TAX ACCOUNTING CONSIDERATIONS 2021

HVK STEVENS

On 21 December 2021, the Upper House of Parliament adopted the 2022 Tax Plan package. Prior to finalising the financial statements of 2021, you may thus want to consider our 5 tax accounting tips for corporate income tax purposes below. Feel free to reach out to your specialist at HVK Stevens to discuss the potential impact of these tax measures on your company's tax position.

1. Tax rates

The Dutch Government will increase the statutory corporate income rate as of January 1, 2022, to 25.8% (as opposed to 25%). The lower 15% rate for the first bracket is increased from EUR 245,000 to EUR 395,000.
The increase in tax rate will impact the reported deferred taxes as these will have to be remeasured once the changes have been enacted. The effect of the change in rate is - depending on the recognition of the item to which the temporary difference relates - either recorded as other comprehensive income or directly into equity if the item was previously recognised outside the profit and loss account.

Tip. Evaluate deferred tax positions

2. Tax-loss carry-over rules

The changes in loss carry-over rules have already been enacted earlier this year, and will therefore impact the 2021 financial statements. The rules will apply to the utilisation of tax losses to relieve taxable profits of financial years starting on or after 1 January 2022.

The changes in tax-loss carry-over rules are twofold. On the one hand, losses that have not expired before the start of that financial year will remain available indefinitely in time (currently this is limited to only six years). Furthermore, it will in any financial year no longer be possible to fully offset tax losses over EUR 1,000,000. Taxable profits over EUR 1,000,000 shall only be available for tax-loss offset for 50%. As a consequence, a taxpayer may find itself in a tax-paying position (current tax payable) although it still has tax losses available to relieve future profits (deferred tax asset).

Tip. Evaluate the impact on deferred tax positions and cash tax payment

3. Earnings stripping rule

The Dutch Government will reduce the maximum amount of interest deductible for corporate income tax purposes exceeding 20% of the taxpayer's EBITDA for tax purposes (down from 30%). The EUR 1,000,000 threshold for net interest expenses will remain unchanged. This measure will become effective in financial years starting as of January 1, 2022. Depending on the availability of sufficient (future) EBITDA and/or interest income to offset against the carried forward interest, this may result in a change in the deferred tax asset recognised in connection with non-deductible interest to be carried forward.

Tip. Evaluate reversal schedule for recognition of deferred tax asset

4. Reverse hybrid entities

A hybrid entity is an entity that is considered transparent for income tax purposes in its jurisdiction of residency/incorporation and non-transparent from the perspective of its participant(s). This could result in a mismatch between deductibility of payments (such as interest or royalties) to that hybrid entity without any corresponding income being taxed at the level of the hybrid entity.

Already as of January 1, 2020, several measures were implemented to limit tax avoidance through the use of hybrid instruments, which will be followed up with additional tax measures for reverse hybrids from January 1, 2022, onwards. Under the Tax Plan 2022, a reverse hybrid entity can become fully liable for corporate income tax purposes as a Dutch resident taxpayer.

In terms of corporate income tax, the proposed legislation will cause hybrid entities to become subject to Dutch corporate income tax. The reverse hybrid will have to prepare an opening balance for tax purposes, which could lead to temporary differences resulting in deferred tax positions. Also, as the profits of the reverse hybrid entity become subject to Dutch corporate income tax, the effective tax rate may increase.

Reverse hybrid entities may furthermore become withholding agents for Dutch dividend withholding tax and conditional withholding tax on interest and royalty payments when paid to low-tax jurisdictions. These taxes could either be presented as non-income tax ('above the line') or as income tax ('income tax line').

Tip. Evaluate structure for presence of hybrid entities and assess potential impact for 2021 and 2022

5. Transfer pricing mismatches

Under current legislation, if there is a deviation between the related-party remuneration and an arm's length remuneration, the Dutch entity should for tax purposes report the arm's length remuneration. Technically, such adjustment is effectuated as either a deemed dividend distribution or as an informal capital contribution as a means to report an upward or a downward adjustment from statutory income. This could lead to mismatches in case no corresponding adjustment to the income of the related counterparty in the transaction is taken into account for local tax purposes.

In order to counter this type of mismatches, effective for financial years starting on or after January 1, 2022, a measure will be implemented for Dutch corporate taxpayers resulting in a denial of downward transfer pricing adjustments, unless the taxpayer can demonstrate that a corresponding upward adjustment is taken into account in the transaction counterparty's jurisdiction.

In case of the transfer of an asset to the Dutch taxpayer at a price below fair market value, no step-up to fair market value can be realized unless a corresponding capital gain is taken into account at the level of the transferor. The denial of downward adjustments on assets contributed from 2022 financial years onwards, will result in an increase in the effective tax rate compared to the current situation.

Tip. Evaluate whether any transfer pricing adjustments to the Dutch tax base were made based upon the arm's length principle for which no corresponding adjustment is taken into account

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