Budget Day 2018

Dirkzwager
legal & tax

On Tuesday 18 September 2018, Budget Day 2018, the Dutch Minister of Finance has published the Tax Plan 2019. Below the most important measures from an international perspective will be outlined. For the larger part, the Tax Plan 2019 contains measures which were already announced in the coalition agreement. In addition thereto, the proposals include the implementation of the Anti-tax avoidance directive part 1 (ATAD1) and measures not previously disclosed. Please note that the Tax Plan 2019 is subject to discussion in and approval by the Dutch Parliament.

We have divided the measures of the Tax Plan 2019 in the following topics:

1. Corporate income tax

2. Withholding taxes

3. Income Tax & Wage Tax aspects for expats

If you have any questions regarding one or more measures discussed below, or if you would like to receive more detailed information regarding the measures included in the Tax Plan 2019, please contact your regular contact person at Dirkzwager. If you do not have a regular point of contact, you can find the contact details of our senior tax specialists on the last few pages of this document.

1. Corporate Income Tax

Corporate income tax rate

The corporate income tax rate will be reduced in steps to 16% (for taxable profit up to EUR 200,000) and 22,25% (for taxable profit above EUR 200,000) in 2021. The rates in 2019 will be 19% and 24.3% and the rates in 2020 will be 17.5% and 23.9%.

In view of the proposed rate reductions, it may be beneficial for tax payers to postpone taxable profit or to claim a cost deduction in an earlier year, via for example the optimization of provisions.

Fiscal investment institution

As of 2020, fiscal investment institutions (FBI) will no longer be allowed to invest directly in real estate that is located in the Netherlands. Due to the proposed abolition of the dividend tax, the remittance reduction for FBI in the dividend tax will also be abolished from 2020 onwards.

Reduction tax loss carry-forward period

The tax loss carry-forward period for corporate income tax purposes will be reduced from nine to six years. This six-year-period shall be applicable for tax losses incurred in taxable years commencing on or after 1 January 2019. For tax losses incurred in earlier years, the nine-year-period will remain applicable.

With regard to the order of tax years for loss compensation, losses that will lapse first, should be compensated first. Hence losses incurred in 2019 shall be compensated prior to losses incurred in 2017 and 2018, and losses incurred in 2020 shall be compensated prior to losses incurred in 2018.

Limitation on depreciation in buildings for corporate income tax purposes

For corporate income tax purposes, a building held for own use may only be depreciated until 100 percent of the WOZ-value of the building has been reached (instead of 50 percent) as of 1 January 2019. Depreciation on buildings for Corporate Income Tax purposes will thus be substantially limited.

Additional Tier 1 capital Banks and Insurance companies

The tax deductibility of coupon payments on additional tier 1 capital instruments will be cancelled for banks and insurance companies as of 1 January 2019.

However, it is in our view uncertain if it is no longer possible to deduct the coupon payments from the taxable result. The exact terms and conditions of the additional tier 1 capital instrument should be analyzed in detail. If the additional tier 1 capital instrument based on these terms and conditions qualifies as debt, the coupon payment could (still) be deductible.

Earnings stripping rule (EBITDA rule)

A new interest deduction limitation will be introduced by way of an earnings stripping rule as of 1 January 2019, limiting the deduction of excess interest expenses (sum of interest expenses and interest income) to a maximum of 30 per cent of the earnings before interest, taxes, depreciation and amortization (EBITDA). The new earnings stripping rule will have a threshold of EUR 1,000,000. The review must take place at the level of the taxpayer (this may be the fiscal unity), whereby the capital structure of the group is irrelevant.

If, in a year there is a surplus of excess interest expense which is not tax deductible, this surplus can in principle be carry-forward indefinitely to following years. A limitation may apply in case of a change in control.

Interest deduction limitations for Acquisition holding companies and Excessive participation debt

In connection with the introduction of the earnings stripping rules, the interest deduction limitations for Acquisition holding companies and Excessive participation debt will be abolished as of 1 January 2019.

1. Corporate Income Tax (2)

Holding and Group financing losses regulations

In connection with the introduction of the earnings stripping rules, the regulations regarding Holding and Group-financing losses will be abolished as of 1 January 2019.

CFC rules

If a Dutch parent company has an interest of at least 50 per cent in a subsidiary that is located in a low-tax jurisdiction (a controlled foreign company: CFC), new CFC rules will in principle become applicable as of 1 January 2019. Certain income components of the CFC – like dividend, interest, financial lease and royalties - will then be included in the tax base of the Dutch parent company, if not distributed before year-end.

An exception has been proposed for CFCs whose income usually consists mainly (at least 70%) of income categories other than those just mentioned.

An exception is also included for bodies with substantial economic activity. To assess whether there is a substantial economic activity, the substance requirements are taken into account. For this purpose, the wage cost criterion of EUR 100,000 and the requirement to have an office space available for at least 24 months must be met.

Exit taxation

If a transfer of tax residency, a transfer of assets or a transfer of a business abroad leads to an exit taxation for corporate income tax purposes, the tax liability shall as of 1 January 2019 be paid immediately or in five yearly terms.

2. Withholding taxes

Dividend withholding tax

The dividend withholding tax will be abolished as of 2020. Instead, a new conditional withholding tax will be introduced for dividend payments to low-tax jurisdictions and in specific cases of abuse. The withholding tax is applicable in situations where dividends are paid to shareholders which are resident in a country listed on the EU black list or with a Corporate Income Tax rate below 7 per cent and if the other requirements for this withholding tax are met (objective test and subjective test).

The withholding tax rate is equal to the highest Corporate Income Tax rate and is 23,9 per cent (as of 2021: 22,25 per cent)

Interest and royalties

From 2021 onwards, a new withholding tax is introduced for outgoing royalty and interest payments to low-tax jurisdictions and some specific cases of abuse. The withholding tax rate is equal to the highest Corporate Income Tax rate (22,25 per cent in 2021).

3. Income Tax & Wage Tax aspects of expats

Income Tax/Wage Tax rates

The income tax brackets will be gradually reduced to two. For 2019, a rate of 36.65% (including social security premiums) applies for the first bracket and a rate of 38.10% in the second and third tax bracket. The current top rate of 51.95% will drop to 51.75% in 2019 and to 50.50% in 2020. In 2021 only two tax brackets remain: a basic rate of 37.03% and a top rate of 49.5% for income above 68.507 euros. The initial amount of the highest rate band of 68,507 euros will not be indexed up to and including 2021.

30%-ruling

The term for which a 30%-ruling will apply will be shortened with three years from eight years to a maximum period of five years. The reduced duration will apply to both new and existing cases (without transitional law).

Transitional law has only been included for school fees. International school fees for the school year 2018/2019 can also be reimbursed tax-free after the reduction of the duration. The condition is that this takes place before the end of the original term of the 30% ruling.

Tax credit for foreign taxpayers

Non-resident taxpayers who are residents of another Member State of the European Union, Liechtenstein, Norway, Iceland, Switzerland and the BES islands may in principle also claim tax credits from 2019 on the tax part of the employed person's tax credit and the income-dependent combination tax credit.

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