Content
1. Introduction .......................................................................................................................... 2
2. Entrepreneurs and employers .......................................................................................... 3
   2.1 Amendment of the dividend withholding tax in international structures ................. 3
   2.2 Restriction dividend withholding tax exemption fiscal investment institutions .......... 3
   2.3 Information obligation dividend withholding tax exemption with default penalty sanction 3
   2.4 Tightening of interest deduction limitation in the corporate income tax .................. 3
   2.5 Restriction write-off losses by fiscal unity ................................................................. 4
   2.6 Amendment liquidation loss regime ........................................................................... 4
   2.7 Amendment liquidation loss regulation (intermediary holding company regulation) ...... 4
   2.8 Tightening application object exemption by fiscal unity ........................................... 4
   2.9 Country-by-country reporting in case of untimely implementation other countries ...... 4
   2.10 Abolishment deemed employment for non-executive directors ................................ 5
   2.11 Benefits from conditional options included in excessive severance payments ........ 5
   2.12 Elimination VAT agricultural regulation ................................................................. 5
   2.13 Tightening the definition of medication for the application of the lower VAT rate ...... 5
   2.14 Zero VAT rate for activities regarding sea vessels and aircrafts modified ................. 5
   2.15 Pledge and mortgage holders and executors liable for VAT debts ............................ 5
   2.16 Equalization of rates for waste tax ......................................................................... 6
   2.17 Temporary increase in energy tax ............................................................................. 6
   2.18 Expansion of the district heating scheme within the energy tax ............................... 6
3. Innovations and investments ............................................................................................. 7
   3.1 Percentage energy investment allowance (EIA) 0.5%-point decreased .................... 7
   3.2 Lower budget for WBSO ............................................................................................ 7
   3.3 Change in reporting realization WBSO ...................................................................... 7
4. Private individuals .............................................................................................................. 8
   4.1 Income policy ............................................................................................................. 8
   4.2 Continuance of increased gift deduction .................................................................... 8
   4.3 Abolishment minimum payment term for capital insurances .................................... 8
   4.4 Prenuptial agreements and gift or inheritance tax being due ....................................... 8
   4.5 Foster children not considered as partner upon request ............................................. 8
   4.6 Changes to supplements upon termination of partnership or co-occupancy ............... 8
   4.7 Post-recovery of gift and inheritance tax ................................................................... 8
   4.8 Amendment of the assessment periods for the gift tax ............................................. 9
   4.9 Application single senior citizens' credit expanded for payroll tax purposes .......... 9
   4.10 Application tax credits for foreign taxpayers restricted ............................................ 9
   4.11 Abolishing of the voluntary disclosure scheme ....................................................... 9
5. Mobility ................................................................................................................................ 10
   5.1 Car tax (BPM) when converting a motor vehicle into a passenger or delivery car .... 10
6. Housing market .................................................................................................................... 11
   6.1 Amendment landlord tax ............................................................................................ 11
7. Miscellaneous ..................................................................................................................... 12
   7.1 End of suspensive effect of execution of a tax enforcement order ............................ 12
   7.2 Expansion of possibilities to investigate excise duties ............................................... 12
   7.3 Expansion reporting obligation for loss of “bodemzaak” to tax debtor ..................... 12
   7.4 Expansion simplification third-party seizure procedure .......................................... 12
   7.5 Access to anti-money laundering intelligence ........................................................... 12
8. Contact ................................................................................................................................. 13
1. Introduction

It is almost a tradition like Prinsjesdag itself: the Prinsjesdagmailing of EY. Also this year we are informing you about the fiscal measures the cabinet has proposed on Prinsjesdag.

In order to come to a balanced buying power picture in the eyes of the outgoing cabinet, the cabinet has decided to take measures to improve the buying power of the Dutch household. The cabinet indicates that also the approach towards tax avoidance and tax evasion requires constant attention. Therefore, the 2018 Tax Plan contains proposals which fit into the cabinet’s policy of recent years to actively deal with tax avoidance by means of international cooperation.

If you have any questions, please contact the contact persons that are listed in this brochure.

Best regards,

Jeroen Davidson
Managing Partner EY Tax
2. Entrepreneurs and employers

2.1 Amendment of the dividend withholding tax in international structures

Withholding obligation for Holding Cooperatives
In order to prevent the unintended use of cooperatives, it is proposed to introduce a dividend withholding tax obligation for Holding Cooperatives.

Expansion of withholding exemption to treaty countries outside of the EU/EEA
Together with the introduction of the dividend withholding tax obligation for Holding Cooperatives, it is proposed to expand the dividend withholding tax exemption. In general, the Dutch dividend withholding tax currently provides for a withholding exemption for distributions to entities established in the Netherlands, the European Union or the European Economic Area holding an interest of at least 5% in the Dutch distributing entity. This withholding exemption is expanded to distributions to entities residing in a country that concluded a tax treaty with the Netherlands and contains an article covering dividends, irrespective of the withholding tax rate provided for in the respective tax treaty. The expansion of the dividend withholding tax exemption will also apply to such distributions made by Holding Cooperatives.

Modification of anti-abuse test
However, said withholding exemption does not apply in case of abuse. In general, abuse is considered present if the shares in the Dutch entity or Holding Cooperative are held with the main purpose or one of the main purposes to avoid the levy of dividend withholding tax at the level of another (subjective test) and the (series of) arrangement(s) or construction(s) is considered artificial (objective test).

2.2 Restriction dividend withholding tax exemption fiscal investment institutions
It is proposed to exclude fiscal investment institutions (“FBI”) as withholding companies from the application of the withholding exemption for revenues distributed to (partly) exempt bodies.

2.3 Information obligation dividend withholding tax exemption with default penalty sanction
With the introduction of a broader exemption to withhold dividend withholding tax, at the same time an information obligation is introduced for the withholding company. If such company does not comply with the above information obligation in a timely manner, the inspector can impose a default penalty to a maximum of € 5,278.

2.4 Tightening of interest deduction limitation in the corporate income tax
The counter evidence rule of the interest deduction limitation of art. 10a of the Corporate Income Tax Act will be amended. Also in case a loan from a related party is ultimately financed by an external (non-related) party (the so-called parallelism), the business motive(s) of the legal transaction financed with such loan should still be demonstrated separately by the (borrowing) taxpayer.
2.5 **Restriction write-off losses by fiscal unity**

The possibility for a fiscal unity to deduct so-called write-off losses will be restricted. Write-offs by a fiscal unity of receivables held from entities/debtors not belonging to that same fiscal unity, but that were connected to the taxpayer belonging to that fiscal unity at any given time, cannot be deducted from the taxable profit to the extent that such write-off losses are connected to losses incurred by other members of that fiscal unity.

2.6 **Amendment liquidation loss regime**

In the event of the liquidation of an entity related (at any time) to the taxpayer but not included in the fiscal unity of that taxpayer, which entity holds an impaired receivable from a (former) member of that fiscal unity, then the taxpayer may only deduct the liquidation loss to the extent that it can be demonstrated that the sacrificed amount exceeds the loss incurred by that (former) member during its inclusion in the fiscal unity.

2.7 **Amendment liquidation loss regulation (intermediary holding company regulation)**

The provision in the liquidation loss regime which relates to the liquidation of intermediate holding companies will be amended. This regime must prevent that losses incurred by indirect subsidiaries can be brought forward in time through the liquidation of such intermediate holding company.

2.8 **Tightening application object exemption by fiscal unity**

The scope of art. 15ac, paragraph 5 of the Dutch Corporate Income Tax Act will be expanded. When applying the object exemption for foreign business profits, not only internal financing costs will be taken into account, being financing costs that are owed within a fiscal unity, but all internal usage fees. As a result, if a subsidiary that is part of a fiscal unity has a foreign permanent establishment and that subsidiary would have been liable for e.g. rent-, lease- and royalty payments to another entity in absence of such fiscal unity, then all such usage fees will reduce the amount of the business profit to be exempt.

2.9 **Country-by-country reporting in case of untimely implementation other countries**

In case of untimely implementation of country-by-country (CbC) reporting in other countries, the cabinet intends to allow for so-called "voluntary filing" (also called "surrogate parent filing"). In that case, the ultimate parent entity will submit the CbC report on a voluntary basis to the tax authorities of the country in which the ultimate parent entity is resident, despite the fact that CbC reporting has not yet been implemented there. That country will subsequently exchange the CbC report with the Netherlands. In that case, there will no longer be an obligation for Dutch group entities to provide the inspector with CbC report.
2.10 Abolishment deemed employment for non-executive directors

Starting 2017, the deemed employment for commissioners has been abolished. Particularly for non-executive directors, the question arose as to whether they must be considered equivalent to executives (withholding obligation) or commissioners (no withholding obligation).

The legislator has now resolved this unclarity. The new proposed legislative text effective as per January 1, 2018 clarifies that the deemed employment only applies to executive directors.

2.11 Benefits from conditional options included in excessive severance payments

If the employment with an employee with an income of at least € 540,000 (two years before termination) is terminated, there may be an excessive severance payment.

The legislator has now amended this regulation. Only unconditional options or options of which the condition has been fulfilled at the moment of termination may be disregarded when determining the payment. The benefit derived from conditional options, even if that results in a benefit and taxation after the year of employment termination, is taken into account when determining whether or not a severance payment is excessive.

2.12 Elimination VAT agricultural regulation

Effective January 1, 2018, the VAT agricultural regulation will be abolished. From that date, farmers must charge VAT over their (entrepreneurial) activities. On the other hand, they will have the right to fully deduct the VAT on costs incurred which was not allowed under application of the existing VAT agricultural regulation.

2.13 Tightening of the definition of medication for the application of the lower VAT rate

A more restrictive definition has been proposed for the application of the lower VAT rate to the supply of medication. For the trade in medication a trade license within the meaning of the Medicines Act should be obtained to be eligible for the lower VAT rate, or the medication should expressly be exempt from having to obtain such trade license.

2.14 Zero VAT rate for activities regarding sea vessels and aircrafts modified

The zero VAT rate on the supply and services regarding sea vessels is modified. This is mainly a clarification of the cases in which the zero rate applies: the vessels must actually be used for navigating on the open seas. At the same time it is proposed that similar rules for activities regarding aircrafts will be clarified.

2.15 Pledge and mortgage holders and executors liable for VAT debts

Pledge and mortgage holders and executors will become liable for the VAT due upon the sale of the goods sold by the pledge and mortgage holders and executors on behalf of their debtors.
2.16 **Equalization of rates for waste tax**

The waste tax rate for disposing of or burning waste materials from the Netherlands abroad will be set at the same rate for disposing of or burning waste materials within the Netherlands.

2.17 **Temporary increase in energy tax**

The cabinet proposes a temporary increase of the energy tax during the years 2018 and 2019.

2.18 **Expansion of the district heating scheme within the energy tax**

The cabinet proposes expanding the existing district heating scheme within the energy tax to district heating installations which mainly use geothermal heat or heat generated through solid or liquid biomasses.
3. Innovations and investments

3.1 Percentage energy investment allowance (EIA) 0.5%-point decreased
The EIA is a tax incentive for investments in energy saving measures and sustainable energy. The EIA percentage will be decreased with 0.5%-point in 2018 to 54.5%.

3.2 Lower budget for WBSO
As a result of a budget overrun of the WBSO (wage tax remittance reduction facility for research and development work) in 2016, the available budget for the WBSO in 2018 is reduced with € 42 million to € 1,163 million. The facility will not change substantively.

3.3 Change in reporting realization WBSO
A mandatory part of the WBSO is the reporting of the actual hours worked and the costs and expenditures incurred. The administrative burden is now being reduced by including the possibility to report for all R&D (research and development) declarations issued in a calendar year collectively.
4. Private individuals

4.1 Income policy
The cabinet states that it wishes to rebalance buying power, and does so by making a number of minor adjustments to the income tax brackets, the general tax credit ("algemene heffingskorting"), the labor credit ("arbeidskorting") and the senior citizens' credit ("ouderenkorting").

4.2 Continuance of increased gift deduction
The cabinet intends to continue the increased gift deduction in the personal income tax and corporate income tax with one year.

4.3 Abolishment minimum payment term for capital insurances
The minimum term during which premium payments must be made for capital insurances under the transitional law of the so-called Broad Revaluation ("Brede Herwaardering"), will be abolished.

4.4 Prenuptial agreements and gift or inheritance tax being due
The cabinet considers it desirable to more clearly specify in the legislation in which cases the entry into or change of prenuptial agreements leads to gift tax or (after death) inheritance tax being due. The proposal implies that for spouses who marry in or after 2018 in a limited communal estate with equal parts or choose for a complete communal estate with equal shares, no gift tax is due.

4.5 Foster children not considered as partner upon request
Foster children for whom the foster parent receives – or in the past received – a foster care allowance, shall, upon request, not be considered as partner for purpose of the income tax and allowances.

4.6 Changes to supplements upon termination of partnership or co-occupancy
The supplement scheme in the event of a termination of partnership or co-occupancy will change.

4.7 Post-recovery of gift and inheritance tax
In the Inheritance Tax Act a special regulation is included for the post-recovery of gift and inheritance tax in case too little gift and inheritance tax has been levied from a recipient due to the reduction of a tax assessment imposed on another recipient. In light of the object and purpose of this regulation, according to the cabinet post-recovery should also be possible in cases where a post-recovery tax assessment should be imposed on the same recipient due to a reduction of a tax assessment.
4.8 Amendment of the assessment periods for the gift tax
To further align the regulation with the legislator's intentions, the cabinet proposes to explicitly include in the legislative text that the assessment periods for the gift tax will commence on the day after the day of filing the gift tax return in case the gift tax return is filed at a moment more than four months after the end of the calendar year during which the gift took place.

4.9 Application single senior citizens' credit expanded for payroll tax purposes
Based on the current legislation, the single senior citizens' tax credit can only be applied if the single senior citizen receives a state pension allowance (“AOW”) and the standard payroll tax credit is applied to this allowance. This will now be amended.

4.10 Application tax credits for foreign taxpayers restricted
It is proposed to restrict the application of the tax credit as included in the payroll tax legislation for foreign taxpayers.

4.11 Abolishing of the voluntary disclosure scheme
The voluntary disclosure scheme is being abolished. Currently, the tax authorities cannot impose a punitive fine on a taxpayer who complies with his tax obligations still within two years after filing an incorrect or incomplete tax return. This voluntary disclosure possibility will be abolished per January 1, 2018.
5. Mobility

5.1 Car tax (BPM) when converting a motor vehicle into a passenger or delivery car

When converting a motor vehicle into a passenger or delivery car within the meaning of the BPM, the cabinet proposal allows the depreciation on the basis of the car's real value in addition to applying the depreciation table associated with the Car Tax Act (Wet BPM).
6. Housing market

6.1 Amendment landlord tax

On January 1, 2018, a number of changes to the landlord tax will enter into effect:

- The tax-free base is increased from ten to fifty homes. Only landlords owning more than fifty homes become subject to the landlord tax.
- Homes designated as national monument no longer fall within scope of the landlord tax.
- If a leased home has a tax value (“WOZ value”) exceeding € 250,000, the value to be considered for the calculation of the landlord tax is maximized at € 250,000.
7. Miscellaneous

7.1 End of suspensive effect of execution of a tax enforcement order
Currently, filing an objection to a tax enforcement order automatically causes the execution of the enforcement order to be suspended. Therefore, the cabinet proposes to abolish the suspensive effect of an objection to a tax enforcement order per January 1, 2018.

7.2 Expansion of possibilities to investigate excise duties
Currently, in relation to excise duty legislation the inspector only has the option to perform investigations in places where excise goods are kept and places subject to restricting provisions. Starting January 1, 2018, the inspector has the authority to conduct an investigation on any premises, residences excepted, and any property to which access must be granted pursuant to the General Tax Act.

7.3 Expansion reporting obligation for loss of “bodemzaak” to tax debtor
Since 2013, pledgeholders and other third parties who intend to perform actions or have performed such actions which could lead to the tax authorities losing the seizure right on (third party) goods found on the premises of the tax debtor (a so called “bodemzaak”) must report this to the tax authorities. The reporting obligation and the period of four weeks will now also apply to the tax debtor itself.

7.4 Expansion simplification third-party seizure procedure
With the proposed legislative change, the scope of the simplified third-party seizure procedure is expanded. It will become possible for the tax collector to apply the simplified third-party seizure procedure in relation to any third party from whom the tax debtor holds a claim or will acquire from an existing legal relationship, to the extent these claims are eligible for seizure.

7.5 Access to anti-money laundering intelligence
It is proposed to include a provision in the International Assistance with Levying Taxes Act as a result of which the tax authorities, if so desired, will gain access to so-called anti-money laundering intelligence as referred to in the fourth anti-money laundering directive of the European Union. The tax authorities can subsequently use this anti-money laundering intelligence for the verification of specific information which financial institutions must provide to the tax authorities based on the common reporting standards (CRS).
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