Executive summary

On 10 October 2017, the new Dutch Government published its Policy Paper (the Paper). The Paper outlines the policy of the new Dutch Government for the next four years. The new four-party coalition Government was formed following extensive negotiations after the elections that were held on 15 March 2017. The current Prime Minister, Mr. Rutte, will likely continue to head the Dutch Government.

The aim of the proposed tax changes is to ensure that the Netherlands continues to offer a competitive tax investment climate for companies but at the same time it addresses the developments on tax avoidance in line with the Organisation for Economic Co-operation and Development and European Union (EU) recommendations, which includes the Anti-Tax Avoidance Directive (ATAD) and the EU blacklist for non-cooperative countries which is expected to be published by the EU later this year.

This Alert summarizes the plans of the new Dutch Government regarding the Dutch Corporate Income Tax Act and the Dutch Dividend Withholding Tax Act.
Detailed discussion

Lower Dutch corporate income tax rates
The new Government proposes to lower the current standard Dutch corporate income tax rate from 25% to 24% in 2019, to 22.5% in 2020 and to 21% as from 2021. Profits up to an amount of €200,000 are currently taxed against a lower step up rate of 20%. The new Government proposes to lower the step-up rate from 20% to 19% in 2019, to 17.5% in 2020 and to 16% as from 2021.

Elimination of Dutch dividend withholding tax
The Paper introduces plans to eliminate the 15% withholding tax on dividend distributions. However, dividend distributions in abusive situations and to low-tax jurisdictions would become subject to a withholding tax.

Under the current legislation, dividend distributions by limited liability companies (BVs and NVs) are in principle subject to a 15% dividend withholding tax (although reductions and exemptions might be applicable based on treaties, EU legislation or domestic legislation), while dividend distributions by cooperatives are in principle not subject to dividend withholding tax, except for certain abusive situations.

Recently, the Dutch Ministry of Finance published its tax budget proposals for fiscal year 2018. This budget proposal included two amendments to the Dutch Dividend Withholding Tax Act:

1. Introduction of a broader domestic dividend withholding tax exemption for dividend distributions to recipients resident in the EU/European Economic Area (EEA) or a country that has concluded a tax treaty with the Netherlands covering dividends, combined with the introduction of a specific anti-abuse rule.
2. Treat cooperatives that predominantly (for 70% or more) operate as holding/financing companies similar to BVs and NVs.

At this stage it is unclear how the 2018 budget proposal – whereby under certain conditions distributions from a Dutch cooperative would in principle become subject to Dutch dividend withholding tax – relates to the announcement to abolish the Dutch dividend withholding tax. Therefore, we strongly advise to review existing cooperative-structures and discuss the impact of the 2018 budget proposal.

Withholding tax on interest and royalties
Currently, the Netherlands does not levy withholding tax on interest and royalties. The new Dutch Government plans to introduce withholding tax on interest and royalties on payments from Dutch taxpayers to low-tax jurisdictions. This may be seen in context of the initiative taken at the EU-level to prepare a blacklist for non-co-operative tax jurisdictions before year-end.

Interest deduction limitation rules
Some detail was shared around the implementation of the earnings stripping rule of the ATAD as from 1 January 2019. The Paper describes that net borrowing costs will only be tax-deductible up to either: (i) 30% of a taxpayer’s earnings before interest, tax, depreciation and amortization (EBITDA); or (ii) a threshold of €1 million. The new Government specifically mentions they will not include a group-ratio exemption. In addition, a thin capitalization rule limiting interest expenses related to debt exceeding 92% of the total commercial balance sheet value is included in the Paper.

Simultaneously, the new Government proposes to abolish other existing interest deduction limitation rules in the Netherlands with the exception of the anti-base erosion rule of article 10a Dutch Corporate Income Tax Act.

Restrictions of carryforward loss compensation
Currently, tax losses may be carried forward for nine years and/or carried back for one year. The new Dutch Government plans to limit the carryforward from nine years to six years.

Increase of effective tax rate innovation box regime
The Dutch innovation box regime, a beneficial intellectual property regime, currently allows qualifying research and development profits to be taxed at an effective tax rate of 5%. The new Government plans to increase the effective tax rate to 7%.

Next steps and timing
The Paper cannot be considered as a formal legislative proposal, but should be considered a blueprint for future formal legislative proposals, which are expected in due course.
Implications

The introduction of lower Dutch corporate income tax rates and the abolishment of the Dutch dividend withholding tax could be seen as an important step in further strengthening the Dutch fiscal investment climate for companies. At the same time, the Netherlands continues to support the initiatives around targeting international tax avoidance.

Endnote

1. For more information regarding the 2018 Budget Proposals, see EY Global Tax Alert, The Netherlands publishes 2018 Budget Proposals including changes to Dutch Dividend Withholding Tax Act, dated 19 September 2017.
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EYG no. 05776-171Gbl
1508-1600216 NY
ED None

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