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DUTCH TAX DEVELOPMENTS FOR NATIONAL AND INTERNATIONAL BUSINESSES

INTRODUCTION

- In 2024 and 2025 important changes are expected in the Dutch tax rules applying to national and international businesses. Some of those changes have been announced at Budget Day 2023, other envisaged changes have been announced separately or make part of other legislative proposals.
- This presentation lists the most relevant proposed changes. Please note that some proposals may still be changed.
- Some of the proposed changes may be reason to adjust the financing and/or group structure. Of course, STP Tax will be happy to discuss the impact of the proposed changes for your specific situation. Please contact your dedicated STP Tax advisor or send an email to info@stp.nl if you have any questions.

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1. CIT-RATES IN 2024 AND MAIN CIT-RULES

In recent years, important changes have taken place with regard to the Dutch CIT-rates and main Dutch CIT-rules (e.g. with regard to the participation exemption, liquidation loss facility, interest deduction rules, fiscal unity.)

As per 1 January 2024, no such major changes are expected. The Dutch CIT-rates will, similar to 2023, be 19% for profits up to € 200.000 and 25.8% for profits exceeding € 200.000.

Also the loss compensation rules will stay unchanged. A loss can be carried back one year, and can be carried forward without limitation in time. If the profit in a year exceeds € 1.000.000, only 50% of the excess can be offset against losses.

2. REAL ESTATE SHARE TRANSACTIONS

Background
If real estate is acquired via a share transaction, as a basic rule, real estate transfer tax is due. However, under the current legislation the possibility exists that, under certain conditions, neither VAT nor real estate transfer tax is due based on the so-called concurrence exemption. In the view of the government this is undesirable.

Proposed legislation
Based on the proposed legislation, 4% real estate transfer tax may become due upon the acquisition of shares in a real estate company if the real estate is used for less than 90% for VAT-taxable activities. This proposed change will take effect on January 1, 2025.

Practical consequences
Subject to conditions, transitional law is proposed for real estate share transactions agreed in writing before Sept. 19, 2023, 3:15 pm. Application of this transitional law must be requested before April 1, 2024.

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3. MINIMUM TAXATION OF 15%

Background

There has been much attention in recent years for the profit tax burden on multinationals. The OECD and the EU have taken several initiatives to ensure that multinationals pay their "fair share" of tax. One of these initiatives concerns a minimum tax burden of 15%.

Proposed legislation

On January 1, 2024, the Minimum Tax Act 2024 will take effect. Under this law, multinationals and domestic companies with a revenue of €750 million or more must pay at least 15% tax in each country. If the tax paid is lower than 15%, a Dutch group company may be subject to additional taxation. Based on a European directive, other EU countries will also incorporate the 15% minimum tax into their legislation.

Consequences in practice

As the Dutch CIT rate is 25.8%, most Dutch companies will meet the 15% minimum tax burden. However, this may be different due to the (combined) effect of facilities, such as the liquidation loss facility, the innovation box and the tonnage regime. In that case, an additional taxation may take place under the Minimum Tax Act 2024.

There may also be major consequences for Dutch companies that make part of an international group, if less than 15% profit tax is levied in one or more countries. If no additional tax is levied in another country, this can take place at the Dutch group company.

4. CONDITIONAL DIVIDEND WITHHOLDING TAX

Background
The Dutch dividend withholding tax contains an exemption for dividend payments to treaty countries. This exemption can also be applied if the relevant treaty country is on the blacklist of low-tax or non-cooperative countries (such as Barbados, Bahrain, Panama and the United Arab Emirates). In the view of the government this is undesirable.

Proposed legislation.
As of January 1, 2024, 25.8% conditional withholding tax must be withheld on dividend payments to companies in a blacklisted country. The "regular" Dutch dividend withholding tax can be offset against this conditional withholding tax. However, the conditional withholding tax cannot be credited against any Dutch corporate income tax due under the foreign tax liability rules.

Consequences in practice
The presence of an entity in the group structure located in a "blacklisted jurisdiction" can have significant adverse consequences. Amongst others, an additional tax may be levied under the Dutch CFC-rules and a withholding tax of 25.8% on interest and royalty payments may apply. With the introduction of the conditional withholding tax on dividends, even more adverse consequences can arise. It is very important to check the presence of "blacklisted jurisdictions" in the group structure and consider the consequences.

5. CHANGES IN QUALIFICATION RULES

Background
Under current legislation, the Netherlands qualifies entities in a way that is internationally unusual. This can lead to qualification differences (transparent versus non-transparent) between the Netherlands and other countries, resulting in profits being taxed twice or not taxed at all.

Proposed legislation
The government proposes to introduce the following qualification rules as of January 1, 2025:

- Under the legal form comparison method, foreign entities that are similar to a Dutch legal form will be qualified in accordance with the Dutch equivalent;
- Under the so-called fixed method, a foreign entity established in the Netherlands that is not comparable to a Dutch legal form will be qualified as non-transparent;
- Under the so-called symmetric method, the Netherlands follows the foreign qualification of a foreign entity that is not established in the Netherlands and is not comparable to a Dutch legal form;
- A limited partnership and similar foreign entities will be qualified as transparent.

Consequences in practice
It is important to timely review existing structures because other tax consequences may arise after January 1, 2025. In addition, the change in qualification can lead to an exit taxation.

6. AMENDMENT IN GENERIC INTEREST DEDUCTION LIMITATION

Background
Based on the generic interest deduction limitation of art. 15b CIT, interest is deductible up to the highest of (1) 20% of the adjusted fiscal profit and (2) € 1 million. According to the government, particularly in the real estate sector, the €1 million threshold is used multiple times by splitting activities amongst different taxpayers.

Proposed legislation
In the spring of 2023, the government proposed to abolish the €1 million threshold for companies that lease real estate (to third parties) as of 2025. Further details on these proposed changes are not yet available.

Consequences in practice
The abolishment of the threshold may result in an increased tax burden for groups that rent out real estate. The proposed change may be reason to adjust the financing and/or group structure.

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7. AMENDMENT OF DEMERGER FACILITY REAL ESTATE TRANSFER TAX

Background

Based on the current legislation, it is – under conditions - possible for a real estate company to demerge real estate without real estate transfer tax being due. Under circumstances, a subsequent sale of the acquiring company can also take place without real estate transfer tax being due. The result can thus be that the real estate has been acquired by a third party without real estate transfer tax being due. In the view of the government this outcome is undesirable.

Proposed legislation

In the spring of 2023, the government proposed to introduce new conditions when applying the demerger facility: amongst others the shares in the acquiring company should not be sold within three years after the demerger. More details on the exact content and entry into force of the proposal are not yet known.

Consequences in practice

The demerger exemption is frequently applied in practice. In case of a proposed reorganization of real estate, it is important to timely assess the consequences of the possible change and, where necessary, look for an alternative.

8. ABOLISHMENT OF GIFT DEDUCTION FOR COMPANIES

Background
Under current legislation, donations to acknowledged charities may be deducted by companies up to 50% of the profits with a maximum of EUR 100,000. Donations that are not deductible under this regulation are considered a dividend distribution to the shareholder. As a result, dividend withholding tax and personal income tax may become due. The shareholder can include the donation in the personal income tax return.

Proposed legislation
The government wants to facilitate making donations directly from the company. For this reason, it is proposed that donations to acknowledged charities will no longer qualify as a distribution to the shareholder. On the other hand, the current possibility to deduct donations by a company will be abolished.

Consequences in practice
The proposed legislation enables making larger donations by a company without personal income tax and dividend withholding tax becoming due. This may lead to a change in the donation policy.

9. CHANGES IN BUSINESS SUCCESSION FACILITIES

Background
The business succession facilities in the Dutch personal income tax and the inheritance/gift tax offer, under certain conditions, the possibility to transfer a business without taxation. In the view of the government the conditions for these facilities are too broad on the one hand and too limited on the other hand.

Proposed legislation
As of 2024, real estate rented to third parties will be considered as an investment asset by fiction of law. Consequently, such assets will no longer qualify for all business succession facilities.
Some other measures are proposed to enter into force in 2025, amongst which:

- The amount of the exemption will be adjusted: as of 2025, 100% of the value up to EUR 1.5 million will be exempted, on the excess a 70% exemption will apply;
- The abolition of the efficiency margin. This rule now means that limited investment assets (up to 5% of the business assets) are considered to be business assets;
- The abolition of the so-called employment requirement for the transfer facility in the substantial shareholder rules;
- The introduction of a minimum age of 21 years for the business succession facilities in case of a donation.

Consequences in practice
Important changes are expected with respect to the business succession facilities. If a business succession is expected, it is very important to carefully consider the tax consequences in time.

QUESTIONS?

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