The consequences of the 2017 Tax Plan

EY’s vision on the Dutch Tax Plan

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The cabinet levels the buying power, simplifies where possible and combats undesired use of fiscal rules

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

After a number of difficult years, the Dutch economy is doing a bit better. The cabinet has expressed the intention to let the entire Dutch population profit from the economic recovery, also through fiscal measures. In addition, the cabinet believes that tax system can be simplified, while the combat of tax avoidance continues to require attention.

The simplification of the tax system is not easy. This is because the simplification of the tax system requires choices to be made. In early 2016, the cabinet gave everyone the opportunity to make proposals for practical simplifications of the tax system. EY also contributed to this. A number of the ideas that were received were included in the 2017 Tax Plan, including in the legislative proposal Fiscal simplification law 2017.

Another focus point is tax avoidance. The cabinet supports a proactive approach to tax avoidance. That is why the cabinet in the 2017 Tax Plan includes steps to combat tax avoidance. For example, the cabinet is taking measures with regard to arbitration between box 2 and box 3, deductibility of interest in the corporate income tax and the innovation box.

The legislative proposals are not yet final. During the parliamentary process some changes may occur. We expect that this will certainly happen in a number of cases. Obviously, we will follow the developments with regard to the plans of the cabinet closely. Via our website and social media, we will keep you informed about all changes.

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

Best regards,

Jeroen Davidson
Country Managing partner tax
EY Netherlands
In the area of the employment market, the parliament did not propose specific fiscal measures. However, under the header "Entrepreneurs and employers" measures are included in the area of payroll taxes.
Entrepreneurs

Companies, small and medium-sized enterprises in particular, will receive support because the first rate level of the corporate tax is expanded. The law is also simplified in a number of areas resulting in that the administrative burden of the entrepreneurs is reduced. An important topic for the entrepreneur is the in-house pension. For this a legislative proposal was submitted on Prinsjesdag which can have significant consequences.

Various amendments excise duties

The proposals of the cabinet contain various amendments of the excise duties.

- Per January 1, 2017, the rates of the excise duty on sparkling and non-sparkling wine as well as on so-called interim products is increased.
- There will be a reimbursement scheme for certain renewable fuels such as renewable methanol.
- The way in which the excise duty on cigarettes and tobacco (shag) is calculated will be simplified, as a result of which the administrative burdens for importers and producers but also for the Tax Administration will be reduced. Moreover, this is all implemented budget neutral.
- The excise duty exemption for biofuels that are used for heating purposes is eliminated. The cabinet expects that the European Committee will no longer tolerate this support measure.
- The reimbursement scheme of excise duty on LPG for buses and garbage trucks will be eliminated.
Amendment pension for the director-substantial shareholder that is administered in-house

It is proposed to eliminate the pension for the director-substantial shareholder (dga) that is administered in-house that we currently have per January 1, 2017.

The existing pension claims can be reduced from the (high) commercial value to the (low) tax value without fiscal consequences. As a result, the dga is released for a substantial part from the pension block that stands in the way of possible dividend payments.

There are two possibilities to reduce the pension:

- The pension is bought out. Normally, in case of the buyout of the pension, the commercial value is taxed. In the proposal, the (lower) tax value is taxed. Moreover, no revision interest is charged. Furthermore, in 2017, 2018 and 2019 the dga will also not receive a (expiring) discount on the applicable tax rate; this discount is applied to the fiscal value per the closing balance sheet date in the year 2015. No discount is granted on the remainder. After the buyout, the dga has the free disposal of the pension capital.

- The pension is converted to a retirement claim (previously also referred to as the "savings variant"). An annuity can be obtained for the tax value with the professional administrators thereof. The retirement claim can also be kept in-house and is increased annually until a certain pension start date - or until an earlier date of death. Further pension accrual will no longer be possible. From the start date of the pension, every year a linear part of the annual savings balance - including annual interest - is paid out. The payments are taxed in box 1 of the Income Tax.

The reduction as mentioned above can only take place with the written permission of the partner.

A dga can also opt not to reduce the pension. Then the implementation/legislation shall stay as it was but without further accrual of pension in-house. The difference between the tax value and commercial value will continue to exist with the associated pension block to pay dividends.

Elimination absolute upper limits of pension and more

In the legislative proposal, the parliament also included proposals to simplify the implementation of the pension law, and intends to specifically reduce or prevent the administration expenses with this. These proposals apply for all pension schemes (thus not only for pension schemes that are administered in-house).

This concerns:

- the elimination of the so-called 100%/70%/14% limits;
- measures with regard to pension payments that start on the first day of the month;
- the elimination of the so-called "working longer" requirement;
- the scope of the survivor's bridge pension for persons who have lost one parent;
- the addition of the so-called investment company for the implementation of annuity products.
Amendment business succession scheme

For the inheritance or donation of shares, there are regulations in the Income Tax Act and in the Succession Act based whereupon no or fewer taxes are owed. These are the rollover facility and the business succession scheme.

In order to be able to apply these regulations, it must concern shares in a company that operates a business enterprise. Thereby the activities and assets/debts of participations of such company are allocated to it if there is an indirect substantial interest. There is an indirect substantial interest if a shareholder (the deceased/donator) holds at least 5% in the share capital of the participation.

The Supreme Court in its decision of April 22, 2016 concluded that if an interest in a participation does not qualify as an indirect substantial interest (and thus no allocation takes place), the shares in the participation may possibly still be considered as as assets of a business enterprise.

In order to repair this - in the eyes of the government undesired - result, a fiction will be included in the rollover facility and the business succession scheme on the basis of which an interest in another body - regardless of the function - is not included in the assets of a business enterprise. The allocation in case of an indirect substantial interest (an interest of 5% or more) is maintained, however.

No waste disposal tax for export waste materials

Since July 1, 2015, waste disposal tax is imposed for obtaining permission to transport waste materials outside of the Netherlands in order to be incinerated there. The permission is granted by decision of the Human Environment and Transport Inspectorate (ILT).

However, it appears that this export duty cannot be maintained in its current form under European law. That why the rate of the export duty in the beginning of this year has been set to zero, with retroactive effect to July 1, 2015, through a policy decree. This decree is transposed in the current legislative proposal.

Increase rate waste disposal tax

The rate of the waste disposal tax is increased with €1.15 to €14.22 per 1,000 kilograms of waste materials. This is before indexation. With this the loss of income for the treasury, due to the zero percentage for export duty, is absorbed.

Cooperative and dividend withholding tax

The State Secretary of Finance in a letter announced a bill based whereupon cooperatives that act as holding companies will become withholding agents for the dividend withholding tax. It concerns cooperatives that are used in international structures and that are engaged in holding company activities, investing capital in and financing of affiliated entities. There will be a withholding obligation if and to the extent that the member has an interest in the cooperative of 5% or more.

At the same time, the State Secretary of Finance has presented his intention to expand the dividend withholding tax exemption for business structures. If a parent company is resident in a country with which the Netherlands has a tax treaty, then the Netherlands entity is no longer required to withhold dividend withholding tax. However, the condition is that there may not be any abuse.

The State Secretary of Finance notes that after this letter an internet consultation will take place followed by a legislative proposal. The goal is to let this legislative proposal be effective as per January 1, 2018 at the latest.
Dividend tax refund scheme for foreign investors

Good news for foreign investors with Dutch shares. Subject to certain conditions, they will be able to apply for a refund of Dutch dividend withholding tax. The new measure does not only apply to private shareholders, but in principle to legal entities as well. The main condition for a refund is that the effective tax burden would have been lower if the investor had lived or had been established in the Netherlands. In addition, investors from outside the EU/EEA should hold their shares aimed at a normal return on investment. Furthermore, they must live in a country with which the Netherlands can exchange information based on a treaty. The tax refund scheme is not applicable if the Dutch dividend withholding tax - based on a treaty - is fully creditable in the country of the shareholder.

The proposal implements recent European law in the area of dividend withholding taxation. In anticipation of this bill, the State Secretary published a policy decree earlier this year. In this bill, he outlines the conditions to apply for a refund of the Dutch dividend withholding tax. This policy decree has now been laid down in law.

The new refund scheme may be important for foreign private investors holding a relatively small Dutch share package. In these cases, it should be examined what the actual Box 3 tax would have been if the investor had lived in the Netherlands. In this comparison, the tax-free capital should also be taken into account. This could mean that, on balance, in a purely domestic situation, there would be no tax liability. However, ultimately, it should be examined for every investor individually to what extent they would have actually been better off in a Dutch situation. Nevertheless, the question how exactly the comparable domestic tax burden should be determined, is not directly answered by the bill. This will be devised in more detail in a separate ministerial regulation. It cannot be ruled out that this question will cause some debates in practice.

Future vision on fiscal investment climate

On the Dutch Budget Day, the cabinet also presented its vision for the future of the fiscal investment climate. It concerns a combined strategy whereby the continuation of the proactive approach to combat tax avoidance and the maintenance of an attractive fiscal investment climate with a competitive corporate tax rate are the spearheads.

The future vision emphasizes the importance of a competitive climate for investments and employment in the Netherlands. In this context also the importance of the well-known Dutch fiscal ‘crown jewels’ is emphasized once more, including: the participation exemption, the extensive treaty network, the absence of withholding tax on interest and royalties, and the option to obtain certainty in advance.

With regard to the approach to combat tax avoidance, the cabinet strives to present a draft bill about the implementation of the Anti-Tax Avoidance Directive for consultation, in the second half of 2017. This legally binding law which was recently agreed to at European level, implements a number of recommendations of the OECD in the context of the BEPS (Base Erosion and Profit Shifting) project at EU level.

Furthermore, the approach to combat tax evasion is high on the agenda. The cabinet intends to submit proposals this year, which will subsequently be converted into legislation.

The cabinet also emphasizes the importance of a competitive corporate tax rate, without participating in a race to the bottom. The first step towards this is the extension announced in the tax budget proposals to expand the application of the 20% corporate income tax rate which currently is applicable to profits up to € 200,000 to be applicable to profits up to € 250,000 in 2018 and 2019, € 300,000 in 2020 and € 350,000 in 2021. This expansion is also for the benefit of the MKB (small and medium enterprises). In addition to this first step, it is noted in the future vision that the cabinet will specify next steps based on a broader consensus. The reduction of the corporate tax rate is part of a new fiscal strategy for the coming years.
Simplification of refunds of VAT and Environmental Tax in case of Bad Debts

The cabinet proposes a simplification of the refund of VAT for bad debts. The same applies to environmental taxes such as energy tax, tap water tax and waste tax.

This concerns the situation in which an entrepreneur has paid VAT and any environmental taxes for goods or services supplied by him, but a customer has not paid the entrepreneur or has paid only part of the amount due. The entrepreneur is then, under certain conditions, refunded the tax that was paid. The most important change that is proposed is that the right to a refund will exist in any case if an amount due is not received in whole or in part one year after its due date. A further simplification is that from now on the entrepreneur will deduct the refund himself on the return, and no longer has to apply for a refund. If the entrepreneur receives (part of) the amount due later on, the tax is again (partly) owed.

Clarification of Definition of Construction Site in the VAT

The definition of the term ‘construction site’ will be modified. Under the current laws, one out of four specific conditions must be fulfilled. However, these conditions do not cover the term ‘construction site’ as defined in the case law of the EU Court of Justice. In order to bring Dutch law into line with this case law, it is proposed to change the definition starting in 2017. It is sufficient for unbuilt land to be ‘apparently intended to be built on’. This takes the intentions of the seller and the buyer into account. In the explanation of the proposal, the cabinet indicates that a piece of land is also a construction site if built-up land is supplied and the supplier has made a commitment to completely demolish the building in the context of the delivery.

If a piece of land is regarded a construction site in for VAT purposes, supply by an entrepreneur is (more likely) taxed at 21% VAT. An advantage of this is that because of the clarification there will be much less discussion about exemption from transfer tax since, normally, it applies automatically.

Modification of VAT Sports Associations Exemption for Water Sport Organizations

The exemption that applies for some services that sports associations provide for their members is modified in regard to water sports organizations. This is in response to an infringement procedure of the European Commission and case law of the EU Court of Justice. Starting on 1 January 2017, provision of mooring and storage places for recreational vessels (thus vessels that are not appropriate for exercise of a sport, although it is not completely clear how to define the difference between recreational vessels on the one hand and sports vessels on the other hand) is excluded from the exemption for sports organizations.

Expansion of the default penalty for dividend withholding tax

The law currently provides for a fine of no more than € 5,278 to be imposed on, amongst others, anyone failing to comply with the obligation to issue a statement of dividend payment. In expanding the legislation concerning the exemption for entities not subject to corporate income tax, the ability to impose a default penalty has also been expanded. An entity that is not subject to corporate income tax, may, under certain circumstances, be obligated to provide certain information to the tax authorities. Should it fail to provide such information, a penalty of no more than € 5,278 may be imposed.
Adjustment to the innovation box regime in corporate taxation

The innovation box regime can be applied on income that is derived from qualifying research and development (R&D). The effective corporate income tax rate of the innovation box is 5% instead of the statutory rate. The Netherlands needs to amend the innovation box regime due to its commitment to the OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan.

The main proposed changes relates to the amendment of the definition of “qualifying IP” in line with the OECD definition. As a result of this proposed change, both an R&D declaration and a patent (or other IP assets that are functionally equivalent to patents) are needed in order to qualify for the application of the Dutch innovation box.

Another important change is the introduction of the “nexus-approach”, as recommended by the OECD. This approach limits the application of the innovation box regime if R&D is being outsourced to related parties. The approach links the benefits of the regime with the R&D expenses incurred by the taxpayer.

Conditions for access - qualifying IP

The conditions for access to the regime will differ for small and large businesses.

• For small businesses, the changes are limited. As is already the case under the current rules, these businesses gain access to the innovation box by means of a so-called "R&D declaration" (for "speur- en onderzoekswerk", that is to say research and development). However, under the new rules, they can no longer gain access if they merely possess a patent or plant variety right (an R&D declaration is now also required).
  • A business is considered to be 'small' if its five-year revenues (at group level) do not exceed € 250 million and its five-year income from intangible assets does not exceed € 37.5 million.
• For large businesses, a double test will henceforth be applied, consisting of both R&D declaration as well as one of the following conditions:
  • the intangible asset consists of software;
  • a patent or plant variety right has been granted to the business, or an application has been filed for either (in the event the request is denied the granted benefits of the innovation box will be recaptured);
  • marketing authorization for human or animal medicines has been granted to the business;
  • the intangible asset has been granted a supplemental protection certificate (for human and animal medicines and pesticides) by the Netherlands Patent Office (Dutch: Octrooicentrum Nederland)
  • the intangible asset has been granted a registered utility model for the protection of innovation; or
  • the business possesses an exclusive license to use a patent, plant variety right, marketing authorization for medicine, software or registered utility model in a specific manner, within a certain term or a certain geographical area.

Calculation of the innovation box benefits - nexus approach

In line with the commitments to the OECD's BEPS Action Plan, the 'nexus approach' will be introduced. This results in a new method for calculating benefits, which method is based on research and development expenditures by the taxpayer compared to the overall group.

Thereto a formula is to be introduced (the 'nexus fraction') to determine the portion of incoming that is eligible for the innovation box under the new nexus approach. Should any part of the taxpayer's expenditures be related to e.g., outsourcing of research and development to an affiliated entity, the qualifying income for the innovation box regime will proportionally be reduced.

Transitional law

If an intangible asset has been developed before July 1st 2016 and the taxpayer has opted to apply the innovation box regime to this asset for his tax returns over the year including July 1st 2016, the current legislation will continue to apply. If an intangible asset has been developed for which a patent has been granted, but no R&D declaration has been granted, it will also qualify under the new rules.

This mitigates the possibility of taxpayers being faced with two regimes at the same time: the application of the new rules in addition to the existing innovation box regime.

For small taxpayers currently in possession of a ruling, a (draft) Decree has been published on the basis of which they may request the tax authorities to continue to apply the innovation box regime on the basis of such a ruling, even after 2016.

The transitional law will no longer apply after July 1st 2021.
Viewpoint EY
The Netherlands has amended its legislation on the basis of the conditions imposed by the OECD's BEPS Action Plan. Although the Netherlands opted to apply the broadest definition of qualifying IP, it unfortunately does not fully make use of all options provided by the OESO BEPS action plan to define its new rules. For example, the Netherlands did not need to impose a double requirement of both patents (or some other ticket of entry) in conjunction with an R&D declaration. For smaller taxpayers, a patent no longer suffices, unlike today. A positive development is that the Netherlands has opened the innovation box regime from the moment a patent (or plant variety right) has been applied for and it is no longer necessary to wait until it has been granted.

Deemed salary rules for start-ups with wage subsidy scheme (WBSO) declaration

The director and major shareholder (DSM) who works for his company, needs to get a salary from his company (BV) that is, at least, customary. Various rules apply here and extensive case law has been published on this matter.

It is proposed - as long as the conditions are met - to reduce the minimum amount of € 44,000 for starting innovative entrepreneurs (with a WBSO declaration) to the statutory minimum wage (approximately € 20,000). In order to apply this scheme, the company of the DMS must have issued a so-called R&D (research and development) statement for start-ups. This is the case if the withholding company was not a withholding agent in one or more of the five preceding calendar years and if for that period an R&D statement was issued for up to a maximum of two calendar years.

The cabinet wants to ensure that this scheme will not be regarded as unlawful state aid. This could be the case if a DMS would qualify as employee for the social securities. The DMS-company would then save social security payments. The impact of the new legislation is limited to the extent that there might be unlawful state aid under EU rules. It is anticipated that this scheme expires in 2022 and will be evaluated prior to 2022.

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It is a generous approach. We would like to challenge the parliament to broaden this initiative and open it to all start-ups. The incorporated anti-state aid regulation is quite complicated and start-ups will only be able to apply it with the help of a consultant. This requires further attention.

The annual salary request disappears

The annual salary request was introduced in 2006 in response to problems with data deliveries from the policy administration for the tax and social insurance contributions and surcharges. In the event of missing or incorrect tax return information at the end of the calendar year, the tax authorities could use the annual salary request to request the withholding agent for the annual salary data of its employees.

Since its introduction in 2006, a lot of improvements have been made in the payroll tax return chain, both with employers as with the tax authorities and the Employee Insurance Agency (UWV). In view of this, the annual salary request no longer offers added value, according to the tax authorities and UWV, and will therefore be abolished.

Definition of Wage income 'adjusted' for the R&D tax rebate

The level of the R&D tax rebate also depends on the level of the average hourly wage. In practice, this hourly wage is determined based on the payroll data as the information appears in the UWV administration. This includes wages from current and former employment. This administration does not include final taxation components. Therefore it has now been proposed to align the law with the practice, and only exclude final taxation components from the (average) hourly wage definition.
Deemed employment commissioners and supervisors abolished

Until the end of 2016, the employment relationship of commissioners and supervisors for payroll taxes is considered a deemed employment. This means that the company must withhold and pay payroll taxes, including the income-dependent contribution to the Health Insurance Act (Zorgverzekeringswet) over the remuneration. Until May 1, 2016, this was only different if the commissioner had a Declaration of Independent Contractor Status (VAR) under which withholding and payment of payroll taxes could be omitted.

With the introduction of the DBA legislation (Wet deregulering beoordeling arbeidsrelaties [Deregulation and Assessment of Labor Relations]), the VAR scheme expired per May 1, 2016. In a decision, the State Secretary for Finance approved that it is possible to no longer consider the employment relationship of commissioners and supervisors as deemed employment as of May 1, 2016.

As of January 1, 2017 this decision will become redundant, because the deemed employment of commissioners and supervisors will be abolished. Commissioners and supervisors who wish to continue to use the income tax regime (e.g. in view of the 30% rule and the possibility of other tax-free cost compensations), are allowed to do so, subject to certain conditions under the so-called opt-in system. This is a notification - not a request - to the tax authorities by the "employer" and "employee" jointly, that they voluntarily apply the payroll tax scheme. Without such notification, the taxable profits or income regime applies to the wages of the commissioner. Choosing to opt-in does NOT cause the pseudo-employer to pay the income-dependent contribution to the Health Insurance Act on his behalf. That contribution will remain the responsibility of the commissioner/ supervisor.

Non-resident commissioners of an entity established in the Netherlands

By canceling the deemed employment, the Netherlands did risk losing the right to tax wages of commissioners if a commissioner was not a resident of the Netherlands. It is proposed to completely fix this. In case the wages of the commissioner qualify as profit from business activities, or as wages or as a result from other activities, the right to tax in the Netherlands will be incorporated in domestic law.

Possibilities to deflect withholding obligation payroll tax extended

Since 2013, Dutch law stipulates that a Dutch entity belonging to a business group, under certain conditions, may take over the withholding obligations of a foreign group company with regard to payroll tax in the Netherlands and/or the social securities obligations of employees who are employed by the foreign group company. It is proposed to make the reversed withholding regulation more flexible.

Under the current regulation, the foreign employer is a withholding agent in the Netherlands in the situation where a foreign company in the Netherlands has a real or deemed permanent establishment or permanent representative, or in the situation in which the foreign company voluntarily carries out the payroll administration in the Netherlands.

Until today, the reversed withholding regulation could formally only be applied in a limited way, i.e. in the situation in which the foreign group company mediates in the employment of an employee in the Netherlands. Since carrying out a Dutch payroll administration involves relatively high implementation costs, and for reasons of simplification, it is now proposed that the requirement of mediation in the employment of staff in the Netherlands, will be abolished. Therefore, under the new regulation, each foreign group company is allowed to let the withholding obligation in the Netherlands be taken over by the Dutch group company. The legislative amendment is in line with current practice, in which the tax authorities are already flexible in handling such requests.
Reduction corporate tax rate

The cabinet intends to expand the application of the rate of 20% (the first bracket of the corporate income tax rate) to first €250,000 of profit in 2018 and to the first €350,000 of profit in 2021. The rate structure will then be as follows:

<table>
<thead>
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<th>Year</th>
<th>Level 1</th>
<th>Rate</th>
<th>Level 2</th>
<th>Rate</th>
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<tr>
<td>2016</td>
<td>€0 - €200,000</td>
<td>20%</td>
<td>€200,000 and up</td>
<td>25%</td>
</tr>
<tr>
<td>2017</td>
<td>€0 - €200,000</td>
<td>20%</td>
<td>€200,000 and up</td>
<td>25%</td>
</tr>
<tr>
<td>2018</td>
<td>€0 - €250,000</td>
<td>20%</td>
<td>€250,000 and up</td>
<td>25%</td>
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<tr>
<td>2019</td>
<td>€0 - €250,000</td>
<td>20%</td>
<td>€250,000 and up</td>
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<tr>
<td>2020</td>
<td>€0 - €300,000</td>
<td>20%</td>
<td>€300,000 and up</td>
<td>25%</td>
</tr>
<tr>
<td>2021</td>
<td>€0 - €350,000</td>
<td>20%</td>
<td>€350,000 and up</td>
<td>25%</td>
</tr>
</tbody>
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Amendment of interest deduction limitation rules in the corporate income tax

The corporate income tax includes a number of specific interest deduction limitation rules in order to prevent base erosion by interest deduction, including art. 10a and art.15ad of the Corporate Income Tax Act (CITA).

- The interest deduction limitation rule of art. 10a CITA is an anti-base erosion rule. This interest deduction limitation rules applies with respect to (in)direct loans from related group companies or persons, which are taken up to finance a "tainted" legal transaction, such as a dividend distribution or certain acquisitions. In such case the interest deduction will in principle be limited, unless one of the rebuttal tests can be invoked by the taxpayer.
- The interest deduction limitation rule of art. 15a CITA intends to prevent excessively leveraged acquisitions. For this purposes, in case the acquired entity is included in a fiscal unity with the acquirer, the fiscal deductibility of the interest expense will under conditions be limited to the "stand-alone" profits of the acquirer, not taking into account the profit of the acquired company.

The cabinet proposes a number of changes in this area:

Related party and the cooperating group

In art. 10a CITA, the definition of a "related party" will be expanded. A related party will also include a "cooperating group". The cabinet does not provide for a specific legal interpretation for the definition of a "cooperating group", as was requested during the consultation period of the draft bill. However, the explanation does provide for a basis of how to interpret this concept.

According to the explanation, there is at least a cooperating group if the voting power of (and design of) the investment and interest in the acquired company is vested in a coordinating (legal) person, and each shareholder made its investment under similar conditions with a comparable mix of equity and (risk bearing) loans.

The parliament addresses the question whether there is a cooperating group in a number of specific situations, such as with a joint venture (for example companies that decide to acquire a company together), with a trust foundation (STAK) and with a joint investment by four or more family members. The mere fact that there is a joint investment in these three situations does not automatically lead to the conclusion that there is a cooperating group.

However, such situations are also not risk-free, as a cooperating group, nevertheless, could exist. This is - in the opinion of the cabinet - the case if for example (additional) binding agreements are made, as a result of which the investors are held to provide borrowed capital under similar conditions in proportion to their participation and they could in the interim not dispose of or reduce their participation.
Entry into force
The proposed measures will enter into force as per January 1, 2017. There are no grandfathering rules for existing situations.

Concurrence Anti Tax Avoidance Directive
The cabinet briefly addresses the proposed changes in light of the Anti-Tax Avoidance Directive that will need to be implemented. With the implementation of the Anti-Tax Avoidance Directive - which also includes interest deduction limitation measures - it will be reconsidered to what extent the existing interest deduction limitation rules in the corporate income tax must be maintained. The cabinet expects the anti-base erosion rule to be maintained.

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The term cooperating group is not defined by law. In the explanation it is illustrated by means of several examples in what situations a cooperating group should in any event be deemed to exist. Along with the State Council, we believe that the scope of the provision is not clear, which does not benefit the legal certainty. This will not benefit the fiscal investment climate of the Netherlands.

Because for the (M&A) practice advance clarity and certainty about the (non) deductibility of interest is crucial, we agree with the suggestion of the State Council, to have the inspector determine by decision (subject to objection and appeal) whether a "cooperating group" is in place. The arguments mentioned by the cabinet not to adopt this suggestion because of possible further legislation and an increase of the administrative burden of the Dutch tax authorities do not convince us.

Amendment Leveraged buy-out rules
With regard to art. 15ad CITA, the following substantive amendments are proposed:
• The calculation system will be tightened for cases in which an acquisition debt by means of a so-called "debt-push down" is moved from the level of the acquiring company to the level of the acquired company.
• The term of seven years within which the financing must be reduced to a maximum of 60% of the acquisition price to a maximum of 25% of the acquisition price is further tightened. This should prevent planning by transferring the acquired company to a new acquisition company within the group to restart the seven year period by using a new internal acquisition company each.

Amendment transitional law for leveraged buy-out rules
Fiscal unities formed before November 15, 2011 do not fall under the interest deduction limitation rule of art. 15ad CITA. It was previously also confirmed that such fiscal unities continue to fall outside the scope of art. 15ad CITA if they are dissolved followed by the subsequent formation of a new fiscal unity. This confirmation will expire (i) in case of fiscal unities formed before November 15, 2011 that become part of another fiscal unity that is formed on or after January 1, 2017 or (ii) if companies that are part of a fiscal unity that was formed before 15 November 2011 leave the fiscal unity and together form a new fiscal unity on or after 1 January 2017.

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The proposed containment of the transitional law could have an unreasonable effect in some situations. For example, in the situation in which an existing fiscal unity is acquired and is included in a larger fiscal unity, whereby this acquisition is financed entirely with equity. We do not understand why in this situation the limitation of art. 15ad CITA would have to apply.

Amendment mergers and demerger in corporate income tax
The wording of article 14 and art. 14a CITA regarding mergers and demergers are such that if the transferring or the demerging company, respectively, applies the innovation box, the inspector can set (standard) conditions in view of the facilitation of a tax neutral transaction. The current regulation only offers the tax administration this option if the acquiring companies apply the innovation box.
Amendment quasi-insourcing exemption and exemption internal services public governmental organizations

The exemption for internal services at public governmental organization no longer applies to where a public governmental organization puts assets at the disposal of a private governmental organization, insofar as these assets are used by such private governmental organization for taxed (non-exempted) activities. Assets are defined among other things as immovable property, monetary loans and intangible assets.

With this amendment, potential undesired use of the internal services exemption is cut off. The same happens with the quasi-insourcing exemption. This no longer applies where a private governmental organization puts assets at the disposal of a public governmental organization of which the private governmental organization forms a part, or to another private governmental organization of the same public governmental organization, to the extent that these assets are used by such legal entity or such governmental organization for taxed (non-exempted) activities. This proposed measure only includes the quasi-insourcing exemption and not the exemption for activities in connection with an agreement to provide services. That is why the provision in which this exemption is laid down will be split up.

Entry into force
The amendments will apply to the financial years that start on or after January 1, 2017.

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We can understand that the cabinet limited the possibility of unintended use. However, it does give rise to the question how this change relates to the initial decision of the legislator not to incorporate anti-abuse measures with respect to treating governmental organization as taxpayers or not, as one may expect a prudent approach from the government and other authorities.

During the implementation of the law, the legislator however indicated that the cabinet would be forced to take appropriate measures if that prudent approach would appear not being followed in practice.
Amendment of the 6-month term for foundations and associations to opt-in for corporate income tax

The corporate income tax does not have a tax exemption for foundations and associations with limited profitable company activities. As it is sometimes more beneficial for foundations and associations to actually be subject to corporate income tax, they can opt in.

The request to opt-in must be submitted within six months after the end of the respective year. In practice this period appears to be too short. The cabinet proposes to extend this period. The request should be made no later than when submitting the tax return.

Dividend withholding tax

Companies that are subject to corporate income tax can offset the withheld dividend withholding tax against the corporate income tax due. Companies that are not subject to corporate income tax cannot, however they could file a request for a refund of the dividend withholding tax. In addition to the possibility to request for a refund, a withholding exemption is introduced in the dividend withholding tax for such bodies (for example pension funds, exempted (parts of) government owned companies and comparable foreign (EU/EEA) bodies).

As a result of the withholding exemption, the parties involved do not have to request for a refund of the dividend withholding tax afterwards, resulting in a liquidity advantage and a lower administrative burden. The recipient of the dividend can ask the inspector to determine by decision (which is open to objection) if the recipient meets all conditions.

Contact

Arjo van Eijsden  
E: arjo.van.eijsden@nl.ey.com  
T: 088 - 407 84 11

Rudolf de Vries  
E: rudolf.de.vries@nl.ey.com  
T: 088 - 407 11 45

Jeroen van Strien  
E: jeroen.van.strien@nl.ey.com  
T: 088 - 407 82 57
On June 21, 2016, the European Member States reached an agreement about a directive prepared by the European Commission with measures to prevent tax evasion via erosion of the tax based and profit shifting (Base Erosion and Profit Shifting, or BEPS) in the corporate tax.

The measures have not yet been incorporated in the package Tax Plan 2017. In the second half of 2017, a draft bill will be presented about the implementation of the anti-tax evasion director for consultation. Furthermore, the approach of tax evasion is also high on the political agenda, whereby a connection is made with the Panama Papers. The parliament intends to yet submit proposals this year that will then be elaborated and converted in to law.
Innovation and investments

Under pressure of Europe, the innovation box is amended. Therefore, entrepreneurs must again check in the corporate tax if they qualify for the innovation box. In addition, the parliament also spends extra money to stimulate innovation through tax incentives.

**Extra Budget for Innovative Business**

The Dutch government views innovation as an important motor for strengthening economic growth and our its competitive position. One of the most relevant stimulus programs for innovation in the Netherlands is the wage tax remittance reduction for Research and Development remittance (WBSO) [Wet Bevordering Speur en Ontwikkelingswerk (Act on the Promotion of Research and Development)]. More money funds will be made available for the WBSO in the next few years. The budget will be increased by €33 million in 2017 and will come to a total of €1,151 million. As of 2018, the budget for the WBSO will increase by €85 million.

**Extra Budget for Reduction of CO2 Emissions**

In order to further reduce energy consumption, especially by energy-intensive companies, in 2017 a one-time extra amount of €15 million will be available for the EIA [Energie-investeringsaftrek (Energy Investment Deduction Allowance)]. With this, the total budget of the EIA will come to €176 million in 2017. The EIA makes it attractive to invest in energy-saving company resources. The extra budget should bring the reduction of CO2 emissions in line with the agreements from the Energy Agreement, which will, for example, make it possible to make investments with a longer payback period (12 years instead of 8 years) eligible for the EIA.
Amendment penalty with R&D declaration

The recipient of an R&D declaration must indicate for each calendar year how much R&D hours took place, and how many costs and expenses were incurred per R&D declaration. If this notification obligation is not complied with, a penalty will be imposed.

Because it will in principle concern an administrative error, it will be laid down in the law that the penalty will not exceed €2,500. In addition, the extensive, more onerous procedures that would normally apply to penalties are deviated from, and a simpler procedure is used that offers sufficient certainty but is easier to execute. This amendment does not change the fact that in case of gross negligence or fraud a higher penalty can be imposed and the more onerous procedure applies.

Contact

Bram de Nies
E: bram.de.nies@nl.ey.com
T: 088 - 407 78 461
Private individuals

Just like last year, also this year the Tax Plan leads to a balanced improvement of the buying power according to the Tax Plan. According to the parliament, seniors and young people, one income and two income households, families and singles will be better off in 2017 than in 2016. In order to realize this improved buying power, a number of fiscal measures are implemented in the area of the income policy. Furthermore, measures are proposed that prevent unwanted tax constructions. An important simplification is also the streamlining of the payment scheme in the collection sphere with regard to tax debts and accrued penalties. In this context, the fiscal protection of rights is also improved.

Debts under a usufruct will defiscalized

In case of a usufruct will, the surviving spouse generally receives the usufruct of the property from the estate and the children the bare ownership. In principle, the surviving spouse would have to report the value of the usufruct annually as asset in box 3, and the children the value of the bare ownership.

Given the fact that it is the usufructuary who actually has this capital at its disposal, a few years ago the legislator decided to defiscalize these kinds of situations: the usufructuary is taxed in box 3 for the full value of the assets and the bare owners are not taxed in box 3 for the value of their bare ownership.

Given the fact that this defiscalization currently only applies for assets and not for debts, the debts must still be taken into account by the surviving spouse for the usufruct value and for the bare ownership value by the children. This although the usufructuary based on the usufruct still owes the interest on the debt. The cabinet now proposes to expand the defiscalization to all assets and liabilities to which a usufruct is attached pursuant to an inheritance.
Tax-free capital also for foreign box 3 investors

The tax-free capital in box 3 is expanded to all foreign individuals with Dutch assets. Based on the current law, this group may be subject to tax in the Netherlands, without the tax-free capital being taken into account. However, from recent European case law it can be derived that this is a forbidden discrimination compared to domestic investors. In order to eliminate this conflict with European law, it is now proposed that foreign tax payers with box 3 income may also use the tax-free capital. The State Secretary of Finance already took a similar measure earlier this year at policy level. Thus this policy is now codified in the law.

Ending of fiscal deduction of expenditures for listed buildings

Fiscal deduction of expenditures for listed buildings is an arrangement that allows private owners of buildings listed as national monuments to deduct the costs of maintenance of a national monument as a personal deduction. It has been proposed that this arrangement should be ended in 2017 and that in the future (financial) support should no longer be regulated through the tax system. In 2017 and 2018 a transitional arrangement will apply.

Replacement of supplementary training allowance by training vouchers as of 2018

The fiscal deduction of training expenditures is an arrangement that allows someone to deduct from his/her income the costs of training or study oriented towards a (future) profession and for which there is no right to study financing, as a personal deduction. It has been proposed that deduction of training expenditures should be abolished as of 2018. Starting in 2018, the revenue from this measure will be used for a focused expenditure scheme in the form of training vouchers for people that would be less inclined to get training of their own accord, but whose participation in training is, according to the cabinet, very important to society.

Recovery of allowances is limited

Someone who has applied for an allowance with the Tax Administration/Allowances in most cases first receives an advance of the estimated allowance. The Tax Administration/Allowances will then determine the final allowance and offset this against the amount of the advance. This can lead to an additional payment to or a repayment by the stakeholder.

The highest court recently concluded that the Tax Administration/Allowances can no longer adjust the advance downward after a period of five years. Therefore, as soon as five years have passed after the last day of the calendar year to which the allowance relates, the final reimbursement is at least the amount of the advance and recovery is no longer possible. However, the final amount of the reimbursement may be higher. This will now be laid down in the law. Thus, after five years the minimum amount of the allowance is set and a stakeholder can no longer be confronted with a recovery claim.

Introduction of information exchange concerning allowances

The information the Tax Administration/Allowances has can be relevant for the work of other government bodies. The legislative proposal offers a legal regulation based whereupon the Tax Administration/Allowances can deviate from its confidentiality obligation with regard to this information. Based on the legislative proposal, the Tax Administration/Allowances can provide information to other government bodies which they cooperate with based on a covenant. It will be elaborated in a separate decision what information may be provided to what government body. Examples are the partnerships to prevent terrorism financing and tackling organized crime.
Relaxation of rules against fraud risks in case of allowances

The Tax Administration/Allowances uses an advance system for granting allowances. An allowance is initially paid as an advance that is based on estimated information.

In connection with the combatting of fraud in allowances, it is proposed to introduce a rule based whereupon the Tax Administration/Allowances does not pay an advance if the applicant of the allowance has committed an offence for which an administrative fine or criminal sanction was imposed. However, this regulation has not yet entered into force. In advance of the entry into force, a change of this regulation has now been proposed because the application of the rule can lead to an undesired situation in certain cases. The rule will be changed to a discretionary authority instead of an obligation. This means that the Tax Administration/Allowances can opt not to pay an advance, but it can also opt to pay the advance despite a previous fine or sanction.

Measures against constructions involving tax-exempt investment institutions

The tax-exempt investment institution ("vrijgestelde beleggingsinstelling", or "vbi") allows for tax-free investments through a corporation. The vbi is exempt from corporate income tax and dividend withholding tax. This allows for higher net yields on investments.

The cabinet has noted that the vbi is used in several ways that it considers to be undesirable, and introduces four measures to counter these.

- When creating a vbi-structure, the initial situation is often that investments are held by a holding company, with the shares of that company being held by a taxpayer. Up until now, it was generally possible to separate these investments into a vbi in a tax neutral manner by means of a legal demerger. At the level of the taxpayer, the existing future tax claim on the holding company's shares is rolled-over to the vbi's shares. However, the cabinet proposes to tax this future tax claim. To prevent anticipatory behavior, this measure will take effect on the 20th of September 2016, at 3:15 PM.
- By placing capital with a vbi just before the end of the calendar year, and then removing this capital soon after the start of the subsequent year (so-called "yoyoing") the reference date for income tax box 3 (January 1st) can be circumvented twice, leading to significant tax savings. The cabinet proposes that, should capital return to box 3 within a period of 18 months, taxes will have to be paid on such capital in box 3 as well as in box 2. A taxpayer can avoid this double taxation if he can show that he had business reasons to return the assets to box 3 within a period of 18 months.
- Persons with a substantial interest in a vbi (simply put, having an interest of 5% or more of the shares) have to report at least a 4% (fixed) dividend (as is the case for foreign investment companies). The cabinet proposes that from the 1st of January 2017, this fixed percentage is to be set at the same level as the percentage that applies to the highest bracket of box 3 (from 2017: 5.5%).
- To prevent taxpayers from moving to foreign investment entities, which pay little or no taxes on their gains, these measures will also apply to any capital placed with a foreign investment entity.
Income policy

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

In 2016 the upper limit of the third bracket of the wage and income taxes is € 66,421. Contrary to what was previously agreed, the cabinet proposes to increase this upper limit to € 67,072 per 2017. This means that the maximum rate of 52% will apply to incomes starting at € 67,072.

In respect of purchase power, policy is also set by means of the various tax credits. These are reductions in the amount of tax to be paid. For 2017, the cabinet proposes a number of changes:

- The general tax credit essentially applies to everyone. This tax credit is income-dependent and ranges from € 0 to € 2,242 in 2016. The cabinet proposes to increase the maximum general tax credit for 2017 to € 2,254.
- The labor credit essentially applies to everyone receiving income from work. The labor credit is also income-dependent. In 2016, the maximum labor credit is € 3,103. The cabinet proposes to raise the maximum labor credit in 2017 to € 3,223. In addition to this change to the maximum labor credit, the point at which the labor credit starts to decline, is also adjusted. In 2016, the labor credits starts to decline for incomes of € 34,015. The cabinet proposes to start this decline of the labor credit at € 32,444 in 2017.
- In 2016, the senior citizens' credit is € 1,187. The cabinet proposes to increase this per 2017 to € 1,292 for pensioners having a total income of no more than € 36,057. According to the cabinet, this increase in the senior citizens' credit will structurally improve the purchase power of senior citizens.

Progress report regarding box 3

The State Secretary of Finance has presented the progress report regarding taxation of income in Box 3 of the Income Tax. The progress report is an initial exploration of the feasibility of introducing a system in which the actual yields on capital are taxed. The report furthermore examines under what conditions, as well as when, such a system might be introduced. The optimal means of taxation has been considered for each type of asset. The progress report summarizes both pros and cons. Based upon these findings, three alternatives have been drafted, which the cabinet believes could in principle be implemented in the Netherlands.

- Alternative A: taxation of accrued yields, based on the increase in value of every type of asset for which sufficient information can be gathered ("vermogensaanwasbelasting").
- Alternative B: taxation of yields, based on any increase in value which has actually been realized ("vermogenswinstbelasting").
- Alternative C: Annual fixed determination. In this alternative, the gains on each type of asset are determined to be a fixed percentage, which is set retrospectively for each fiscal year.

An internet consultation is to be held in spring of 2018 and legislation is to be proposed in autumn of 2018.

For completeness sake, the taxation of box 3 will already change per January 1, 2017 on account of an earlier amendment:

- As of 2017, the exempt amount will be increased to € 25,000.
- As of 2017, the fixed yield percentage will be made dependent on the taxpayer's capital. The more capital the taxpayer has, the higher the fixed gains percentage. See the table below (which has already taken into account the exempt amount of € 25,000).

<table>
<thead>
<tr>
<th>Capital more than</th>
<th>But less than</th>
<th>Fixed yield percentage 2016</th>
<th>Fixed yield percentage 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>€ 0</td>
<td>€ 75,000</td>
<td>4.00%</td>
<td>2.91%</td>
</tr>
<tr>
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<td>€ 975,000</td>
<td>4.00%</td>
<td>4.69%</td>
</tr>
<tr>
<td>€ 975,000</td>
<td></td>
<td>4.00%</td>
<td>5.50%</td>
</tr>
</tbody>
</table>
Measures against constructions involving segregated private capital

In the past, capital such as shares in a family business, as well as liquid investments, was often segregated in trusts and (foreign) foundations to avoid taxation. The founder, or rather the person transferring the capital, could not be taxed, as the segregated capital was no longer part of his own capital. Nor was it possible to tax the beneficiaries, as the segregated capital was not yet part of their own capital. This resulted in untaxed, 'floating' special-purpose capital.

To prevent this, the apv-rules (for 'afgezonderd particulier vermogen', segregated private capital) went into effect as of the 1st of January 2010. Under these rules, all of the apv's assets and debts, revenues and expenses are attributed to the person who has transferred the capital to the apv, or to this person's heirs.

An important exception to this is the so-called attribution stop, or 'toerekeningsstop'. This means that if the apv is taxed in a foreign country in a manner which is substantial by Dutch standards, the capital will not be attributed to the transferor or his heirs. A tax is considered substantial if, simply put, it generally amounts to at least 10%.

It has come to the cabinet's attention that this attribution stop is used in a number of undesirable ways. For example, an apv may be subject to a 10% levy, but the amount that this tax is applied to is (close to) nil, or the initial taxation is subsequently downwardly adjusted. This can be difficult for Dutch tax authorities to verify, which is why the cabinet has proposed that the attribution stop will only apply to the extent that the apv conducts an actual, physical business. Should this not be the case, the attribution stop will not apply, and only actually paid foreign taxes on income or profits may be offset against the Dutch income tax.

Due to this change, certain assets may yet come to be attributed to the transferor, even though the attribution stop previously applied. Should these assets include shares which form a substantial interest (simply put, an interest consisting of 5% or more of the shares), the appreciation of such shares which may have occurred in the time between their transfer to the apv, and the moment at which the attribution stop ceased to apply, gives rise to a tax claim.

To prevent anticipatory behavior, this measure will take effect on the 20th of September 2016, at 3:15 PM.
Streamlining collection regulations taxes and penalties

The cabinet proposed the following to streamline the collection regulations:

- The Recipient - in addition to the taxes - will also become the competent authority for the collection of penalties.
- There will be a debtor-oriented payment scheme.
- There will be a discharge of the residual debt after the expiration of a payment scheme.
- The legal protection takes place via the fiscal courts.
- The settlement scheme is changed.
- There will be a preference for allowance debts.

By authorizing the Recipient for collection/payment of both tax debts and refunds as well as allowance debts and refunds, allowance debts and tax refunds can be offset against each other, and vice versa. In addition, this also allows for specific debtor-oriented payment schemes to be introduced. This means that tax debts as well as allowance debts a citizen owes to the Tax Administration can be combined and be treated as one debt. With regard to this debt, subsequently a uniform payment scheme is offered. This will be further outlined in executional decrees. In summary the payment scheme will consist of:
  - a standard scheme of 12 months;
  - a customized scheme of a maximum of 24 months. If the payment capacity of a citizen is insufficient to pay a debt via the customized scheme within a maximum of 24 months, then this citizen - if all conditions are met - will be eligible for discharge of the residual debt.

During the application of a payment scheme, outstanding debts can no longer be offset against existing advances and/or interim refunds.

Now that it has been proposed to streamline the treatment of tax debts and allowance debts, the bill also includes a proposal to give legal preference to allowance debts. This means, for example, that in a bankruptcy situation the Recipient has preference over other debtors.

Lastly, it is proposed to only give the fiscal courts jurisdiction with regard to disputes about postponement and discharge of both tax debts and allowance debts, as well as the postponement or elimination of payments.

Vision EY
Almost all proposed provisions relate to citizens that deal with allowances and income tax. The proposed legal protection via the fiscal courts has a general scope, however. This means that - if the proposal is adopted - for all taxes instead of one possibility to appeal with the General Director Taxes it is possible for the stakeholder to litigate up to the Supreme Court if so desired. We would very much like to see this change!

Contact

Jan-Bertram Rietveld
E: jan-bertram.rietveld@nl.ey.com
T: 088 - 407 83 22

Charlie Bruijsten
E: charlie.bruijsten@nl.ey.com
T: 088 - 407 84 13

Frank Elsweier
E: frank.elsweier@nl.ey.com
T: 088 - 407 35 05
With regard to the own home, the parliament did not propose significant fiscal changes. In addition to the extension of the filing period in case of an appeal to the donation exemption, the parliament has specifically removed a number of fiscal bottlenecks.

Exemption in case of buyout capital insurance, savings account or investment right own home

The benefit from a capital insurance own home (KEW), savings account own home (SEW) or investment right own home (BEW) is only exempt if premiums/contributions were paid for at least 15 or 20 years.

A taxpayer who sells his own home and moves to a rental home under certain conditions can use the exemptions for the KEW, SEW and BEW, even if he does not meet the condition of 15 or 20 years of premium/contribution payments.

Taxpayers who are in a difficult financial situation often do not have another option than a buyout. This will be the case specifically in situations:
• of the termination of a fiscal partnership, such as in case of a divorce;
• that the taxpayer is in a debt assistance program;
• that the taxpayer has disposed of an own home and at that moment directly afterwards still has or will again have an own home available;
• that the taxpayer has general financial problems and is no longer able to carry the costs with regard to an own home.

In a policy decree it was already arranged that the KEW, SEW, or BEW in certain situations of financial need could be paid out early, in whole or in part, whereby the high exemption still applied. The cabinet has decided to include a regulation for this in the law. The situation that the taxpayer could partially lose the exemption in case of a buyout of a capital insurance after cheaper living was added to this.
Usufruct by will and home-ownership: deductible interest for the holder of the usufruct

The home-ownership regime (and thus the deductibility of interest on mortgages) no longer applies if a home has been transferred under a condition of usufruct while the owner is still alive. In that case, the home is subject to taxation on a fixed yield (box 3) at the level of both the holder of the usufruct as well as the holder of the bare ownership for their respective interest in the home.

However, should the usufruct have been acquired through inheritance, the tax home-ownership regime may continue to apply for the holder of the usufruct. This could for instance be the case in the situation in which the surviving spouse continues to live in the home, while the children become bare owners on account of the deceased's will or by division of the estate. In this case, the bare owners will not be taxed in box 3. Even though the debt is in the name of the bare owners, it is the holder of the usufruct who may deduct the interest that he or she has to pay as well. The cabinet wishes to codify these rules, which until now had been included in an administrative decree, in the law.

These rules apply to debts for which the taxpayer must bear the costs on the basis of a usufruct acquired through inheritance, through right of inhabitancy or right of use.

Averaging interest in case of the termination of fixed interest period own home debt

If an own home mortgage loan with a fixed interest rate is converted into a loan against a lower market interest rate, then the bank will charge a penalty due to the termination of the fixed interest period. This amount can be paid in one lump sum or can be spread out over the new fixed interest period by means of an averaging of interest.

The surcharge for the averaging of interest - in addition to the spread out penalty interest - also consists of other elements, such as a fee for the risk of early repayment in case of a sale. Strictly speaking, these last elements would not be deductible interest but at the most expenses of a monetary loan, which could create all kinds of practical complications, for example in case of an annual repayment. Because of this fiscal consequence, offering interest averaging could become unattractive. In order to prevent this, in a policy decree, the State Secretary of Finance already approved that the respective interest is deductible as an interest of debts (and not as expenses of a monetary loan), and that it is also considered as interest for the assessment of the fiscal repayment requirement. The cabinet is currently proposing to convert this approval from the policy decree into law.
Extension assessment period after donation for home ownership

From January 1, 2017, it will be possible - subject to certain conditions - to use an increased donation exemption of up to €100,000, if the donation is made to a beneficiary aged between 18 and 40 and if the donation is related to home ownership (e.g. purchase and/or renovation of the privately-owned home and/or repayment of the mortgage debt).

After the gift tax return (in which the exemption is invoked), the Dutch tax authorities have three years to impose the assessment. The cabinet believes that the three year assessment period is too short for the tax authorities to impose a correct assessment. Especially now that it is possible to take advantage of this exemption spread over three years - from January 1, 2017 - the cabinet considers it appropriate to extend the assessment period from three to five years.

Vision EY

In the explanatory notes, this measure is mainly justified because the increased exemption may be used over a three year period, since "it is expected that in many cases only after three calendar years the actual utilization of the exemption and the use of the donation can be identified." We do not see the logic in this argument. After all, if a donation of €25,000 is made in 2017 that is related to home ownership, the tax authorities - based on the current law - have three years to determine if all conditions have been met in relation to this donation. If subsequent second and third donations are made in 2018 and 2019, the tax authorities, again, have three years to determine if all conditions have been met and if there is sufficient unused exemption left. Therefore, we do not understand the need to affect the legal protection and legal certainty of the taxpayer in this way.

Contact

Arjo van Eijsden
E: arjo.van.eijsden@nl.ey.com
T: 088 – 407 84 11

Charlie Bruijsten
E: charlie.bruijsten@nl.ey.com
T: 088 – 407 84 13
Earlier this year the Law implementation Automobile Regulation II was accepted. In this the parliament has laid down changes in the automobile regulations for 2017 through 2020. The purpose was to come to a stable revenue stream for the government, based on defendable and implementable automobile taxes and a significant support of the air quality and climate purposes in the area of automobiles via proportional and properly directed fiscal incentives. An important part thereof is that the general tax benefit percentage for new cars is reduced to 22% starting in 2017. In addition, an annual tightening of the CO2 limits will appear on the BPM rate levels in order to keep up with the technological developments.

However, for Prinsjesdag not much was left of the previously promised reduction of the rate of the energy tax for public charging stations.
Lower rate energy tax public charging stations

The rate of the energy tax for public charging stations is reduced for four years, from 2017 through 2020. The height of the fixed rate for charging stations is then equated with the rate in the second bracket of the energy tax. Currently the rate is 4.996 cents per kWh, and thus is half the rate in the first level of 10.007 cents per kWh, which currently generally applies in practice.

This rate adjustment improves the business case for public charging stations. Charging at a public charging station thus becomes cheaper, insofar as the tax advantage is passed on in the price. Charging at home in principle does not qualify for the lower rate. In such case it usually does not concern an independent connection, which in most cases is the case with public charging stations.

The term of four years equals the period of fiscal stimulation for electric driving in the Automobile Regulation II.
Letter about fiscal simplification

In addition to a Fiscal Simplification Law, the State Secretary of Finance also sent a letter on this topic to Parliament. In the letter, the State Secretary again emphasizes the importance of and the striving for the simplification of tax rules.

The State Secretary explicitly states in the letter that he is thankful for the input of simplification proposals in response to the consultation that was held. He does indicate that some simplification proposals from the consultation session are not further reviewed, because they do not meet the assessment aspects mentioned in the consultation. Specifically mentioned are the proposals to:

- grand everyone, during their life, an exemption for the donation and inheritance tax for an amount of €100,000 per donor;
- eliminate the bank tax;
- eliminate the consumption tax for alcohol free beverages;
- eliminate the reduced VAT rate;
- not impose VAT on the purchase of solar panels.

An example of a proposal that the State Secretary would like to review in more detail is the possible elimination of one or more specific interest deduction limitations in corporate income tax. This option is reviewed in conjunction with the obligation arising from the Anti-Tax Avoidance Directive to introduce a generic interest deduction limit in the form of an earnings stripping provision. The State Secretary also intends to further review the possible implementation of the proposal to simplify the small company regulation in the VAT.
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Contact

Arjo van Eijsden
E: arjo.van.eijsden@nl.ey.com
T: 088 - 407 84 11

Charlie Bruijsten
E: charlie.bruijsten@nl.ey.com
T: 088 - 407 84 13

Frank Elsweier
E: frank.elsweier@nl.ey.com
T: 088 - 407 35 05
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