The Netherlands – September 2020

Dutch Budget Day 2020: The most important changes for the real estate industry

In brief

On Dutch Budget Day (15 September 2020), the Dutch Ministry for Finance published a number of important proposals to amend Dutch tax legislation, as well as announcing proposals that will be published in the (near) future and investigations currently underway. The most important changes and announcements for the real estate industry are highlighted below, divided into legislative amendments, proposals and investigations.

1. Legislative amendments

Statutory corporate income tax (CIT) rates

The previously announced reduction of the (highest bracket) CIT rate from 25% to 21.7% will not be implemented. The step-up rate for profits of up to €200,000 will be reduced from 16.5% to 15%. The threshold amount for the step-up rate will be increased from €200,000 to €395,000 in two steps – as of 2021 to €245,000 and as of 2022 to €395,000.

Year	Part of profit (in €)	Rate (in %)
2020	≤ 200,000	16.5
	> 200,000	25.0
2021	≤ 245,000	15.0
	> 245,000	25.0
2022	≤ 395,000	15.0
	> 395,000	25.0

PwC observation

The reversal of the proposed reduction of the CIT rates also has an impact on the valuation of deferred tax assets and liabilities in the 2020 commercial accounts (assuming the legislative proposal is substantively enacted before year end). Furthermore, the change in valuation of the deferred tax position will also have an impact on the regulatory capital.

Real estate transfer tax regime

The general real estate transfer tax rate for immovable property will be increased to 8% (currently 2% for residential property and 6% for non-residential property). This rate applies both to the acquisition of (an economic interest in) immovable property and the acquisition of shares in real estate entities.

For private individuals that acquire immovable property for the purpose of their primary residence, the rate remains 2%. An exemption may apply to private individuals aged between 18 and 35.

As from 2021, a filing obligation will be introduced for acquisitions where an exemption from real estate transfer tax is claimed.

A real estate transfer tax base reduction currently applies for subsequent taxable acquisitions of immovable property within a six months period. Under the current rules, the purchaser may reduce the tax base of the subsequent acquisition by the amount of tax base used for the acquisition of that immovable property within the previous six months. This system is to be amended for acquisitions of residential real estate under the 2% rate followed by an acquisition under the 8% rate. In that case, a tax credit of the actual tax paid applies rather than the application of the base reduction.

PwC observation
It needs to be assessed how the new rates will influence valuations. Also, in terms of purchase price negotiations the real estate transfer tax credit rules become more relevant.

Landlord levy tax rate

Currently, landlords renting out more than 50 residential properties in the "regulated" sector (*sociale huur*) are subject to the “landlord levy”. This levy amounts to a percentage of the value of the residential properties, the value of which is determined anually by the municipality where the residential property is situated (WOZ value). The landlord levy is reduced by 0.036% to 0.526%.

Interest deduction limitation rules

Currently, the deduction of interest (including expenses and foreign exchange results) on loans from affiliated entities in relation to certain base-eroding transactions may be limited under a specific interest deduction limitation rule (Article 10a Corporate Income Tax Act, or CITA). These transactions include capital contributions, distribution of dividends, acquisitions of shares that subsequently become participations.

Under current legislation, the amount of interest receivable or foreign exchange gains on qualifying debts exceeding the amount of interest payable, costs or foreign exchange losses is effectively exempt from CIT.

Under the proposed changes, Article 10a CITA will no longer result in an exemption of net amounts of interest receivable and foreign exchange profits. The new rule is applied to each qualifying loan separately.

PwC observation
The impact of this rule is limited to very specific cases.

Clarification of hybrid mismatch rules

The legislative proposal sets out specific rules in relation to overlaps between the Dutch implementation of ATAD II (Section 2.2a CITA) and the general earnings stripping rule (Section 2.9a CITA). Under the proposed rules, the anti-hybrid rules should apply prior to the earnings stripping rule. Interest that is limited under the anti-hybrid rules is not taken into account for the earnings stripping rule.

Any non-deductible interest under ATAD II that is deducted in a subsequent year against “dual inclusion income” is added to the amount of interest to be recognised for the purpose of the earnings stripping rule.

Liquidation loss

Under Dutch tax law, the participation exemption provision and object exemption provision for foreign source profits may provide for an exemption from Dutch CIT on income from (foreign) participations and foreign permanent establishments. Generally, losses arising from participations and foreign permanent establishments are not deductible. However if ceasing activities gives rise to a loss, such a loss may be tax-deductible under the so-called liquidation loss provisions (“*liquidatieverliesregeling*” for participations or “*stakingsverliesregeling*” for foreign permanent establishments).

Under the legislative proposal, the deductibility of such losses – to the extent it exceeds €5 million – is restricted and will only be deductible if the following additional requirements are fulfilled:

i. the taxpayer has decisive control over the participation (typically more than 50% of the voting power);
ii. the participation or permanent establishment is based in the EU or EEA or certain treaty jurisdictions; and
iii. the liquidation is completed within three years of ceasing the activities or the decision thereto.

Termination losses of foreign permanent establishment will only be deductible in EU/EEA situations.

The new rules are proposed to enter into force on 1 January 2021 with a three-year transitional period concerning deferred liquidation losses incurred before 1 January 2021.

PwC observation
Liquidation losses up to the amount of €5 million remain deductible, also for non-EU/EEA participations. However, the suggested changes may have a significant impact in specific cases.

2. Announcements

Adjustment for offsetting withholding taxes (WHT) with CIT

As of 1 January 2022, the Dutch government aims to limit the offsetting of dividend WHT and gambling tax against the CIT due. Under current rules, dividend WHT and gambling tax exceeding the amount of CIT due is refunded to Dutch taxpayers. Under the proposed rules there will no longer be such refund. However, excess amounts of dividend WHT and gambling tax will be carried forward for offsetting in subsequent years without time limit.

PwC observation
We expect the impact of the rule for Dutch taxpayers to be limited given that the rule allows for an indefinite carry forward of the WHT and therefore should only lead to timing differences.

Loss carry forward to be restricted in amount

The Dutch coalition announced its intention to publish additional legislative proposals in the course of 2021 for, among others, the rules for carry forward and carry back of (tax) losses. These rules may be changed from 2022. It is suggested that the utilisation of the carry forward losses will no longer be limited in time (currently six years), but will be limited in any given year to:

- €1 million; and
- 50% of the taxable profits over €1 million.

Change of “arm’s length” principle

It is expected that a legislative proposal will be published in Spring 2021 aimed at creating a coherent treatment in respect of tax adjustments based on the “arm’s length” principle. It is intended to disallow such adjustments as a deduction to the extent that the other jurisdiction does not include the corresponding correction in the taxable base.

3. Investigations pending

The Dutch coalition announced it would explore the following legislative changes:

- Introduction of capital deductions: The Dutch coalition is investigating further limiting interest deductibility under the earnings stripping rule (currently 30% of the tax-EBITDA or €1 million de minimis) in combination with the introduction of a capital deduction allowance on equity. This measure aims to stimulate equity financing of businesses.
- New CIT group regime (to replace the current fiscal unity rules): As a result of ECJ case law, the Dutch government is investigating the possibility of a new CIT group regime that is fully compliant with the latest ECJ case law.

Introduction of conditional WHT on dividends

The Dutch coalition announced that it is considering introducing a new WHT on dividend payments to certain countries from 2024. This measure will be introduced in the context of addressing tax avoidance and will apply to dividend payments to designated countries with a profit tax rate of less than 9% and countries that are on the EU list of non-cooperative jurisdictions.

PwC observation
The introduction of the conditional WHT will have an impact where the recipient is resident in a designated low-tax or black-listed jurisdiction. In addition, due to the specific rules, the WHT may also have an impact in case of abuse or the use of so-called “hybrid entities”.

4. Proposals and announcements outside of Budget Day

Dividend exit tax for companies

A tax bill was proposed to counter the loss of a Dutch dividend WHT claim, which may occur when companies/head offices are relocated from the Netherlands to certain other jurisdictions. This bill aims to discourage companies that are considering relocating their headquarters to jurisdictions that provide for a step up on arrival, such that the latent WHT claim does not remain present.

The legislative proposal introduces a conditional levy of Dutch dividend WHT on the entire (profit) reserves of the company that is relocating its residence. The measure will also apply to cross-border (de)mergers and share mergers. Generally, the payment date can be deferred until the moment of the actual dividend distribution.

In order to prevent avoidance between the announcement of the proposed bill and its entry into force, it was provided that the proposed bill will have retroactive effect from 18 September 2020, 12pm.

Note that the bill will become law provided that both the House of Parliament and the Senate agree to it. During the parliamentary process, adjustments to the bill may be made. Developments therefore should be closely monitored.

PwC observation
This proposed bill has a significant impact on Dutch taxpayers and their shareholders which migrate to jurisdictions with a different dividend WHT regime. However, companies which can benefit from the WHT exemption based on their current shareholders should not be affected by this measure.

Financial service companies regime

Currently, substance requirements apply for Dutch entities whose activities mainly consist of receiving and paying of interest, royalties, rent or lease, from and to affiliated foreign entities, so-called “Financial Services Companies”. Where the Dutch entity does not meet all the substance requirements, the Dutch tax authorities may spontaneously exchange relevant information with any foreign state(s) from which the entity has received double tax relief. On Budget Day 2019, it was confirmed that the substance requirements for Dutch “Financial Services Companies” will be expanded to also include the requirement of payroll substance and office space (in line with existing substance requirements in Dutch tax legislation). It is expected that the additional substance requirements will apply from 1 January 2021.

PwC observation
Dutch entities which qualify as “Financial Services Companies” should carefully consider their substance in the Netherlands, as failure to meet the substance requirements may lead to an exchange of information.

Application of the participation exemption

The Dutch State Secretary for Finance is further examining the CJEU’s judgments in the Danish beneficial owner cases in the context of the application of the Dutch participation exemption by substance deprived intermediate holding companies. In particular, the feasibility of applying the Dutch substance requirements when applying the Dutch participation exemption is to be investigated.

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