

The Netherlands

September/2010

Budget 2011

On Tuesday 21 September 2010 the Dutch Budget for 2011 was introduced to Parliament. Due to the elections last June and the ongoing formation of a new government, the fiscal measures contained in the budget have less impact and are less numerous than usual. 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

- To compensate companies for the non-introduction of the Interest box, the general corporate income tax rate is decreased by half a percentage point from 25.5% to 25%. The general rate will be applicable for profits exceeding € 200,000. For profits up to this amount a lower rate of 20% will be applicable.
- As a temporary measure the Budget 2010 introduced the possibility for companies 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 was only available for years starting on or after 1 January 2009 and before 1 January 2011. In the 2011 Budget it is proposed to extend this measure also to book years starting on or after 1 January 2012.
- The scope of the existing anti-abuse provision aimed at trading in fiscal losses is to be expanded to the period up to the moment of a significant (ultimate) shareholder change. Therefore, the anti-abuse provision is no longer restricted to book years that ended before the year in which a significant (ultimate) shareholder change occurs.
- The Innovation box is made more attractive by introducing the possibility to include income from patent based intangible assets that was recognized before the patents were granted.
- As a measure to increase liquidity and stimulate investment it is currently allowed to use accelerated depreciation on qualifying investments made in 2009 and 2010, with a maximum of 50% depreciation in the year of investment and the year after. In the Budget it is announced that this facility will be continued for investments made in 2011 (maximum depreciation of 50% in 2011 and 50% in 2012).

Changes regarding the real estate transfer tax (RETT)

- The acquisition of shares in real estate companies, i.e. companies that have the acquisition, alienation and/or exploitation of Dutch real estate as their main activity and whose assets consist for 70% or more of Dutch real estate, can be taxable with RETT if the acquirer has or acquires a significant stake in the real estate company. The taxation can in principle be avoided if the company owns (for at least one year) enough other assets than Dutch real estate to avoid the status of real estate company. The Budget contains measures that intend to qualify more companies as real estate companies by including foreign as well as Dutch real estate to determine the real estate company status and further excluding certain assets as "other assets" that could preclude a company being qualified as a real estate company. The measure introduces a double asset threshold, i.e. owning more than 50% real estate (foreign and Dutch) and at the same time owning 30% or more Dutch real estate, to qualify as a real estate company. Furthermore, 70% of the total real estate (Dutch and foreign) of the company has to be used in the "real estate business" (currently this requirement is 70% or more of the Dutch real estate). Besides broadening the scope regarding qualifying companies, additional measures are introduced to increase the possibility that a certain transaction is taxable, e.g. by linking certain transactions.

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Changes regarding VAT

- To get in line with the European VAT Directive, a new VAT treatment for travel agents (including tour operators) is introduced. In the new system, output VAT is charged on the profit margin including VAT of the travel agency. Input tax cannot be reclaimed. The new system only applies to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.

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