Real Estate Tax Services News

Keeping you informed

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Budget day: The Netherlands

In brief

On Dutch Budget Day (21 September 2021), the Dutch Ministry of Finance published some proposals to amend Dutch tax legislation. Furthermore, last years announced changes to the loss compensation rules will be enacted with effect as of 1 January 2022. The most important changes for the real estate industry are highlighted below.

In detail

Conditional withholding tax on interest to be expanded to (passive) Dutch real estate held by non-resident entities

A proposal has been announced to include non-resident entities with Dutch real estate in the scope of the 25% conditional withholding tax on interest (and royalty payments) as of 1 January 2022 with respect to interest and fees on loans attributable to Dutch real estate. This means that also if a non-resident entity (such as a Luxembourg S.à r.l.) holding (passively) leased out Dutch real estate may fall within the scope of the withholding tax. Interest payments to the affiliated entities in designated low-tax jurisdictions or in cases of abuse fall under the conditional withholding tax.

PwC observation

Non-resident entities with Dutch real estate should carefully review their structure to determine whether amendments to the structure may be required before year end 2021.

Losses carried forward to be limited in amount

The rules for carry forward and carry back of (tax) losses are amended for financial years starting on or after 1 January 2022. Under the new rules, the use of loss carryforwards 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.

PwC observation

We expect this budgetary measure to have impact for cash flows of taxpayers. We note that also in share deals the new rules may be relevant. In case of changes of control, losses are generally forfeited, but these losses may be used for revaluation of the property (up to the maximum of the fair market value of the property or the losses otherwise forfeited). The revaluation option remains available, but upon such revaluation the new restriction in the amount of loss carry forward may result in corporate income tax over the period prior to the share deal.

Introduction of CIT liability for reverse hybrid entities

As of 1 January 2022, a CIT liability is proposed to be introduced for reverse hybrid entities. The introduction of this measure stems from the EU Anti-Tax Avoidance Directive (ATAD II). This Directive prescribes that Member States must introduce a tax liability for certain tax-transparent partnerships. The measure aims to further prevent hybrid mismatches that are the result of a difference in the qualification of partnerships that are transparent from a Dutch, but non-transparent from a foreign tax perspective (such as limited partnerships in the so-called "CV-BV schemes").

The proposed measure applies to corporate income tax, dividend withholding tax, conditional withholding tax on interest and royalty payments, income tax (foreign tax liability) and the Dutch General Law on Taxation (AWR). The date of entry into force of the proposed measure is 1 January 2022. There is no grandfathering rule.

PwC observation

Dutch transparent fund vehicles and partnerships need to carefully consider their position before 1 January 2022 and if necessary, take measures to avoid taxation based on the new rules.

Preventing mismatches when applying the arm's length principle

On 21 September 2021, the Dutch Government published the previously announced bill preventing mismatches when applying the arm's length principle. This principle must ensure that taxable profits are at arm's length. The purpose of the bill is to eliminate mismatches in taxation that arise due to the application of the at arm's length principle, for instance in the case of informal capital structures or deemed profit distributions. Since not all countries apply the arm's length principle (in the same way), this can lead to a part of the profits of a multinational company remaining untaxed.

PwC observation

The proposed legislation may result in a higher taxable profit in the Netherlands in situations where currently, on the basis of the arm's length principle, certain costs are taken into account in the Netherlands, which are not matched by corresponding income within the group. As a result of the proposed measures, the expense will not (or not fully) be taken into account if a corresponding amount is not taxed (or is taxed at a lower amount) as income at the level of the affiliated company.

Adjustment for offsetting withholding taxes (WHT) with corporate income tax

As of 1 January 2022, the offsetting of dividend withholding tax and gambling tax against the corporate income tax due is limited. Under current rules, dividend withholding tax and gambling tax exceeding the amount of corporate income tax due is refunded to Dutch taxpayers. Under the proposed rules there will no longer be such refund. However, excess amounts of dividend withholding tax and gambling tax may be carried forward for offsetting in subsequent years without any time limit. Detailed rules are proposed for specific circumstances, such as when an entity with such excess refund enters or leaves a fiscal unity.

PwC observation

We expect the impact of the rule for Dutch taxpayers will be limited as the rule allows for an indefinite carry forward of the dividend withholding tax and should therefore only lead to timing differences, except in specific circumstances.

The Budget Day proposals are currently being discussed in parliament and may, as a result, be amended or expanded. In this respect, it was proposed during the general political debate on Dutch Budget Day to increase the general corporate income tax rate (for profits over €395,000) from 25% to 25.8% in order to finance the increase in healthcare salaries. Furthermore, a tightening of the earnings stripping rules was announced. The earnings stripping rules currently limit the deduction of a taxpayer's net financing costs to 30% of its tax EBITDA or €1 million. The details of the adjustment of the earnings stripping rules must now be shaped, which may either be a reduction of the €1 million threshold or reduction of the 30% EBITDA. For more and up-to-date information, we refer to www.pwc.nl/en/insights-and-publications/tax-news/pwc-special-budget-day.html

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