

A close-up photograph of several black chess pieces on a light-colored chessboard. The pieces are in sharp focus, while the background is blurred, showing other pieces and the green and white squares of the board. The lighting is warm, creating soft shadows.

Budget Day 2020

Budget Day 2020 / Tax Plan 2021

On Tuesday 15 September 2020, Budget Day 2020, the Dutch Minister of Finance has published the Tax Plan 2021. Below the most important measures from an international perspective will be outlined. Please note that the Tax Plan 2021 is subject to discussion in and approval by the Dutch Parliament.

We have divided the measures of the Tax Plan 2021 in the following topics:

- 1. Corporate income tax**
- 2. Withholding taxes**
- 3. Income Tax & Wage Tax aspects for expats**
- 4. RETT / Landlord Levy**

No amendments have been announced for VAT.

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 2021, please contact your regular contact person at Dirkzwager. If you do not have a regular point of contact, please be referred to the contact details of our senior tax specialists on the last few pages of this document.

1. Corporate Income Tax (1)

Adjustment reduction corporate income tax rate

The standard corporate income tax rate regarding profits in excess of € 200,000 will remain 25%. The reduction of the standard corporate income tax rate is cancelled. The reduction of the lower corporate income tax rate regarding profits below € 200,000 will remain as planned, a reduction to 15% in 2021. Furthermore, The lower tax bracket will be increased to € 245,000 in 2021 and to € 395,000 in 2022.

COVID-19 tax provision 2019

Following up a previous policy decision, Dutch corporate income tax payers will be allowed to offset (expected) 2020 Dutch tax losses incurred in connection with the COVID-19 crisis against their 2019 taxable profits in the 2019 (revised) tax return. The 2020 COVID-19 related tax losses can be added to a COVID-19 tax provision. The amount of the provision is limited to the tax payer's (expected) full-year tax loss for 2020 and can also not be higher than the 2019 taxable profit excluding the allocation to the COVID-19 provision.

As a result, tax payers will be able to receive a tax refund at an earlier time than would have been the case if the standard loss carry back procedure would be used. The COVID-19 provision needs to be released in 2020 and increases the 2020 taxable profit of the tax payer.

Adjustment interest deduction limitation

The interest deduction limitation regarding so-called tainted transactions will be tightened. The current interest deduction limitation may lead to an exemption due to positive currency exchange results and/or negative interest being in excess of negative exchange results and positive interest.

Starting from 2021, this will no longer be the case. For each individual loan, the restriction applies that the outcome cannot lead to an amount to be exempted.

Adjustment loss compensation

Starting from 1 January 2022, losses can be carried forward for an unlimited amount of years. At this moment, losses can be carried forward for six years. However, starting from 2022, a restriction will apply if taxable profits exceed an amount of € 1 million. In respect of the excess amount, only 50% of available tax losses may be offset against such profits.

Adjustment arm's length principle

In the spring of 2021, the Dutch government will present new legislation to adjust the arm's length principle. Based on long standing case law, if related entities charge prices not at arm's length, this may lead to an upward or downward adjustment. The proposal will entail that if such adjustment leads to a reduction of Dutch profit, this will no longer be allowed if no corresponding adjustment will be made at the level of the relevant affiliated (foreign) group company.

1. Corporate Income Tax (2)

Possible tightening earnings stripping rules and introduction capital deduction

The Dutch government will investigate the option to further tighten the Dutch earnings stripping rules, currently restricting interest deduction to the higher of 30% EBITDA or € 1 million and at the same time introducing a capital deduction (notional deduction based on a percentage of equity). This should lead to a more equal treatment of equity and debt.

IP-box regime

The tax rate for innovation box benefits will increase to 9% (was 7% in 2020). This rate is still substantially lower than the standard corporate income tax rate (25%). Furthermore, companies conducting certain research and development activities are entitled to a reduction in wage withholding taxes on salaries paid to their employees.

Liquidation loss provision

As of 1 January 2021, the deductibility of liquidation losses will be limited.

The liquidation of a company must be completed within the three calendar years following the calendar year in which the company has entirely or almost entirely ceased its activities (extension period is possible if the tax payer is able to demonstrate that such delay was not tax-motivated). Furthermore, liquidation losses in excess of an amount of € 5 million are not deductible unless:

- a) the taxable person holds a qualifying interest in the company that is being dissolved;

- b) that company (the one being dissolved) is a tax resident of: (1) the Netherlands; (2) another EU Member State; (3) an EEA State or (4) a State as designated by ministerial regulation and that State has concluded a European Union Association Agreement; and
- c) requirement (a) and (b) are met for a period of at least 5 years before that company is wound-up.

Certain exemptions apply for the 5-years period requirement. A qualifying interest is defined as an interest in a company that allows the interest holder to influence decisions that determine that company's activities. Generally, a 50% shareholding will satisfy that requirement.

No transitory rules have been included for pending liquidations where the subsidiary does not meet the territorial or/and quantitative requirements.

Clarification ATAD II and earnings stripping rule

Currently, there is a potential overlap between ATAD II measures (regarding hybrid mismatches) and the earnings stripping rule. It is possible that reimbursements (additional profit) and payments including interest (excluded from deduction) are subject to double taxation at the level of a Dutch tax payer as a result of ATAD II measures. The Dutch government has now proposed complex rules to deal with situations where both measures coincide to avoid such double-inclusion.

1. Corporate Income Tax (3)

Tax interest and collection interest

The tax interest and the collection interest have been reduced to 0.01% in connection with the COVID-19 crisis. Starting from 1 October 2020, the tax interest will be increased to 4%, the collection interest will remain 0.01%. These percentages will remain applicable until 31 December 2021.

Refund of withholding tax for non-resident entities

Dividend withholding tax is generally credited against the corporate income tax of the dividend recipient. The withholding tax is however refunded if, and to the extent that, the corporate income tax is lower than the withholding tax. This regime may conflict with EU-law. As of 2022, the Netherlands will no longer fully refund dividend withholding tax to resident companies. The credit is maximized to the corporate income tax due before such credit and therefore can no longer result in a refund. Excess credits can be carried forward to future years.

Alternative group regime

In a Policy letter, the Dutch government has announced that the current fiscal unity is too vulnerable under EU-law and should be replaced by an alternative group regime. Due to the substantial impact on the entire tax system and the time needed for ICT implementation, it will take several years before such alternative can be implemented.

In the Policy letter, the Dutch government outlines the main features of the alternative group regime it is currently considering. Such alternative system will no longer be a full tax consolidation but will involve a system where profits and losses can be transferred or offset within groups. In respect of the conditions to apply for such regime (e.g. minimum percentage of shareholding, legal form) the government prefers to align such requirements with the current fiscal unity regime. At this moment, it is unclear if one group tax return must be filed or that every group company should file a separate tax return. Furthermore, it is also unclear if a reorganization facility will be implemented, allowing a transfer of assets within a group without incurring corporate income tax.

2. Withholding taxes

Withholding tax on interest and royalty payments

De Wet Bronbelasting 2021 enters into force on 1 January 2021. This law introduces a withholding tax on interest and royalty payments. These payments are subjected to a 25% withholding tax (the standard corporate income tax rate) if the beneficiary is a related entity situated in a low tax jurisdiction (statutory profit tax rate of <9%) and/or in a country on the EU-blacklist of non-cooperative jurisdictions.

Furthermore, the WHT on interest and royalty payments may also apply to certain abusive structures and certain situations involving hybrid entities or permanent establishments.

For example, the artificial interposition of a low taxed intermediate conduit company (which is not regarded as the beneficial owner of the interest or royalty payment) between the low taxed jurisdiction and the Dutch paying entity / permanent establishment could qualify as an abusive structure. In principle, no WHT is levied if such an intermediate conduit company meets the 'relevant substance' requirements or if such an intermediate conduit company can demonstrate valid economic reasons. In spite of this, the Dutch tax authorities still have the possibility to demonstrate that a structure should be considered abusive.

The WHT on interest and royalty payments will apply to payments by Dutch resident entities and permanent establishments in the Netherlands of non-resident entities. The WHT targets interest and royalty payments to related entities whereby 'control' determines if entities are related.

Transitional rules apply in situations where the low-tax jurisdiction or EU blacklist country is resident in a treaty country which treaty prevents or restricts the WHT from being levied. It is the intention of the Netherlands to approach such treaty partner to amend the tax treaty (i.e. WHT will become applicable).

3. Income Tax & Wage Tax aspects of expats

Adjustments discretionary margin in the employment costs scheme

Since 1 January 2020, the discretionary margin in the employment costs scheme amounts to 1.7% of the fiscal wage sum up to € 400,000, and 1.2% of the portion of the fiscal wage sum in excess of € 400,000.

Due to Covid-19, the discretionary margin for the year 2020 has been increased once, by calculating not 1.7% but 3% of the fiscal wage sum up to € 400,000. This temporary increase will be abolished on 1 January 2021.

As of 1 January 2021, the percentage of the second tranche of the discretionary margin will be reduced from 1.2% to 1.18%.

4. RETT / Landlord Levy

Exemption from real estate transfer tax for first-time buyers

The government aims to increase the possibilities of young first-time buyers on the housing market. It is proposed to introduce a one-time exemption for transfer tax for acquirers

1. Being a natural person;
2. Under the age of 35 years;
3. Obtaining a home;
4. Uses this house as a main residence other than temporarily; and
5. Have not previously used this exemption.

Reduced transfer tax rate

For other purchasers of (owner-occupied) homes the rate will remain 2%. The reduced rate of 2% for the acquisition of a home will only continue to apply to natural persons (not being first-time buyers) who will use the acquired home as their main residence other than temporarily.

General rate increases to 8%

The general real estate transfer tax rate is to be increased from 6% to 8%. This transfer tax rate will apply to the acquisition of non-residential properties as well as to homes which the buyer does not purchase for own occupation, for example buy-to-let properties and holiday homes. The 8% rate will also apply to acquisitions by non-natural persons (legal entities), such as a housing corporation.

The general rate of 8% will also apply to the acquisition of the beneficial ownership and the acquisition of shares in a real estate entity.

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