General

In this newsletter, we summarize the main changes as per 1 January 2018 in the Dutch corporate income tax Act ("CITA") and the Dutch dividend tax Act ("DTA") to the extent relevant for the international tax practice. We furthermore describe certain relevant proposed measures which are expected to impact the international tax practice.

Amendments to the Dutch Dividend Tax Act

As per 1 January 2018 changes to the Dutch DTA came into force which seek to align the Dutch dividend tax treatment of Dutch cooperatives and Dutch companies with a capital divided into shares (typically limited liability companies like BVs and NVs). These changes include the following:

- Dutch cooperatives mainly functioning (i.e. for 70% or more) as a holding entity (including financing of related entities; "Holding Coops") are liable to withhold dividend tax similar to the existing withholding obligation for Dutch limited liability companies, where it concerns distributions to qualifying members (in brief, members owning an interest of at least 5%).
- All Dutch entities which are required to withhold Dutch dividend tax on profit distributions (including Holding Coops and limited liability companies) benefit from a full exemption from Dutch dividend tax if (i) the shareholder/member owns an interest of at least 5% in the Dutch entity, (ii) the shareholder/member is a corporate entity resident in an EU/EEA State or a state which has concluded a tax treaty with the Netherlands which includes a dividend article, and (iii) the structure cannot be qualified as abusive. A structure cannot be qualified as abusive if there is no dividend tax avoidance motive or if the structure cannot be considered artificial (i.e. the structure is based on valid business reasons reflecting economic reality). This should be reviewed on a case-by-case basis taking into account substance and operations of the direct shareholder/member of the Dutch entity as well as (in certain situations) other group companies.
- A Dutch entity must notify the Dutch tax authorities and provide certain factual information if it applies the new Dutch dividend tax exemption.

The above changes have taken effect as from 1 January 2018 with no transitional regime except for a short grandfathering period up to 1 April 2018 for a specific situation where additional substance requirements must be met at the level of the foreign shareholder/member of a Dutch entity.

For hybrid ownership structures (i.e. members/shareholders in the ownership chain which are treated as tax transparent in one jurisdiction and as non-tax transparent in the other) specific rules apply.

Parkstraat 20
P.O. Box 177
2501 CD The Hague
+31 70 310 50 70

WTC H-17
Zuidplein 140
1077 XV Amsterdam
+31 20 333 92 80

info@hamelinktooren.com
hamelinktooren.com
Chamber of Commerce 27197846

AMENDMENTS TO THE DUTCH CORPORATE INCOME TAX ACT

Dutch non-resident taxation

As a consequence of the above-mentioned changes in the Dutch DTA, also the Dutch non-resident CIT rules for foreign corporate shareholders owning a substantial interest (i.e. 5% or more) in a Dutch entity have changed. These rules only apply in certain abusive situations. Before 1 January 2018 a situation was considered abusive if (i) (one of) the main purpose(s) of holding the substantial interest is the avoidance of Dutch personal income tax or Dutch dividend tax, and (ii) the structure can be considered artificial. As per 1 January 2018 condition (i) is changed in such manner that only in case Dutch personal income tax is avoided, the Dutch non-resident CIT rules may apply. A Dutch dividend tax avoidance motive no longer triggers the non-resident taxation since such avoidance falls under the scope of the new Dutch dividend tax rules (see above).

Anti-tax base erosion rules

The anti-tax base erosion rules of article 10a CITA may limit the deduction of interest on related party loans if the funds are used to finance a tainted transaction (e.g. the acquisition of a subsidiary, the distribution of a dividend). These interest deduction limitation rules do, however, not apply if (i) the debt and the related transaction are entered into for business reasons, or (ii) the interest income is subject to an effective tax rate of at least 10% at the level of the creditor (with a counterproof possibility for the Dutch tax authorities).

In a situation where a loan was legally granted by a related party, but materially due to a third party, the Dutch Supreme Court ruled that in such a situation both the debt and the related transaction were entered into for business reasons. In other words, article 10a CITA did not limit the deduction of interest if the loan was materially due to a third party since the 'business reasons exception' could successfully be invoked. Under the new legislation which has become effective as per 1 January 2018, where a loan is legally granted by a related party, but materially due to a third party, the Dutch taxpayer needs to separately demonstrate that the related transaction is based on business reasons.

Dutch innovation box regime

The Dutch innovation box reduces the effective Dutch CIT rate for qualifying benefits derived from certain innovative activities. As per 1 January 2018, the effective Dutch CIT rate for profits to which the innovation box regime applies has increased from 5% to 7%.

PLANNED TAX MEASURES IN THE NEAR FUTURE

The newly elected Dutch government is currently working on the following proposed tax measures which are expected to impact the international tax practice:

- Ratification of the Multilateral Instrument ("MLI") which implements the treaty related anti-tax avoidance BEPS measures in existing bilateral tax treaties (expected to be finalized in the first half of 2018 and potentially effective as per 1 January 2019).
- The abolishment of Dutch dividend taxation, most likely as from 2020 (not applicable in case of certain abusive situations).
- The introduction of a Dutch withholding tax on interest and royalty's in certain abusive situations.
- A step by step lowering of the Dutch CIT rates:

Year	*Profits up to € 200,000*	*Profits exceeding € 200,000*
2018	20%	25%
2019	19%	24%
2020	17.5%	22.5%
2021	16%	21%

- A limitation of the carry forward CIT loss compensation term from nine to six years. The carry back loss compensation term is expected to remain one year.
- New interest deduction limitation rules and controlled foreign company ("CFC") rules as a result of the implementation of the EU Anti Tax Avoidance Directive (ATAD1) as per 1 January 2019.

Should you have any questions on the above, please contact your regular advisor at Hamelink & Van den Tooren at + 31 70 310 50 70 or + 31 20 333 92 80.