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Global Tax Update

Netherlands

Deloitte Tohmatsu Tax Co.

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2020 Tax Package - Highlights

On 24 September 2019, the government's budget plans for the coming year were released in public. The budget plans contain the details of the Tax Package 2020.

The Tax Package 2020 contains several important amendments and plans for Dutch tax acts, mostly driven by the desire to improve the Dutch business climate, for instance by reducing the corporate tax rate. At the same time, tax avoidance is combatted through several legislative anti-abuse measures which are in essence driven by global and/or European tax reforms.

Below you will find a summary of the most notable items in the Tax Package 2020 that are relevant for Dutch subsidiaries of Japanese MNC's. Please note that the House of Representatives and the Senate have to approve these changes, before implementation, and that the proposals may be changed in the legislative process. If not explicitly mentioned otherwise, below measures will be applicable for financial years starting on or after 1 January 2020.

1. Corporate tax

(1) Corporate tax rate decrease in 2020 and 2021

The current Dutch corporate tax rate is 25%, with a step-up rate of 19% for the first EUR 200,000 taxable profits. The 2020 Tax Package includes a decrease of the corporate income tax rate per 2020 and 2021, which will take place in steps:

- for book years starting on or after 1 January 2020 : 25% corporate tax rate with a step-up rate of 16.5%;
- for book years starting on or after 1 January 2021 : 21.7% corporate tax rate will apply with a step-up rate of 15%.

(2) Introduction minimum capital rule for banks and insurance companies

The Dutch government has previously expressed their wish to further align the tax treatment of equity and debt. For that reason, the 2020 Tax Package includes a minimum capital rule for banks and insurance companies, which limits the deductibility of interest payments in case the company does not meet certain equity thresholds. In short, interest deductibility will be limited

- For banks: in case its leverage ratio is less than 8%;
- For insurance companies: in case its equity ratio is less than 8%.

Since the measures relate to banking and insurance sector, the new rules will also apply to branches / PE's of foreign banks / insurance companies.

2. Withholding tax

(1) Dividend withholding tax measures

Dividend distributions to foreign parent companies are currently exempt from Dutch dividend withholding in case certain conditions are met. The dividend withholding tax exemption is not applicable in case of tax abuse. This anti-abuse provision applies (in short) if a foreign shareholder holds a Dutch company with the main purpose (or one of the main purposes) of avoiding Dutch dividend withholding tax ("subjective test") and the structure is not based on valid business reasons that reflect economic reality ("objective test"). A similar rule applies under the Dutch foreign substantial interest rules and the controlled foreign company rules.

These anti-abuse rules are now adjusted pursuant to recent EU jurisprudence. Specifically, the adjustment relates to the requirements that an intermediate holding company with a so-called linking function

should meet to establish valid business reasons that reflect economic reality.

As a result of the 2020 Tax Package, the role of the current substance requirements will change. They will play a role in dividing the burden of proof and will not provide for a safe harbor anymore. In case the substance requirements are met, the tax inspector may still prove the absence of valid business reasons. If the minimum substance requirements are not met, then the taxpayer may provide counter-evidence that valid business reasons exist.

(2) Interest and royalty withholding tax measures

In line with earlier announcements, a new withholding tax on interest and royalty payments to related entities in low tax jurisdictions is proposed, applicable as from 2021. The rate will be equal to the statutory Dutch corporate income tax rate (i.e. 21.7% per 2021). The rules also apply to accrued interest and royalties. The withholding tax applies regardless of interest deduction limitations.

The new withholding tax only covers payments by Dutch resident entities and permanent establishments to related entities. Related entities are entities with a (in)direct link of definite influence (e.g. holding 50% share interest).

Moreover, the withholding tax will be limited to payments to companies and permanent establishments situated in listed “low tax jurisdictions”, which are jurisdictions that do not levy income tax or levy tax at a statutory tax rate lower than 9%, as well as jurisdictions included in the EU list of non-cooperative jurisdictions. For tax treaty jurisdictions a 3-year transitional period applies before they may qualify as a low tax jurisdiction. Further, withholding tax applies for certain situations in which payments are made to (reverse) hybrid entities.

An anti-abuse rule is introduced for interest and royalty payments to conduit companies that effectively pay the interest or royalty to a listed low tax jurisdiction or (reverse) hybrid entity. Tax treaties will be respected (and thus may give an entitlement to a reduced or zero withholding tax rate).

The MLI is the treaty that facilitates a quick and efficient introduction of the various measures as agreed under the OECD BEPS Actions. The MLI has become effective for the Netherlands as per 1 July 2019 which results that the amendments for the relevant tax treaties will become effective as from 1 January 2020. For this purpose, the definition of a Permanent Establishment (“PE”) in Dutch domestic rules have been aligned with the amendments of the tax treaty definitions under the MLI.

The important changes refer to the amendment and broadening in the definition of a ‘fixed representative’ which is now including the new material definitions under the BEPS Action 7

Further, PE definition also covers situations where various related parties provide ‘separate’ activities in a (foreign) country. With the latter, the new rules focus on related parties that perform both core activities (e.g. performed by a local entity) and activities that have a preparatory or auxiliary nature. In case the combination of activities goes beyond an auxiliary nature, all activities will be considered together and could constitute a PE.

3. Indirect tax Reform

(1) Value Added Tax

1) Electronic publications

As of 1 January 2020, the reduced VAT rate of 9% will be applicable to certain electronic publications, such as books, newspapers and magazines, and to access to news websites, for example, those of daily newspapers, (weekly) magazines and periodicals. The legislative proposal introduces equal VAT treatment for physical and digital publications to enter into force on 1 January 2020.

There is no mention of the application of the reduced VAT rate with retroactive effect.

2) Simplification EU cross-border supplies of goods

The Netherlands fulfils the obligation to implement harmonization and simplification for the taxation of EU cross-border supplies of goods, also known as the Quick Fixes, in the Dutch VAT Act with a legislative proposal for the implementation of the Directive regarding harmonization and simplification for trade between Member States. The Directive must be implemented before 1 January 2020.

The quick fixes relate to:

- The VAT rules regarding situations where a business moves stock to a warehouse in another EU Member State where the business knows the identity of the customer to whom the goods will be supplied on a call-off basis at the time of shipment;
- An arrangement for so-called chain transactions that determines in which leg of the chain the cross-border transaction takes place;
- Proof of the intra-Community transport of goods to other Member States; and
- The status of the VAT identification number.

As it seems that the functionality to exchange data with other EU Member States will not be available on 1 January 2020, the mandatory recapitulative

statement for call-off-stock will not be operational before 1 April 2020.

(2) Real Estate Transfer Tax

1) Standard rate Real Estate Transfer Tax increased from 6% to 7%

The standard Real Estate Transfer Tax rate for the supply of non-residential buildings, such as industrial buildings, business spaces, land earmarked for housing development and hotels and guesthouses, will be increased from 6% to 7%. The new rate will become effective on 1 January 2021. The reduced rate of 2% will remain applicable to residential housing for the time being. In that regard, legislative proposals for changes are expected in November 2019. No transitional arrangements have been proposed.

(3) Insurance Premium Tax

1) New exemptions insurance premium tax

Two new exemptions will be formally implemented for Dutch Insurance Premium Tax purposes.

The first exemption applies to insurances taken out by employers to cover potential financial obligations. This is only a formal implementation as this was practically already applied.

The second exemption will apply to weather insurances taken out by farmers to cover the financial damages caused by weather conditions. The Netherlands have sought and obtained confirmation from the European Commission that the introduction of the exemption is also in line with (non-tax related) EU-legislation.

4. Other measures

(1) Publication administrative penalties intermediaries

To further combat tax evasion, the 2020 Tax Package includes a measure that creates the possibility to publish certain administrative penalties for intermediaries if they assist tax payers in tax evasion upon tax compliance. The publication (on the web page of the Dutch Tax Authorities) will show amongst others, the name of the service provider and the amount of the penalty.

(2) Amendments in the work-related costs rules

The work-related costs rules (WKR) provide a mechanism to determine the taxable element of cost reimbursements, fringe benefits and other costs related to employees. The WKR provides for a maximum amount of tax free reimbursements of personnel costs stated as a fixed percentage of total wages, which is currently 1.2% of the total wage amount.

This cap was found not satisfactory for mid-market companies that have low wages employees. Therefore, the maximum amount for tax free reimbursements will be increased by introducing a two-step percentage: 1.7% up to a wage sum of EUR 400,000 and 1.2% over the excess. In addition, some administrational changes will be introduced, some administrational changes will be introduced.

(3) Changes in Dutch tonnage tax regime

The Dutch tonnage tax regime provides a facility for internationally operating shipping companies under which their fiscal profits are determined at hand of the tonnage of the ships that are exploited by the company. Those rules were found compatible with the EU State Aid regulations as well the additional applications for the regime for ship management and ship services activities. Last year, the European Commission stated that the latter applications could be extended in conformity with EU State Aid guidance rules if the Dutch tonnage tax regime would be tightened on January 2020 on the following areas:

- Time/travel charter companies: the annual sum of the daily net tonnage for non-EU/EEA ships held in time/travel charter should not exceed 75% of the annual sum of daily net tonnages of the qualifying ships. If this threshold is exceeded, the tonnage tax regime cannot be applied to the ships held in time or travel charter.
- The exceptions to the flag requirement will be tightened.
- The profit for non-transportation activities may not exceed 50% of the total income from the exploitation of ships in order to qualify for the tonnage tax regime. If the 50% threshold is exceeded, the income from non-transportation activities will be regularly taxed (profit split). The assessment whether a company qualifies for the tonnage tax regime as such, actually contains an activity test.

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