

The Netherlands

September/2009

Budget 2010

On Tuesday 15 September 2009 the Dutch Budget for 2010 was introduced to Parliament. Below we summarize the most notable items of the legislative proposals with respect to Dutch taxation which we believe are of interest for (corporate) businesses.

Changes in the corporate income tax

- The participation exemption will be more flexible and easier to apply by (re-)introduction of a motive test besides the objective asset and taxation tests. This issue was already discussed in the Consultation Paper of June 2009, when the Ministry of Finance published a discussion paper on this topic as well as the mandatory interest box and some further changes regarding the deduction of interest. Legislation regarding these two latter points will be forthcoming in autumn this year.
- Companies will be allowed to choose whether they want to carry back losses three years instead of the regular carry back to the previous year. In return for the additional carry back the carry forward of the loss is shortened to 6 years instead of the regular 9 years. The additional carry back possibility is maximized to EUR 10 million per loss-making year and will only be available for years starting on or after 1 January 2009 and before 1 January 2011.
- The Patent box will be reformed into an “Innovation box” by allowing the box regime to apply to qualifying assets without any restrictions on amounts. Wide application of the box will be open for assets (e.g. software, trade secrets) that are based on qualifying R&D-activities but not based on patents. Besides expanding the scope of the box, the effective rate will be cut from 10% to 5%.
- As a measure to increase liquidity and stimulate investment it is currently allowed to use accelerated depreciation on qualifying investments made in 2009, with a maximum of 50% depreciation in 2009 and 50% in 2010. This facility will now be continued for investments made in 2010 (maximum depreciation of 50% in 2010 and 50% in 2011).
- The scope of the tonnage tax, which taxes qualifying shipping activities based on ship’s tonnage, will be broadened to include activities from cable ships, pipe-layers, research vessels and crane barges. Implementation will be subject to approval by the European Commission. Another change for which approval by the European Commission –although with additional terms– has already been granted, is the implementation of a lower rate for ships with tonnage higher than 50,000 that had been proposed in the 2009 Budget last year.

Changes regarding wage tax/social security

- Introduction of a common base for determining wage tax and social security obligations.
- Simplification of non taxable allowances and issued goods by introducing a discretionary amount (“werkkostenvergoeding”) of 1.5% of total wages without the current tests and requirements for qualification as non-taxable item. Certain specific non-taxable items decrease the discretionary amount. The current rules regarding a big part of the specific non-taxable items and goods are not replaced, but stay in force.

Changes regarding interest, fines and levying additional taxes

- It will become possible to levy additional VAT in cases where in first instance VAT has been repaid ex officio due to a request by the tax payer.

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- Interest on corporate income tax due (“heffingsrente”) will be calculated from the end of the year regarding which the tax is due for tax years starting on or after 1 January 2010. This is a restoration of the situation as it applied up to 2006.
- Maximum amounts of fines (“verzuimboetes”) for late filing of corporate income tax returns will be increased from EUR 1,134 to EUR 4,920.
- A fine for late payment of corporate income tax will be introduced with a maximum of EUR 4,920.

Changes in the dividend withholding tax

- The dividend withholding exemption for corporate shareholders will be simplified. Currently, only shareholders within the EU with a legal form that qualifies for application of the EU Parent-Subsidiary Directive qualify for the exemption. This restriction will be lifted so the exemption would apply to any entity that in its (EU) country of residence is regarded as non transparent for tax purposes, unless the entity has a similar function as a tax exempt Dutch investment fund.
- The dividend withholding tax exemption will also become available for corporate shareholders in Iceland and Norway.

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