INTERNATIONAL ASPECTS OF BUDGET DAY - TAX PLAN 2023

INTRODUCTION

On 20th of September 2022, it was Budget Day (also known as Prinsjesdag) where the Dutch government presented its budget for the year 2023 as well as the anticipated tax changes for the years to come. HVK Stevens highlights lists the most relevant tax measures for international businesses.

THE CORPORATE INCOME TAX BRACKET

Currently corporate income tax is levied at the following rates (2022):

- 15 % on taxable profits up to € 395,000
- 25.8% on taxable profits in excess of € 395,000

As per 2023, the first bracket will be reduced from EUR 395,000 to EUR 200,000. At the same time the lower rate for the first bracket will be increased from 15% rate to 19%. The top rate remains 25.8%.

INNOVATIVE START-UPS: EXPIRATION OF RELAXED CUSTOMARY WAGE RULES

In the Netherlands a company needs to pay their director main-shareholder (DGA) a suitable salary for the work provided or at minimum €48.000. It used to be that innovative start-ups got a relaxation on this obligation, so they were only obligated to pay a salary at the height of the minimum wage to their DGA's. The relaxation of the customary pay rule for innovative start-ups will expire on January 1st 2023.

THE 30%-RULING

Highly skilled migrants recruited from abroad may be eligible to apply for the 30% ruling. The 30% ruling provides for a tax free allowance up to 30% of the employee's taxable gross salary. As per 2024, the amount of salary over which expats may apply the 30% rule will be capped under the Standards for Remuneration Act (WNT-norm), also referred to as 'Balkenende norm'. Currently, the maximum wage is set at €216,000 (2022). As such, the maximum reimbursement (tax fee allowance) amounts to EU 64,800. A transitional arrangement up to 2026 applies to employees already entitled to the 30% ruling in 2022.

CHANGE IN LEGISLATION CONCERNING THE TAXATION OF SHARE OPTION RIGHTS

International Startups and scale-ups in the Netherlands, often do not have sufficient financial capacity to offer their staff competitive salaries. To still attract and retain staff, they often use stock options as a remuneration tool. The problem with this, however, is that under current tax law in the Netherlands, stock options are taxed when the option is exercised. In other words, when the option rights are converted into shares. At that time, however, employees do not always have (sufficient) liquid assets to pay the tax due.

To solve this problem, a change in the tax regime has been proposed. This allows the employee to choose to tie in with the moment at which it is possible to dispose of the shares for tax purposes. The measure is intended to make it slightly more attractive for startups and scale-ups to use stock options as a remuneration tool. The change in legislation concerning the taxation of share option rights is expected to go into force on January 1st, 2023.

The question, however, is whether the change goes far enough. After all, it will not always be desirable, advantageous or practically possible to also dispose of shares immediately once permitted. Opportunities exist to design employee shareholdings so that a forced share sale to pay tax is not necessary and, moreover, a more favorable tax rate is achieved.

TRANSFER TAX

The transfer tax on non-residential properties and acquisitions of properties by entities and private parties that are not going to live in these properties is to be increased from 8% to 10.4%.

CHANGES FOR THE DUTCH REIT

The Dutch regime for fiscal investment institutions, the equivalent of a REIT, provides a 0% corporate income tax rate for profits of companies that qualify as REIT under a number of conditions. The REIT that invests in real estate is not itself taxed for the real estate income. The idea is that tax is levied on its participants when profits are distributed by the REIT.

The REIT is required to distribute a portion of its profits annually. In principle, 15% dividend tax must then be withheld from the participants on this distribution. In practice, for many foreign participants, the Netherlands cannot enforce this dividend tax because they are protected from that levy by tax treaties. The result is then that income from Dutch real estate held by REITs is not subject to Dutch tax at all.

On July 7, 2022, an evaluation report of the REIT and exempt investment institution for the corporate taxes was sent to the House of Representatives noting this. In response to this report, the government indicated that on Budget Day the regime regarding REITs will be adjusted as of 2024. The measure means that REITs will no longer be allowed to invest directly in real estate as of January 1, 2024. They can, however, place their real estate in regularly taxed subsidiaries. Pure real estate REITs will thus be taxed regularly at the normal VPB rates. In addition, the so-called funding requirement of REITs will be modified. The current requirement that the financing of the REIT with loan capital may not exceed 60% of the book value of the real estate will be dropped. As a result, the remaining investments of the REIT will be limited to no more than 20% of the book value of the investments.

When restructuring REIT real estate holdings, the 10.4% transfer tax will play a major role. The government is still investigating whether measures are needed to prevent the transfer tax from hampering restructurings.

DAC-7

There will be a reporting requirement for platform operators. This originates from an EU directive (DAC7). Platform operators will have to report to the Tax Authorities the amount of income the member companies and individuals have earned through the platform from the sale of goods and services and the rental of property. For example, the income of users who earned income with a platform like AirBnB or Booking will have their income automatically shared with their respective tax authorities as a consequence of the implementation of the new EU directive.

The reporting requirement applies to EU residents. However, given the nature and flexibility of digital platforms, the reporting obligation also applies to platform operators who carry out a commercial activity in the EU, but who are not tax residents of an EU member state, are not incorporated in accordance with the laws of an EU member state, nor have their place of management or a permanent establishment in an EU member state (these will be the so called foreign platform operators).

The bill takes effect on January 1st, 2023. This means that digital platforms will be required to collect and record data on sellers starting January 1, 2023. From 2024, digital platforms will be required for the first time to report seller data for calendar year 2023 to the respective tax authorities.

QUALIFICATION POLICY OF FOREIGN ENTITIES

In recent years attention has been drawn to the so-called consent requirement in the classification of the limited partnership (cv). Certain entities incorporated under foreign law that are similar to a CV are considered fiscally non-transparent (independently taxable) for Dutch purposes, while in the state of establishment they are considered fiscally transparent (not independently taxable).

The government aims to adjust the qualification policy of (foreign) legal forms to prevent mismatches from happening in the future and make the policy in line with ATAD 2. The intended measures consist of two parts:

- Codification of the current qualification policy of foreign legal forms and legal additions for non-comparable legal forms.
- Removal of the accession requirement (toetredingsvereiste) and thus the end of the corporate tax liability of the open CV with associated transitional law. The distinction between private and open CVs will thus disappear.

The plan is to introduce the bill in the spring of 2023 with 1 January 2024 as the proposed effective date.

UPDATE ON PILLAR TWO

On Sept. 9, 2022, a joint statement was sent by the Netherlands, France, Germany, Italy and Spain on the directive negotiation and implementation of a globally effective minimum level of taxation. At the June 2022 Ecofin Council, 26 of the 27 EU member states expressed their willingness to implement this important step toward tax justice. The gist of this was as follows:

"Should unanimity not be reached in the coming weeks, our governments are determined to deliver on our commitment. We stand ready to implement the global minimum effective tax rate by 2023 and by all legal means possible. We are also committed to the work on better redistribution of tax rights on the profits of large global multinationals, with the goal of signing a multilateral treaty by mid-2023."

Pillar 2 regulates a global minimum level of taxation. Pillar 2 ensures that multinationals and large domestic groups with a turnover of €750 million or more always pay at least effectively 15% in tax on their profits. This is designed through a system of top-up taxation. The budget of 2023 did not mention any update regarding Pillar two, nevertheless it is important to keep an eye on the current state of Pillar Two. The implementation of Pillar 2 in national legislation is expected to take place only as of January 1, 2024 (and not as of January 1, 2023 as was previously the Cabinet's ambition).

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