
<tr>
<td>Bahamas</td>
<td>Cayman Islands</td>
<td>Jersey</td>
<td>Trinidad and Tobago</td>
<td></td>
</tr>
<tr>
<td>Bahrain</td>
<td>Fiji</td>
<td>Oman</td>
<td>United Arab Emirates</td>
<td></td>
</tr>
</tbody>
</table>

The list will be updated to include the jurisdictions on the EU list of non-cooperative jurisdictions for tax purposes on the date the new list is published and any jurisdiction that has a corporate income tax rate of less than 9% as determined on October 1, 2020.

Based on the current EU list of non-cooperative jurisdictions for tax purposes, Palau, Panama and the Seychelles would be added to the Dutch list.

With respect to treaty jurisdictions, the application of the conditional withholding tax on interest and royalties is deferred until at least three years after the first inclusion on the Dutch list.

As regards abusive situations, a structure where an interest or royalty payment is made to a company in a non-low-tax jurisdiction such as Luxembourg may be targeted, if the Luxembourg company on-pays the interest or royalty to a low-tax jurisdiction. This could be the case if only a small spread is reported in Luxembourg and the structure lacks the relevant substance. In addition, the use of hybrid entities may trigger the conditional withholding tax (under certain circumstances).

Increase in substance requirements for financial services entities

As of January 1, 2021, the substance requirements for financial services entities (entities of which the activity consists, for 70% or more, of (in)directly receiving and paying interest, royalties, rent or lease from group companies) will be increased to match the substance requirements that already function as a presumption of evidence in the Dutch corporate income tax and the Dutch dividend withholding tax. As such, in addition to the currently applicable Dutch substance requirements, financial services entities should have a (relevant) wage sum of at least EUR100,000 and should have office space available (which is also used for its activities) for at least 24 months.

It is important that the amount of EUR100,000 represents payroll costs that can be considered as compensation for the work that consists of the activities of the financial services entity.

Not meeting these increased substance requirements results in the spontaneous exchange of information by the Dutch tax authorities to local tax authorities of source states. This may trigger audits and denial of tax treaty benefits, if the source state tax authorities are of the opinion that the Dutch entity has too little substance.

These substance requirements will be amended by means of a Decree, which will likely be published later this year.

Measures in the area of direct taxes (announced)

Introduction of a job-related investment relief

The Dutch government has announced an amendment to the 2021 Tax Plan that would introduce a job-related tax cut. A percentage of investments made by companies can be deducted from the Dutch wage tax payable. The measure is a temporary measure. The Dutch government will propose a long-term measure with a similar objective at a later stage.

Introduction of a conditional withholding tax on dividends
With an effective date of January 1, 2024, the Dutch government has announced that the Netherlands will introduce a withholding tax on dividends paid to associated enterprises (controlling interest, which is deemed to be the case if 50% of the shares are held) that are resident for tax purposes in jurisdictions included on the Dutch list and in certain abusive situations.

Conditional exit tax for Dutch dividend withholding tax purposes

A member of the opposition has announced that he will propose a conditional exit tax for Dutch dividend withholding tax purposes. The proposal introduces a tax on a deemed distribution of all (deferred) profit reserves immediately before the moment one of the following tainted cross-border reorganizations occurs:

- cross-border transfer of the company’s place of effective management;
- cross-border legal merger;
- cross-border division or demerger; or
- cross-border share-for-share merger.

The tainted cross-border reorganizations will only result in an exit tax if they take place towards a qualifying state. A qualifying state is considered to be:

- a state that does not levy a withholding tax on dividends comparable to Dutch dividend withholding tax; or
- a state which grants a step-up whereby the (latent) profit reserves are regarded as paid-in capital.

In addition, the legislative proposal includes a net turnover threshold. It states that the conditional exit tax only applies to Dutch companies that are part of a group whose consolidated net turnover is at least EUR750 million.

At the taxpayer’s request, a deferral may be granted. However, if a dividend is distributed subsequent to the tainted cross-border reorganization, the deferral ends up to the amount of the distributed dividend.

In addition, the legislative proposal contains an additional measure extending the incorporation fiction. The extension entails that a foreign taxable company which has been tax resident in the Netherlands for at least two calendar years will, after the transfer or migration to another jurisdiction, be deemed to remain a Dutch tax resident for ten calendar years. Currently, only an incorporation fiction (i.e. infinite) applies to companies incorporated under Dutch civil law.

The legislative proposal is intended to enter into force with retroactive effect on July 10, 2020 (12:00).

Measures in the area of indirect taxes

Increase in standard real estate transfer tax rate

As of January 1, 2021, the standard real estate transfer tax rate will be increased from 6% to 8%. Currently, the 6% rate applies to all non-residential real estate properties and rights related to such properties. In addition to the aforementioned increase, the scope of application of the 8% standard rate will be extended to residential properties which are not used for personal dwelling (see below).

Expansion of scope of standard real estate transfer tax rate

Currently, a reduced real estate transfer tax rate of 2% applies to all residential properties. This reduction will be no longer apply in situations where the buyer does not buy the property for personal dwelling but, instead for example, as an investment property.

Introduction of a real estate transfer tax exemption for starters

Furthermore, as of January 1, 2021, a real estate transfer tax exemption will be introduced where the buyer is a “starter”. A starter is defined as a private individual between the age of 18 and 35 who is buying a house for personal dwelling and has not applied the exemption before. The proposed exemption applies up to January 1, 2026.

Postponement of VAT e-commerce package

The new European VAT regulations regarding e-commerce has been postponed until July 1, 2021. The VAT e-commerce package consists of a number of measures, such as:

- extension of the Mini One Stop Shop (MOSS);
- abolishment of low value consignment VAT relief (value of less than EUR22);
- introduction of a simplification for non-EU parcels (value of less than EUR150);
- amendment of the distance sales regime;
- introduction of an import One Stop Shop (iOSS); and
- introduction of the electronic interface (online platform) fiction.

These measures are aimed at combating VAT fraud and could reduce the VAT compliance burden of EU and non-EU businesses alike. The abolishment of the low value consignment VAT relief is expected to create a level playing field between EU and non-EU merchants. Additionally, the introduction of an electronic interface fiction (most notably targeting online platforms) shifts the burden of VAT compliance from merchants selling on the interface to the interface itself.

It should be noted that the e-commerce VAT package was supposed to take effect on January 1, 2021. On initiative of the European Commission the introduction has been postponed to July 1, 2021 due to the COVID-situation. The Dutch State Secretary indicated however, that the Netherlands together with Germany will advocate for a further postponement of the introduction of the package until January 1, 2022.

Please contact the authors if you have any questions concerning the proposals.

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