Baker McKenzie.

THE NETHERLANDS

Tax Plan 2020

On 17 September 2019, the Dutch government released the Tax Plan for 2020, which includes quite a few significant amendments to Dutch tax laws.

In general, the aim of the tax proposals is to maintain a competitive business climate, while at the same time combatting tax abuse and aligning Dutch tax rules with EU case law and EU Directives. As a next step, the measures announced today will be discussed in Parliament in the coming weeks and, when approved, most of the new rules will be implemented effective 1 January 2020 (unless indicated otherwise). In this Alert we summarize the most important tax proposals.

For the sake of completeness we note that we expect additional tax proposals over the next months. The Tax Plan 2020 for instance mentions that the Dutch liquidation loss regime will be amended effective 1 January 2021. Furthermore, we have recently seen legislative proposals for the implementation of ATAD 2 and the EU Mandatory Disclosure Directive (also known as "DAC6"), which are also set to enter into effect as of 1 January 2020.

We are very happy to share with you in this alert our detailed summary of the proposals in across various areas of the Netherlands tax landscape, and we would be very happy to further discuss any of the proposed changes with you.

CONTENT

CORPORATE INCOME TAX RATE CUTS - RATE STILL GOING DOWN BUT LESS THAN PREVIOUSLY ANNOUNCED

The Dutch corporate income tax rate for profits that exceed EUR 200,000 will remain 25% in 2020, but this rate will be reduced to 21.7% as of 2021. We note that this is higher than the 20.5% that was announced for 2021 and onwards under the Tax Plan 2019.

Corporate income tax rate cuts – rate still going down but less than announced last year

Under the 2019 Budget Day proposals, the Dutch government had announced that the Dutch corporate income tax rates will be gradually decreased. While the corporate income tax rate is still going down, the Tax Plan 2020 partly withdraws the earlier announced corporate income tax cuts. For 2020, the corporate income tax rate on profits up to EUR 200,000 will be reduced from the current 19% to 16.5%, whereas the corporate income tax rate on profits exceeding EUR 200,000 remains 25% (as opposed to a tax rate of 22.55% that was initially proposed). For 2021, the lower tax bracket will be decreased to 15%, whereas the higher bracket will be decreased to 21.7% (and no longer to the earlier announced 20.5%)

CONDITIONAL WITHHOLDING TAX ON INTEREST AND ROYALTIES

The Netherlands looks to discourage tax avoidance by introducing a new withholding tax on interest and royalties as of January 1, 2021. The new Withholding Tax Act is applicable to interest and royalty payments made by a Dutch company to a related company if that related company is located in an identified low-taxed jurisdiction, or in a blacklisted jurisdiction. At 21.7%, the proposed withholding tax rate is the same as the Dutch corporate income tax rate applicable to the highest bracket as of 2021.

Introduction of new withholding tax on Interest and Royalty Payments to specific low tax jurisdictions

In an effort to discourage the use of the Netherlands as a conduit for interest and royalty payments to low-taxed jurisdictions, a new Withholding Tax Act ("WTA") will be introduced as of January 1, 2021. Under the proposed rules, interest and royalty payments to a related company will become subject to 21.7% withholding tax if said related company is established in a specifically listed low-tax jurisdiction (i) with no tax or a tax rate that is lower than 9%, or (ii) which is included in the EU Blacklist for non-cooperative jurisdictions, or in the case of a structure that is considered abuse. To confirm what jurisdictions should be considered low-taxed or non-cooperative, the Ministry of Finance will maintain a limitative list of specific low tax jurisdictions (as it already does for the application of the CFC regime introduced per 2019) and update this list annually.

For purposes of the WTA, and as an example, companies are considered related if either company, or a third company that is related to both companies, has a 'qualifying interest' in the company paying the interest or royalties, or vice versa. A qualifying interest is an interest through which sufficient influence can be exercised, that the activities of the Dutch distributing company or the recipient can be determined. This will be assessed based on the facts and circumstances of the case. However, an interest representing more than 50% of the statutory voting rights will in any event constitute a qualifying interest. The Dutch tax authorities can be requested upfront to confirm whether companies qualify as related for purposes of this rule.

Anti-abuse provision expanding the scope of the withholding tax

The application of the new withholding tax is not strictly limited to payments to identified low-tax or EU blacklisted jurisdiction. If the recipient of the interest or royalty is a pure conduit company that (i) is entitled to the interest or royalty income with the main purpose or one of the main purposes to avoid withholding taxes otherwise due and (ii) the structure or transaction is considered artificial, then the new withholding tax will nevertheless apply (the "***Anti-Abuse Provision***").

However, this Anti-Abuse Provision should in principle ***not*** apply if:

1. the conduit company that is the recipient of the interest or royalty satisfies specific minimum substance requirements ("**Objective Test**"); or
2. the conduit company that is the recipient of the interest or royalty does not receive the interest or royalty with the main purpose or one of the main purposes to avoid Dutch withholding tax ("**Subjective Test**").

The Subjective Test is satisfied if royalty or interest payments are not indirectly paid to specifically identified jurisdictions that are either low-taxed or part of the EU blacklist, and no withholding tax would have applied if the Dutch company paying the interest or royalties would have paid that interest or royalty directly to the ultimate recipient.

Burden of proof

In light of the potential application of the anti-abuse provision, the Dutch company will have the opportunity to demonstrate that the structure is not artificial and therefore the anti-abuse provision does not apply. Similarly, regardless whether certain minimum substance requirements are met at the level of the recipient, the tax authorities can still apply withholding tax to the interest or royalty payments if they are able to demonstrate that the structure is artificial or abusive. Reference is made to the announced changes to the current safe harbor rule relying on certain substance requirements being met (read more [link to subpage 'EU case law leads to amendment of multiple safe harbor rules').

Finally, if an interest or royalty payment is subject to withholding tax under the new withholding tax, this domestic tax does not override tax treaties (meaning that such withholding tax rate may be reduced or the payment may be even be exempt from withholding tax under an applicable tax treaty).

In addition to the above, the proposals state that interest or royalty payments to hybrid entities that effectively result in no or low taxation will also become subject to the new withholding tax.

Finally, if an interest or royalty payment is subject to withholding tax under the new withholding tax, this domestic tax does not override tax treaties (meaning that such withholding tax rate may be reduced or the payment may be even be exempt from withholding tax under an applicable tax treaty).

EU CASE LAW INFRINGES MULTIPLE SAFE HARBOR RULES

Three safe harbor rules embedded in anti-abuse rules in both the Dividend Withholding Tax Act and the Corporate Income Tax Act will no longer function as a safe harbor rule. This amendment is prompted by recent EU case law, pursuant to which safe harbor rules do not sufficiently rule out the possibility that tax benefits are granted in abusive cases. Under the proposed amendments, complying with the prescribed substance requirements will no longer guarantee that anti-abuse rules will not apply. Instead, the Dutch Tax Authorities will now be given the opportunity to demonstrate that a particular structure or transaction is abusive even if the substance requirements are satisfied.

EU case law infringes safe harbor rules

Following EU case law, three safe harbor rules currently embedded in domestic anti-abuse rules as part of the Dividend Withholding Tax Act and the Corporate Income Tax Act will no longer function as a safe harbor rule

Safe harbor rule as part of the Dutch dividend withholding tax exemption

The first affected safe harbor rule is embedded in the Dutch dividend withholding tax exemption. In principle, dividend payments by a Dutch company are subject to 15% dividend withholding tax. However, a domestic law exemption from dividend withholding tax applies if the following conditions are satisfied:

1. the beneficial owner of the dividends is tax resident of a country that has concluded a tax treaty with the Netherlands that includes a provision regarding dividends;
2. the beneficial owner of the dividends owns at least 5% of the nominal share capital of Dutch company that distributes the dividends (e.g. through shares), and;
3. the structure is not considered abusive.

A structure is not considered abusive if it does not have as its main purpose, or one of its main purposes, to avoid Dutch dividend withholding tax ("Subjective Test"), or if the structure is not considered artificial following a safe harbor rule ("Objective Test").

Under the current safe harbor rules, the Objective Test is satisfied if the recipient of the dividends is an intermediate holding company that (i) establishes a link between the Dutch dividend distributing company and an active business enterprise "further up the direct shareholding chain", and (ii) fulfills a list of substance requirements in its country of residence (e.g. spends salary costs of at least EUR 100,000 annually and avails of dedicated office space for at least 24 months).

According to the proposed amendment, satisfying minimum substance requirements by an intermediate holding company that establishes the abovementioned link will no longer automatically guarantee that the dividend withholding tax exemption applies. Instead, the Dutch Tax Authorities will in such a case have the opportunity to challenge the exemption by demonstrating that the structure / transaction is abusive.

Safe harbor rule as part of the exemption from non-resident corporate income tax

Foreign companies that hold at least 5% of the shares of a Dutch company can under circumstance be subject to Dutch corporate income tax with respect to benefits derived from their shareholding (e.g. Dutch dividends, capital gains), namely if the structure is considered abusive. Similar to the dividend withholding tax exemption explained above, a structure is not considered abusive if it does not have as its main purpose or one of its main purposes the avoidance of Dutch personal income tax ("Subjective Test"), or if the structure is not considered artificial following a safe harbor rule ("Objective Test").

According to the proposed amendment, and along the lines of the changes to the dividend withholding tax safe harbor rule, satisfying certain minimum substance requirements by an intermediate holding company will no longer automatically guarantee that foreign shareholder is not subject to Dutch corporate income tax.

Safe harbor rule as part of the Dutch CFC-rule

Under current Dutch tax law, income received by a Dutch taxpayer from its foreign subsidiary or permanent establishment is taxable in the Netherlands as CFC income only if:

1. the Dutch taxpayer -with or without affiliated persons- has a direct or indirect interest of at least 50% of the nominal paid-up capital, voting rights and the profts in the foreign subsidiary or permanent establishment; and
2. the foreign subsidiary or permanent establishment is resident in a country specifically identified by the Dutch government and is:
   1. not subject to corporate income tax in its country of residence; or
   2. subject to corporate income tax in its country of residence at a statutory rate of less than 9%; or
   3. The foreign subsidiary or permanent establishment is not engaged in a substantial economic activity. Under the cuXrrent safe harbor rule, the foreign subsidiary or permanent establishment is considered to be engaged in a substantial economic activity for purposes of the CFC rule if it satisfies aforementioned minimum substance requirements.
3. The foreign subsidiary or permanent establishment is not engaged in a substantial economic activity. Under the current safe harbor rule, the foreign subsidiary or permanent establishment is considered to be engaged in a substantial economic activity for purposes of the CFC rule if it satisfies aforementioned minimum substance requirements.

According to the proposed amendments to the safe harbor rules, and similar to the changes discussed above, a CFC satisfying minimum substance requirements will no longer be guaranteed to fall outside the scope of the CFC income inclusion. Instead, the Dutch Tax Authorities will now have the opportunity to challenge the structure by demonstrating that the CFC satisfies the minimum substance requirements with the main purpose or one of the main purposes to qualify for the safe harbor.

OTHER RELEVANT PROPOSALS

Other relevant proposals included the Tax Plan 2020 include:

1. Procedural changes to the Earnings Stripping Rule

   Based on the EU ATAD, a new general interest deduction limitation for Dutch corporate income tax purposes was introduced as from 1 January 2019 (the “Earnings Stripping Rule”). Under the Earnings Stripping Rule, the starting point is to determine the taxpayer’s so called “Interest Expense Excess”. This is the amount by which the taxpayer’s tax deductible interest expenses exceeds its taxable interest income (net-debt). The deductibility of the Interest Expense Excess is limited to the highest of (i) 30% of the taxpayer’s EBITDA (carving out tax exempt income) and (ii) a safe harbor of EUR 1 million.

   The interest disallowed under the Earnings Stripping Rule can be carried-forward to later years without limitation in time. The tax inspector sets out the exact amount of interest to be carried forward in a formal decision (beschikking). It is now proposed that the amount set out in this formal decision can be changed in later years in the event of a so-called new fact, bad faith or a mistake that should have been reasonably known to the taxpayer. The proposed amendments also apply to formal decisions issued before these rules entered into force. Due to this retroactive effect, also existing decisions can be amended under the aforementioned conditions.

2. Amendments to the Dutch domestic definition of a 'permanent establishment'

Currently, the Dutch Corporate Income Tax Act provides for a permanent establishment ("PE") definition in connection with the foreign PE exemption regime (i.e., this definition applies to foreign PEs of Dutch head offices). The Dutch Corporate Income Tax Act, however, does not provide for a PE definition in an inbound setting, i.e. PEs in the Netherlands of foreign companies. Thus, whether or not a Dutch PE of a foreign company exists, is so far mainly determined on the basis of Dutch case law. As a result, it was possible that even though a Dutch PE was recognized under an applicable tax treaty, the Netherlands was not able to levy corporate income tax, because no PE existed under Dutch domestic tax rules.

It is now proposed to include a new definition of a PE in the Dutch Corporate Income Tax Act. For situations where a tax treaty applies, it is proposed that the PE definition in the applicable tax treaty will also be the PE definition for purposes of the Dutch Corporate Income Tax Act. The objective of this change is to ensure consistency in recognizing and taxing a PE. For situations not covered by a tax treaty it is proposed to apply a PE definition that will be largely aligned with the PE definition under the most recent version of the OECD Model.

The MLI has entered into effect in the Netherlands as of July 2019. Consequently, PE related BEPS measures (which generally lower the PE threshold) may apply as of 1 January 2020, depending on the choices made by the tax treaty partner, as well as the date as of which PE related BEPS measures will apply in the country of the tax treaty partner. Following the abovementioned proposal pursuant to which the Dutch domestic PE definition will be aligned with the PE definition in the applicable tax treaty (or the OECD Model definition), the MLI will also affect the Dutch domestic PE definition.

It is proposed that this new definition in the Dutch Corporate Income Tax Act will generally also apply to the Dutch Personal Income Tax Act 2001 as well as the Wage Tax Act, where relevant

3. Introduction of interest deductibility limitation (minimum capital) banks and insurance companies

The Dutch government proposes to implement a minimum capital rule for banks and insurance companies. In general, this rule will apply to banks and insurance companies with debt-financing exceeding 92% of the balance sheet total.

The minimum capital rule applies to Dutch banks and insurance companies, as well as Dutch subsidiaries and Dutch permanent establishments of foreign banks and insurance companies. If the entity is included in a fiscal unity, the minimal capital rule in principle applies at fiscal unity level.

In so far the leverage ratio (for banks) or equity ratio (for insurance companies) is less than 8%, the deductibility of the current year interest due by a bank/insurance company is limited.

Banks

For banks the non-deductible part of the interest due is calculated on the basis of the following formula: (8-L)/(100-L). The ratio calculated on the basis of the formula, multiplied by the interest due, is the part of the non-deductible interest due.

For banks, L equals the leverage ratio following from the EU capital requirements regulations. If the parent institution of the banking group is a parent institution in a EU/EER state, the leverage ratio on a consolidated basis should be used as the leverage ratio for purposes of the minimum capital rule. If the parent institution is established outside a EU/EER state, the stand-alone leverage ratio of the Dutch subsidiary should be used for purposes of the minimum capital rule.

Insurance companies

For insurance companies, the following formula will apply: (8-ER)/(100-ER). The ratio calculated on the basis of the formula, multiplied by the interest due, is the part of the non-deductible interest due.

For insurance companies, ER equals to the ratio between the equity and the balance total as included in the balance sheet prepared for purposes of the Solvency II regulations. For insurance companies, in principle the ratio on group level is used for purposes of the minimum capital rule

Final remark

Both for banks and insurance companies, interest due does not include f/x results on (the interest of) loans or results stemming from hedging instruments. L/ER should be determined as at 31 December of the calendar year prior to the calendar year in which the financial year commences

When it comes to a Dutch permanent establishment of foreign banks and insurance companies, in principle the leverage ratio of the head office is used for purposes of determining the minimum capital rule.

4. The real estate transfer tax rate for the acquisition of non-residential property will be increased from 6% to 7%

An increase in the real estate transfer tax rate for the acquisition of non-residential property from 6% to 7% has been proposed to take effect as of 2021. This increase is proposed in order to finance certain climate goals of the Dutch government and it is expected to raise an additional EUR 297 million in real estate transfer tax.

5. Amendments to the Tonnage tax regime

Under the specific Dutch tonnage tax regime, taxpayers have the possibility to opt for a special regime to determine the annual fiscal profits on the basis of ship tonnage, regardless of the actual profits made. As from January 1, 2020 the Netherlands must bring the Dutch tonnage tax regime in line with new specific requirements from the European Commission:

1. The annual total of the net day-tonnage (netto dag tonnages) of vessels held in time or journey charters not flying an EU/EEA-flag cannot exceed 75% of the annual total of the net day-tonnage of all vessels that are (potentially) eligible for the tonnage tax regime of the relevant taxpayer.
2. The flag requirements will be amended as follows:

   a. At least one vessel in the total fleet should fly an EU/EEA-flag, at the moment a new vessel is being added to the fleet after January 1, 2020, in order to be able to apply the Dutch tonnage tax regime to such new vessel. If this is the case (already), the existing exceptions to the flag requirements (if met) can be invoked for such new vessel;

   b. The flag requirement (and the existing exceptions thereto) will also apply to ship management companies as from January 1, 2020;

   c. The proposed amendments to the flag requirements will only apply as per the second book year starting on or after January 1, 2029 for vessels already benefiting from the Dutch tonnage tax regime on December 31, 2019.

3. The introduction of a 50% profit threshold for non-transportation activities on vessels transporting goods or persons at international waters. In that case, the profits from non-transportation activities would be regularly taxed in the Netherlands. This new requirement is primarily aimed at for instance cruise ships that would earn over 50% of their total profits from entertainment activities (food and beverages not included). The Dutch government expects that this threshold will have little or no practical impact on taxpayers currently using the Dutch tonnage tax regime.

6. Amendments to the R&D wage tax reduction application process and Dutch innovation box regime

R&D-wage tax reduction

To simplify and shorten the application process for the R&D-wage tax reduction, the proposals include minor changes to this tax facility. These changes, in principle, will not change the system of the R&D-tax reduction, but will make the application process more user-friendly and may result in a corporate income tax benefit under the Innovation box regime. More specifically, a recent evaluation of the R&D-wage tax reduction (S&O-afdrachtvermindering) revealed that the current application process for this facility could be simplified and shortened. In accordance with the recommendations included in the evaluation report, the following changes will be made:

- The number of times a year to apply for the facility will be increased from three to four; and
- The deadline for submitting an application for the facility will be changed to the day prior to the period to which the application relates, instead of the month prior to the period to which the application relates.

The abovementioned changes will, in principle, not change the system of the R&D-wage tax reduction, but will make the application process more user-friendly.

Innovation box regime

In addition to the wage tax benefit of the abovementioned R&D-wage tax reduction, using this tax facility could also have a corporate income tax benefit. When the facility applies, an R&D-statement (S&O-verklaring) will be issued, which is one of the entry tickets to apply for the Dutch innovation box regime. Under the innovation box regime, income derived from intangible assets created by a Dutch taxpayer are subject to an effective tax rate of 7%, instead of the regular and much higher corporate income tax rate. The proposed plans include an increase of the effective tax rate of the innovation box regime from 7% to 9% as of 2021.

7. Increased substance requirements for Financial Service Companies

A company qualifying as a financial service company (i.e. a company with activities consisting for 70% or more of directly or indirectly receiving and paying interest, A company qualifying as a financial service company (i.e. a company with activities consisting for 70% or more of directly or indirectly receiving and paying interest, royalties, rent or lease instalments, to or from non-resident group companies, over the time of a fiscal year), must currently indicate on its annual corporate income tax return whether certain minimum substance requirements are met.

As part of the Tax Plan, the Dutch Government announced to expand the existing substance requirements with the following additional requirements:

(i) EUR 100,000 salary costs

On an annual basis, the financial service company must incur at least EUR 100,000 (or the equivalent thereof in a different currency) in salary costs which form the remuneration for the licensing or financing activities performed by the financial service company.

(ii) Office space

The intermediate holding company will be required to have an office space available with the customary facilities for performing the licensing or financing activities for a period of at least 24 months.

If these substance requirements are not met, the Dutch tax authorities can spontaneously exchange information regarding a company's factual situation to foreign tax authorities of countries that have provided a relief of taxation to the Dutch company on the basis of a tax treaty or the EU Interest and Royalty Directive (i.e. foreign source countries).

PERSONAL INCOME TAX

The proposed income tax measures aim to reduce the tax burden on labour as well as to increase the purchasing power. Most importantly, the two-brackets system announced last year will be accelerated and certain tax credits and levy rebates will go up, while the self-employed person's allowance will go down. Also, it was announced that a tax bill enabling taxpayers with savings up to approximately EUR 440,000 to not be subject to any box 3 income tax, will be submitted to the Dutch Lower House before the summer of 2020.

Relevant personal income tax measures in the Tax Plan 2020 include:

- **Tax rates and credits**
  The Dutch government proposes to accelerate the introduction of the two-bracket tax system. In the proposals, the introduction that would initially take place in January 2021 will now be realized as from 1 January 2020. As a result, the top tax rate will already be reduced to 49.5% in 2020. Simultaneously, the maximum deduction rate for dedicated base-reducing items will be 46% in 2020. Furthermore, the proposals increase the general tax credit in two steps: by EUR 78 in 2020 and by EUR 2 in 2021. This increase is in addition to the policy increase that was already included in the existing legislation. The increase in the general tax credit is designed to improve the purchasing power of lower incomes in particular.

- **Levy rebate and self-employed person's allowance**
  The proposal increases the so-called employment levy rebate from 2020 in three steps, as compared to the existing plans. Both self-employed and employees are expected to benefit from this. On the other hand, the government proposes to reduce the self-employed person's allowance (currently EUR 7,280) as of 2020 by eight steps of EUR 250, and one step of EUR 280 to EUR 5,000 in 2028. This means that the future self-employed person's allowance will be around two thirds of the current level.

- **Cancelation education facility**
  The government proposes to abolish the income tax deduction for educational expenses. This deduction will be replaced by the so-called STAP budget subsidy scheme (learning and development budget to stimulate an individual's labor market position) for natural persons with a link to the Dutch labor market. The draft regulation is to be proposed shortly. The purpose of this proposal is a more effective and efficient use of budget resources for (additional) training.

- **No voluntary disclosure for box 2 and box 3 income**
  Currently, taxpayers who have failed to report income or capital may limit the amount of an administrative fine by submitting a so-called voluntary disclosure. The voluntary disclosure scheme however does not apply insofar as it concerns non-reported income from savings and investments (box 3) that has arisen abroad. The Dutch government now intends to broaden the scope of this exclusion. As per the proposals, it will no longer apply for substantial interest (box 2) income, nor for box 3 income that has arisen domestically, either.

- **Continuation of the transitional rules for hybrid annuities predating 2001**
  The current transitional rules for annuity products pre-dating 2001 will in principle end on 31 December 2020. On that date, these annuities are to transfer from box 1 to box 3. However, the Tax Plan 2020 contains a proposal to continue the transitional rules as from 1 January 2021 for certain balance-annuities as well as for certain foreign pensions. It also aims for the abolition of the so-called settlement obligation under the law.

- **Box 3 taxation of savings**
  On 6 September 2019, the government announced a major change of the taxation in box 3. As from 2022, the actual distribution between savings and investments of individual taxpayers will be taken into account. A return on savings is then calculated that matches the actual interest rate as much as possible. The change in law means that taxpayers will not be subject to box 3

income tax on savings up to approximately EUR 440,000. As a result, the government expects that approximately 1.35 million savers will effectively no longer be subject to the deemed capital yield tax of box 3. While technically not part of the Tax Plan 2020 proposals, the bill will be submitted to the Dutch Lower House before the summer of 2020.

WAGE TAX

A number of Dutch wage tax measures has been proposed, some of which had already been published before. Positive ones for employer and employee are the increase in the so-called 'free space' under the Dutch work cost scheme for the total taxable wages up to EUR 400,000, and the continuation (in a limited form) of the tax incentive for environmentally friendly automobiles such as electric cars up to 2026. On the downside however, among other things, the reimbursement and / or provision of administrative penalties, amounts for penal orders and comparable foreign penalties, will mandatorily be considered taxable wages going forward, subject to wage tax payable by the employee.

Other relevant wage tax measures in the 2020 Budget include:

- **Free space for Work Costs Scheme**

  Research has shown that in particular SMEs offering low wages and / or employing many part-timers find the limitation of the so-called 'free space' for reimbursements and benefits under the Dutch Work Costs Scheme (WKR) to be a constraint. To alleviate this issue, as per 2020 the free space in the Work Costs Scheme will be expanded to 1.7% of the taxable wage wages up to EUR 400,000, plus 1.2% of the remaining taxable wages. Companies with a total taxable wages of less than EUR 400,000 therefore proportionally benefit the most from this measure.

- **Work costs scheme items**

  Application fees reimbursed for a Certificate of Good Behavior (VOG) will no longer reduce the free space under the Work Costs Scheme, the method of determining the value of sector-specific products is adjusted and employers are given more time to determine any final levy amounts due under the Work Costs Scheme.

- **Addition to income for environmentally friendly cars**

  The addition to income for new environmentally friendly automobiles, such as electric cars, will double in 2020 to 8% on the first EUR 45,000 of the list price. The addition is subsequently increased in 2021 to 12% on the first EUR 40,000 of the list price, 16% in 2022, and 17% in 2025. From 2026, for the entire list price of an environmentally friendly car a 22% addition to income applies, just as for a conventional car.

- **Indexing the volunteer scheme**

  The maximum amounts for the volunteer scheme (currently EUR 170 per month and EUR 1,700 per calendar year) will be indexed annually at the start of the calendar year.

- **No final levy for administrative penalties**

  The government intends to render it impossible to pay a final levy on reimbursements and provisions in respect of administrative penalties, amounts for penal orders and comparable foreign penalties and amounts. Such wage components will mandatorily be considered taxable wages, on which the employee is liable to pay wage tax. The measure does not apply to periodic penalty payments and amounts imposed or forfeited before 1 January 2020.

- **Definition permanent establishment**
  According to the government, possibilities currently exist to artificially circumvent the qualification as a permanent establishment, in order to avoid taxation. Against that background, it is proposed to align the definition of permanent establishment for income tax, wage tax and corporate income tax purposes with the definition in the applicable tax treaty, or -as the case may be- the OECD standard treaty (more about this can also be found in our corporate income tax chapter above).

- **Amended treatment of share options for startups**
  Under current wage tax law, the taxation of stock option rights granted to employees occurs at the time of exercise or alienation of the option. This applies even if the employee has no cash available to pay the taxes. The Dutch government wants to adjust the current rules so that it becomes more attractive for talent to work for a start-up or scale-up company. The idea is to move the taxable moment from the moment of exercise of the stock options to the moment of disposal of the shares that the employee has obtained his options. The aim is to have this change take effect on January 1, 2021. We kindly refer to our in-depth **Alert** from May 2019 on this issue.

VAT

Reduced VAT rate e-publications

As of 2020, the reduced VAT rate (9%) will be introduced to the supply of e-publications (such as e-books, journals and periodicals) and granting access to news websites. Currently, the reduced VAT rate only applies to publications on paper. Following a recent change in the VAT directive, this category will be extended to include digital publications as well. The current different VAT treatment of physical and digital publications will then cease to exist.

Quick fixes for intra-Community trade

Awaiting the introduction of a definitive VAT regime for the intra-Community trade in goods, the EU member states agreed on addressing the most urgent bottlenecks in the current regime. As of 2020, three of these so called 'quick fixes' will be implemented into the Dutch VAT Act. A valid and correct VAT identification number will be set as an absolute condition for the zero rate, a harmonised EU regime for call-off stock will be introduced and rules are set for the treatment of intra-Community chain transactions.

No zero rate without correct VAT identification number

A correct VAT identification number of one's customer will become an absolute condition for the use of the zero rate. This number must be mentioned on the invoices and reported in the EU sales listings. Any (unintentional) mistake will entitle the tax authorities to levy an additional amount of VAT. This measure clearly puts an additional risk on businesses and will not simplify trade.

Harmonised EU regime for call-off stock

The existing Dutch policy for intra-Community call-off transactions and consignment sales will be replaced by a harmonised EU regime. Under a call-off transaction, products are stored on the premises of a prospective customer, awaiting final supply to the customer. If such customer is located in another member state, the mere transfer of the products may trigger an obligation to register in that other member state. Once the sale is made, a local supply should be reported. Currently, most (but not all) member states offer practical arrangements under which the final sale may be reported as an intra-Community transaction so that registration in the country of the customer is avoided altogether. This patchwork of practical call-off arrangements is now replaced by a harmonised EU regime. Under this regime, the transfer of products to the other member state must be reported in a special register. Once the sale is made, the supplier must report an intra-Community to its customer in the other member state. The customer, on its turn, will then be obliged to report an intra-Community acquisition. The regime only applies if the products are sold and supplied within twelve after their transport.

Rules for intra-Community chain transactions

An intra-Community chain transaction occurs when products are sold between several parties and - eventually - shipped to a seller in another member state. In such a case, each sale represents a VAT relevant supply. However, as a result of this chain of sales and supplies, the products are shipped to another member state. This transport should be linked to only one of the supplies. This supply is then an intra-Community supply, while the other supplies in the chain are local supplies. In practice, it is often uncertain to which transaction the transport must be linked. The existing case law of the CJEU does not provide certainty in all cases. The current quick fix, which will be implemented in the Dutch VAT Act, provides practical rules. Under the new regime the transport should be linked to the supply made to the party which arranges the intra-community transport of the products. This transporting party will thus perform an intra-Community acquisition in the country where the products arrive. If, however, this transporting party is VAT registered in the member state from which the product is sent and if this transporting party provides its supplier with this VAT registration number, the supply to the transporting party is a local supply in the country of departure. The subsequent supply by the transporting party will then be the intra-Community supply.

PROCEDURAL TAX LAW

The most important changes in procedural tax law concern a further restriction of the voluntary disclosure scheme, the publication of negligence penalties to legal service providers (i.e. naming and shaming), a measure to limit tax interest for corporate income and inheritance tax purposes and legal correction and sanctioning powers of the Dutch Tax Authorities with regard to spontaneous tax returns *(spontane aangiftes).*

Further restriction of the voluntary disclosure scheme

Under the voluntary disclosure scheme no criminal charge will be brought against the taxpayer if the taxpayer rectifies its incorrect tax return or gives information to the Dutch tax authorities to correct or complete its tax position within two years after filing the incorrect tax return. As from January 1, 2018 the voluntary disclosure regime is no longer applicable with respect the income from savings and investments accrued abroad.

In the Tax Plan 2020 it is announced that the voluntary disclosure scheme will be further restricted and will as from January 1, 2020 no longer be applicable for income from savings and investments accrued in the Netherlands (e.g. the distinction between income received abroad and income received domestically will be removed). Furthermore, the voluntary disclosure scheme will no longer be applicable for income deriving from a substantial interest held.

Publication of negligence penalties to legal service providers

Legal service providers such as tax advisers, accountants, civil-law notaries and attorneys at law can be confronted with negligence penalties (vergrijpboetes) for the assistance they provide in the practice of their profession or the conduct of their business. As of 1 January 2020 these negligence penalties imposed to legal service providers will be published within ten business days after (i) the negligence penalty becomes irrevocable (i.e. if no objections/appeals are initiated or if a judge decides the penalty was justified) and (ii) the decision to publish the negligence penalty becomes irrevocable. The idea behind this naming and shaming is to help consumers to make a well-informed choice for a legal service provider.

The information that will be published consists of the offender's name (individual or legal entity), the legal basis, amount and date of the negligence penalty, the year in which the finable offence was committed and the name of the place where the offender has committed the offence. The information will be published on the website of the Dutch tax authorities and will be available for five years after publication.

Limitation of tax interest for corporate income tax purposes

With respect to the levy of Dutch corporate income tax and in specific cases the levy of Dutch inheritance tax, it is currently possible that a taxpayer who submits a timely and correct tax return will be confronted with tax interest. In the Tax Plan 2020 it is announced that no tax interest will be imposed in such cases and no tax interest will be due in case the taxpayer i) timely files its corporate income tax return/inheritance tax return and ii) the tax assessment is imposed in line with the submitted tax return.

With respect to the levy of Dutch inheritance tax, the above-described problem can currently only arise in case the term for filing the inheritance tax return commences on another moment than the day of death of the deceased or in case the term is suspended. As a result of the Tax Plan 2019 this problem was already resolved for the situation that the taxpayer filed a timely and correct inheritance tax return and the term of filing commenced on the day of the death of the deceased, which is generally the case when filing an inheritance tax return.

The proposed measure will enter into force on January 1, 2020. For corporate income tax purposes the measure will firstly apply in respect of tax assessments relating to tax periods commencing on or after January 1, 2019.

Legal correction and sanctioning powers with regard to spontaneous tax returns

If a taxpayer files a completed tax return form with the Dutch Tax Authorities without a prior received or issued invitation to file such a tax return, this is referred to as a spontaneous tax return. Based on existing case law, the Dutch Tax Authorities cannot use several legal correction and sanctioning powers (e.g. the power to reverse the burden of proof and the power to impose negligence penalties in certain situations) in case of spontaneous tax returns. Based on the proposed legislation, the Dutch Tax Authorities are able to use all legal corrections and sanctioning powers with regard to taxes by means of assessments (e.g. personal income tax, corporate income tax and inheritance and gift tax). For now, no legislation has been proposed with regard to taxes which are levied by means of returns (e.g. VAT and wage tax).

Furthermore, if a spontaneous tax return if filed less than six months before the end of the expiry of the statute of limitation for imposing an (additional) tax return, this statute of limitation will be extended with a period of six months.

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