Executive summary

Following last year’s Policy Paper published by the Dutch Government,1 outlining its envisaged policies for the next four years, the Dutch Ministry of Finance, on 23 February 2018, released its fiscal policy agenda (the Agenda). The Agenda elaborates on the various tax changes that were already announced in the Policy Paper, and the timing thereof.

Two top priorities of the Agenda are to ensure that the Netherlands continues to offer a competitive tax investment climate for companies, while it also seeks to implement certain anti-tax avoidance measures in line with the Organisation for Economic Co-operation and Development (OECD) and European Union (EU) recommendations, which includes the Anti-Tax Avoidance Directive (ATAD) and the EU blacklist for non-cooperative countries.

This Alert summarizes the proposed changes to the Dutch Corporate Income Tax Act and Dividend Withholding Tax Act.
Detailed discussion

2019 – 2021 Corporate Income Tax (CIT) rate reduction

The Agenda confirms that the current standard Dutch CIT rate will be reduced from 25% to 24% in 2019, to 22.5% in 2020 and to 21% as from 2021. Profits up to an amount of €200,000 are currently taxed against a lower step-up rate of 20%. The Agenda also confirms that this step-up rate will be reduced from 20% to 19% in 2019, to 17.5% in 2020 and to 16% as from 2021.

2019 – Interest deduction limitation rules

As anticipated, the Agenda confirms that the earnings stripping rule of the ATAD will be implemented as from 1 January 2019. Pursuant to the Dutch implementation of this rule, the net borrowing costs will only be tax-deductible up to either: (i) 30% of a taxpayer’s earnings before interest, tax, depreciation and amortization (EBITDA); or (ii) a threshold of €1 million.

The earnings stripping rule will not include a group-ratio exception and will also apply to existing loans as of the introduction date (i.e., no grandfathering). Simultaneous with the introduction of this rule, the other existing interest deduction limitation rules in the Netherlands – with the exception of the anti-base erosion rule of article 10a of the Dutch Corporate Income Tax Act – will most likely be abolished.

2019 – Controlled foreign corporation (CFC) rules

The Agenda also shares some further details around the implementation of the CFC rule of the ATAD as from 1 January 2019.

A foreign entity (or permanent establishment) is considered a CFC if the Dutch taxpayer has an interest of more than 50% in that foreign entity (control test) and the tax due in the foreign jurisdiction is less than 50% of the corporate income tax that would have been due in the Netherlands if the foreign entity was a resident of the Netherlands (low taxed test).

The ATAD gives EU member states two options on how to subsequently determine the CFC’s income. The Netherlands effectively is opting for Option B, which it views as already imbedded into the current rules, while Option A will only become applicable to a limited number of specific cases.

2019 – Restrictions of carryforward loss compensation

Currently, tax losses are carried back for one year and carried forward for nine years. In the Policy Paper, the new Dutch Government announced plans to limit the carryforward of losses from nine years to six years. According to the Agenda, this limitation will be introduced as of 1 January 2019.

2019/2020 – Further focus on substance

The Agenda furthermore expresses the intention to further expand the Dutch substance requirements. It is the aim to expand the situations in which information is exchanged with a source country, if the Dutch taxpayer does not fulfil these substance requirements. This should be achieved by expanding the group of taxpayers of which information will be exchanged to include international holding companies. In addition to the existing Dutch minimal substance requirements, it is envisaged that a Dutch taxpayer should also have at least €100k in wage expenses and have an office at its disposal.

The Netherlands acknowledges and emphasizes the importance of providing taxpayers certainty in advance through a tax ruling (Advance Tax Ruling or Advance Pricing Agreement), both for the fiscal investment climate as well as the possibility to oversee a taxpayer’s tax position. At the same time it considers whether providing certainty in advance is still preferable in all situations. It therefore envisages that similar substance requirements (i.e., minimum wage expenses and an office) will have to be satisfied in order to obtain certainty in advance through a tax ruling.

The Agenda aims to introduce these amendments to the substance requirements on a short notice, but the exact timing is yet to be determined.
2020 – Elimination of Dutch dividend withholding tax

In the Policy Paper it was already announced that the current 15% Dutch withholding tax on dividend distributions will be abolished. Pursuant to the Agenda the Dutch dividend withholding tax will be abolished as of 1 January 2020. At the same time a conditional dividend withholding tax will be introduced that only applies to dividend distributions to related companies tax resident in a jurisdiction with a low tax rate, or a jurisdiction listed on the EU blacklist for non-cooperative countries. The term “jurisdiction with a low tax rate” is yet to be defined. The tax rate of the conditional dividend withholding tax is also not yet determined, however, this rate could be reduced under applicable tax treaties or other arrangements.

2020 – Anti-hybrid rules

Pursuant to the Agenda, the Dutch Government aims to implement the anti-hybrid rules of the ATAD as of 1 January 2020. Because of the technical complexity of the legislation and wide variety of hybrid mismatches, the Dutch Government considers an internet consultation necessary. This consultation will start as soon as possible and provides stakeholders the possibility to provide input. Moreover, according to the Agenda, the Netherlands aims to include an anti-hybrid rule in all its bilateral tax treaties.

2021 – Introduction of a conditional withholding tax on interest and royalty payments

Last year’s Policy Paper already discussed the introduction of a conditional withholding tax on intercompany interest and royalty payments from Dutch taxpayers to low-tax jurisdictions in abusive situations. This should be seen in the context of EU movements against tax avoidance as well as the OECD Base Erosion and Profit Shifting (BEPS) project and the intention of the Netherlands to be on the forefront of these discussions and legislative actions.

According to the Agenda, the Government intends that these withholding taxes will be introduced as of 1 January 2021. The proposed withholding tax on interest and royalty payments is conditional and only applies to intercompany payments to companies tax resident in a jurisdiction with a low tax rate, or a jurisdiction listed on the EU blacklist for non-cooperative countries. The term “jurisdiction with a low tax rate” is yet to be defined. The tax rate of the conditional interest and royalty withholding tax is also not yet determined, however, the rate could be reduced under applicable tax treaties or other arrangements.

Next steps

The Agenda cannot be considered as a formal legislative proposal, but should be considered a blueprint for future formal legislative proposals, which are expected in due course.

Implications

The introduction of lower Dutch CIT rates and the abolishment of the Dutch dividend withholding tax could be seen as an important step in further strengthening the Dutch fiscal investment climate for companies. At the same time, the Netherlands continues to support the initiatives around combatting international tax avoidance, while focusing on transactions that lack economic substance. It is recommended that taxpayers review their existing structures, in particular in light of the announced changes that will be introduced on a short notice.

Endnotes

1. See EY Global Tax Alert, New Dutch Government presents its coalition agreement, including proposed tax changes, dated 11 October 2017.
For additional information with respect to this Alert, please contact the following:

**Ernst & Young Belastingadviseurs LLP, International Tax Services, Amsterdam**
- Danny Oosterhoff danny.oosterhoff@nl.ey.com
- Dirk Stalenhoef dirk.stalenhoef@nl.ey.com

**Ernst & Young Belastingadviseurs LLP, International Tax Services, Rotterdam**
- Michiel Swets michiel.swets@nl.ey.com
- Ronald van den Brekel ronald.van.den.brekel@nl.ey.com

**Ernst & Young LLP, Netherlands Tax Desk, New York**
- Simone Admiraal simone.admiraal1@ey.com
- Annelien Dessauvagie annelien.dessauvagie@ey.com
- Robert Kool robert.kool@ey.com
- Gabriël van Gelder gabriel.vangelder@ey.com
- Philip Mac-Lean philip.maclean@ey.com
- Tim Clappers tim.clappers@ey.com

**Ernst & Young LLP, Netherlands Tax Desk, Chicago**
- Sebastiaan Boers sebastiaan.boers1@ey.com
- Martijn Bons martijn.bons2@ey.com
- Henrik Stipdonk henrik.stipdonk2@ey.com

**Ernst & Young LLP, Netherlands Tax Desk, San Jose/San Francisco**
- Dirk-Jan Sloof dirkjan.sloof@ey.com
- Rik Jansen rik.jansen@ey.com

**Ernst & Young LLP, Netherlands Tax Desk, Beijing**
- Yee Man Tang yeeman.tang@cn.ey.com

**Ernst & Young LLP, Netherlands Tax Desk, Hong Kong**
- Jeroen van Mourik jeroen.van.mourik@hk.ey.com

**Ernst & Young LLP, Netherlands Tax Desk, London**
- Carl von Meijenfeldt carl.von.meijenfeldt1@ey.com
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2018 EYGM Limited.
All Rights Reserved.

EYG no. 01091-181Gbl
1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com