2025 Dutch Tax Budget

On September 17, 2024, the Dutch government published its Budget Day proposals for the year 2025. In this newsletter, we have highlighted key tax changes affecting international operating corporate taxpayers. This newsletter covers significant changes in corporate income tax, dividend withholding tax, conditional withholding tax, minimum tax, and other relevant tax laws.

The most relevant proposals for corporate taxpayers are:

- **Corporate Income Tax Act 1969 (CITA)**: an extension of the related-party definition, the deductibility of interest payments;
- **Conditional Withholding Tax Act 2021 (CWTA)**: a new group definition;
- **Pillar Two/Minimum Tax Act 2024 (MTA)**: the incorporation of the latest OECD Pillar Two Guidance and the interaction of the Pillar Two rules with the CITA 'subject-to-tax rules'.

In addition, some previously adopted changes were reversed or relieved, such as changes to the tax-free repurchase facility for listed entities. It is furthermore announced that the expatriate regime will become more attractive again.

If approved, the proposed measures will take effect on January 1, 2025, unless specified otherwise.

As BDO, we aim to keep you updated on these developments. It is advisable for affected taxpayers to review your tax positions with your tax advisor. If negatively impacted, taxpayers may mitigate effects by using for instance transitional rules. BDO is here to help assess the impact on your business, and to identify risks and opportunities.

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Corporate income tax

Extension related-party definition following changed entity classification rules
As from 2025, all (existing) Dutch partnerships (CVs) will be classified as transparent for Dutch tax purposes. In addition the Dutch tax classification rules applicable to Dutch funds for joint account (FGRs) will be amended. Finally, the Dutch tax classification rules for foreign entities will also change per that date. These modifications were already announced on Budget Day 2024.

The CITA applies a 'related-party' definition in certain provisions, particularly relevant for the anti-base erosion interest deduction limitation (art. 10a CITA). As a result of the new entity classification rules, Dutch partnerships, foreign equivalents, and foreign tax-transparent entities qualifying for the symmetrical approach, will be classified as transparent for Dutch tax purposes from January 1, 2025. This has the effect that the related-party definition would no longer apply to such partnerships and entities. Therefore, it is proposed to extend the related-party definition, including the cooperating group definition, to encompass these partnerships and entities.

Earnings stripping rule
Under the earnings stripping rule the deduction for net interest expenses – defined as the difference between interest expenses and interest income, including foreign exchange results on loans – is currently capped at the greater of either:
- 20% of fiscal EBITDA; or
- a threshold of € 1 million.

This ratio is calculated at the taxpayer level without differentiating between intra-group and third-party interest and costs.

To align more closely with the European average, the government plans to increase the current 20% rate to 25% as of 2025. In addition, it is proposed to tighten the threshold amount of € 1 million to zero for specified 'real estate investment companies'. This measure should combat activity splitting for real estate investment companies. The threshold was abused in this way, especially when financing investment real estate. A real estate entity is an entity whose 'adjusted assets' for at least half of the year consist for 70% or more of immovable property that is made available to third parties. Such taxpayers can, as of January 1, 2025, only rely on the (proposed) 25% EBITDA threshold.

Improved tax incorporation of a direct legal sister merger
Under Dutch civil law, there are situations of a legal merger between companies whereby the acquiring company does not have to allocate shares to the shareholder(s) of the disappearing company. One such situation is the legal sister merger, in which an individual or legal entity immediately (directly) holds all the shares in the companies that are legally merging with each other. Several tax law provisions do not properly accommodate such legal sister mergers. The proposal is to address this as of 2025 by adjusting various provisions in Dutch income tax, corporate income tax, dividend tax and withholding tax.

Solution application debt relief exemption
The debt relief provisions were negatively impacted by the new loss compensation rules introduced as from 2022. The proposal is to amend this.

A waiver of an uncollectible debt is treated as a gain for Dutch corporate income tax purposes, but an exemption applies for the amount exceeding available tax losses. As (from 2022) loss relief is restricted to 50% of the current year profit, exceeding € 1 million. This means that upon a waiver, tax can be due on half of the amount of the waiver exceeding the € 1 million threshold. This makes it more difficult for a loss-making company to restructure because Dutch corporate income tax must be paid on such profit.

To prevent this unwanted result, it is proposed to modify the debt relief exemption so that if tax losses exceed € 1 million, the gain from a waiver will be exempt from corporate income tax to the extent that it surpasses these losses. This implies that no tax will be owed in the event of a debt waiver. In exchange, any remaining losses available for offset will be decreased by the amount of the tax-exempt debt relief profit. Although the proposed legal text doesn't explicitly state this, we assume that losses will not be reduced below € 0.

Liquidation loss scheme and conversion of impaired receivables
The participation exemption stipulates that all gains (such as dividends and value appreciation) from a shareholding of at least 5% are generally exempt from Dutch corporate income tax. Conversely, any devaluation of the participation cannot be deducted. The CITA contains an important exception to this rule: the liquidation loss scheme. In essence, this scheme means that the difference between the distribution upon liquidation of the subsidiary and the so-called sacrificed amount (the amount sacrificed to acquire the participation) can be deducted. Moreover, the law includes a regulation designed to address an old tactic: initially recording a receivable debt against profits, and then converting that receivable into shares eligible for the participation exemption (or valuing it). In that case, the taxpayer can choose between

immediate profit recognition for the amount of the earlier write-down (option 1) or deferred taxation through the system of the revaluation reserve (option 2). Currently, the sacrificed amount for involvement in the ex-debtor increases only when the taxpayer selects option 2 and realizes gains. It is suggested that moving forward, this sacrificed amount should also rise if the taxpayer chooses direct profit taking (option 1).

Liquidation loss scheme and intermediate holding companies
The liquidation loss provision includes a rule to prevent misusing deductible liquidation losses via an intermediate holding company. This rule stops non-deductible participation losses from becoming deductible liquidation losses. However, this rule has a loophole, which is proposed to be closed per 2025.

Object exemption with respect to disregarded permanent establishments
If a Dutch company that is taxable in the Netherlands, has a permanent establishment in another country, the main rule is that there is an object exemption for the foreign business profits obtained with the permanent establishment. This means that the results of the permanent establishment are eliminated from the Dutch corporate income tax base. This applies to both profits and losses. However, the object exemption does not apply if the foreign country in question does not recognize (and thus disregards) the permanent establishment. In that case, the Netherlands includes the profits of the permanent establishment in the Dutch corporate income tax base and the object exemption does not apply.

In practice, it turned out that the anti-abuse measure in the object exemption can sometimes lead to double taxation for the (disregarded) permanent establishment. This concerns situations in which the profits of the permanent establishment (not taken into account) are nevertheless subject to tax on profits in the foreign country concerned. This is the case, for example, if the permanent establishment qualifies as non-transparent entity in the relevant foreign country. In that case, the Netherlands taxes the profit because the object exemption does not apply, and that foreign country would independently include that permanent establishment in a profit tax. This creates double taxation and is contrary to the purpose of this anti-abuse measure (to avoid double non taxation). For this reason, the object exemption will be adjusted so that the exemption does apply to the extent that the profits of the disregarded permanent establishment are subject to tax levied on profits in the state in which that permanent establishment is deemed to be situated for the purposes of the object exemption.

Implementation of general anti-abuse rule ('GAAR')
As of 1 January 2019, the Netherlands implemented the European anti-tax avoidance directive ATAD1. ATAD1 requires EU member states, among other things, to implement a general anti-abuse rule (GAAR). When implementing ATAD1, the Netherlands opted at the time not to transpose the GAAR into national legislation because with the doctrine of fraus legis the GAAR from ATAD1 was already implemented in Dutch tax law. Fraus legis is a general legal framework, developed in Dutch case law, that achieves the objective intended by the GAAR from ATAD1. As part of the Netherlands' implementation obligation with respect to the GAAR from ATAD1, the European Commission (EC) has called attention to the legal embedding of the GAAR in the Dutch CITA. By anchoring the GAAR in the CITA as of January 1, 2025, the government is responding to this request. It is explicitly mentioned that this should not materially change the application of the concept of fraus legis in the Netherlands.

Elimination of the tax deduction for specific donations
It is proposed to no longer allow corporate tax deductibility for donations driven by personal motives of shareholders and to treat them as a distribution to the shareholders for dividend withholding tax and personal income tax purposes. The proposed amendment should not affect the deduction of gifts that are business driven, for instance sponsoring.

Pillar Two

Various changes to the Minimum Tax Act 2024
The MTA entered into force in the Netherlands on December 31, 2023. This law introduced a minimum tax to ensure that multinational and domestic groups with a turnover of € 750 million or more pay at least effectively 15% tax on their profits. This law concerns the implementation of the EU Minimum Tax Directive (also known as the Pillar Two Directive). This directive is based on the model rules of the Organization for Economic Cooperation and Development (OECD). After publishing these model rules, the OECD published several administrative guidelines. Because the MTA is based on the OECD Model Rules and its commentary, the OECD commentary can therefore serve as a source of interpretation. As of January 1, 2025, several elements of the OECD administrative guidance will be included in the MTA. In addition, some technical changes will be made. The legislator intends that the amendments to the MTA have retroactive effect until December 31, 2023. The legislator considers this acceptable insofar the measures are not burdensome for taxpayers. For four of the measures, the legislator does not consider this acceptable, and therefore proposed that these changes only apply for financial years starting on or after December 31, 2024.

Interaction Pillar Two with subject-to-tax rules in CITA
The Dutch CITA includes subject-to-tax rules in relation to various (anti-abuse) measures. These subject-to-tax rules provide for an escape from the (anti-abuse) measure in case of a reasonable level of taxation of the relevant asset, transaction or participation. The proposed amendments to the CITA per 2025 clarify that for certain of these subject-to-tax rules, Qualifying Pillar Two Top-up Taxes should count as tax paid for these rules. These proposed amendments cover the interaction with:

- the interest deduction limitation that restricts the deduction of intragroup financing costs in specific 'abusive' situations (art. 10a CITA);
- the participation exemption; and
- the object exemption.

The proposed amendments to the subject-to-tax rules do not cover (anti-abuse) rules in relation to differences between corporate tax systems, such as the transfer pricing mismatch rules or entity classification mismatches (ATAD2). For determining whether a transaction or asset is included in a tax on profit for these anti-abuse rules, the explanatory memorandum to the 2025 Tax Budget mentions that only regular profit taxes in the relevant state are considered. The explanatory memorandum, however, states that a taxpayer nevertheless meets these subject-to-tax rules if it can show that a Qualified Pillar Two Top-up Tax results in a Top-up Tax percentage of 15% specifically in relation to the transaction or asset. The subject-to-tax rule related to Controlled Foreign Company (CFC) measures (ATAD1) is met if the taxpayer can show that a Qualified Pillar Two Top-up tax results in a Top-up Tax percentage of 15% specifically in relation to the relevant entity.

Dividend withholding tax

Mandatory application of dividend withholding tax exemption
It is proposed to make the use of the dividend withholding tax exemption obligatory when dividends are distributed in Dutch domestic situations: (i) within a fiscal unity, or (ii) to a qualifying domestic shareholder which can apply the participation exemption. This change ensures that the recipients of such dividends can effectively object if the distributing company does not apply the withholding exemption.

Tax free share buyback facility for listed entities
The former Dutch government planned to abolish the tax-free share buyback facility for listed entities as of January 1, 2025. At that time concerns were expressed by the Senate and the

business sector, which were acknowledged by the former government. That government held the view that the expected revenue might also be substantial lower as companies most likely would end their share buyback programs or even relocate out of the Netherlands. Based on the 2025 Tax Budget, the abolishment of the tax-free share buyback facility will be reversed, and the facility will thus continue to be available.

Record date proceeds of shares

It is proposed that, as of January 1, 2025, it should be laid down in the law that the record date is the moment at which it is determined who is entitled to a dividend payment on listed shares, and thus who is entitled to credit, exemption, refund or reduction of dividend withholding tax. This is a confirmation of existing policy for listed shares.

Conditional withholding tax

New group definition

The Dutch CWTA imposes withholding tax on interest, royalty, and dividend payments to affiliated entities in low-tax jurisdictions, EU blacklisted jurisdictions, certain hybrid entities, or in cases of abuse. A low-tax jurisdiction levies no profit tax or does so at a rate of less than 9%. The conditional withholding tax rate is equal to the highest corporate income tax rate: 25.8% (2024 and 2025).

Mainly for structures involving a hybrid entity, the current applicable 'cooperating group definition' (as known from the interest deduction limitation of art. 10a CITA) creates uncertainty, especially since the Dutch tax authorities do not provide certainty in advance regarding the presence or absence of a cooperating group. The concept of cooperating group prevents a taxpayer from splitting up an interest to avoid affiliation and hence to avoid levying conditional withholding tax. Additionally, the current definition may lead to conditional withholding tax being imposed in cases where it is not intended, resulting in overkill.

To combat this negative impact, a new group definition is proposed for the CWTA as of January 1, 2025. The proposed new group definition is referred to as a 'qualifying unity'. This concept should apply to situations where entities are 'acting together' with the main purpose, or one of the main purposes, to avoid withholding tax being levied at one of those entities. The burden of proof regarding the existence of a qualifying unity lies with the tax inspector.

Real estate transfer tax

Reduction rate

It is proposed to reduce the general real estate transfer tax rate for the acquisition of homes from 10.4% to 8%. This applies to the acquisition of homes where there is no long-term owner-occupation as main residence. The measure will take effect on January 1, 2026.

Payroll tax

Partial rollback of 30% ruling

As of January 1, 2024, the 30%-ruling for new applications was gradually scaled back to a 10%-ruling. The Dutch government earlier announced to reverse this scaling back of the 30%-ruling. It is now announced that, for the years 2025 and 2026, a 30% rate will apply for all employees. As of January 1, 2027, the 30%-ruling will be decreased to a 27%-ruling. In addition, the salary criterion to apply the 30%-ruling will be increased. For employees who applied the 30%-ruling before 2024, transitional rules will apply.

Updates to the tax system of the Caribbean Netherlands

As special municipalities of the Netherlands, Bonaire, St. Eustatius and Saba have a separate tax system. With the 2025 Tax Budget BES-islands, some obsolete provisions in the various tax laws will be modernized and some regulations will be brought more in line with regulations already applicable in the European part of the Netherlands. A number of tax rates will also be increased.

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