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Global Tax Alert

Dutch Government's advisory committee publishes report on taxation of multinationals

In 2019, the Dutch Government established a committee with representatives of the Ministry of Finance and Ministry of Economic Affairs, tax advisors and academics, to advise the Government on measures for the "fairer" taxation of multinationals while maintaining the attractive fiscal investment climate in the Netherlands for corporate headquarters. On 15 April 2020, the advisory committee published its report.

In line with the request from the Government, the advisory committee has explored measures that will broaden the corporate tax basis while maintaining the attractive fiscal investment climate in the Netherlands for corporate headquarters of multinationals. The report will now be studied by the Government, who is expected to respond with a roadmap of the way forward this summer. The proposed measures of the published report do not have an official status, they are non-binding and only constitute advice to the Government. This Alert summarizes key recommendations from the report.

The advisory committee report is threefold. First, the advisory committee recommends that the Government conduct further research to gather more information about the worldwide corporate income tax position of multinationals. Second, the advisory committee recommends that the Government take a leading role in international tax developments, such as BEPS 2.0. Third, the advisory committee proposes several measures to broaden the corporate income tax base for multinationals. These proposals can be divided into two categories:

Building a better working world

1. **Recommendations for introducing a minimum tax for multinational companies with profit generating activities in the Netherlands**

    a. Limitation of loss compensation to 50% of the taxable profit, for profits exceeding €1 million. The recommendation includes abolishing the current carry forward limitation of six years and allow losses to be carried forward indefinitely.

    b. Limitation of the deductibility of shareholder/headquarter costs (costs of a headquarter for i.e., preparing the consolidated annual accounts, investor relations, shareholder meetings, etc.) to a certain percentage of the profit. This implies that companies with limited profits will no longer be allowed to fully erode their tax base with these costs. The percentage is not yet determined, and to determine this, further research is required.

    c. Research into the deductibility of intercompany royalties. The advisory committee has no current evidence that royalty costs are used to erode the Dutch taxable basis but recommends that the Government undertake further research, to see whether measures should be considered to limit deduction of these costs to broaden the tax base.

    d. Consider a limitation of the combined amount of shareholder costs, royalty costs and interest costs to a certain percentage of the profit. This should also be researched in more detail.

2. **Recommendations for eliminating international mismatches**

    a. Make the current controlled foreign corporation (CFC) rules more effective.

    b. Abolish the possibility in Dutch corporate income tax to make downward transfer pricing adjustments (informal capital doctrine) to the extent that the foreign jurisdiction does not make a corresponding upward transfer pricing adjustment.

    c. Consider limiting the possibility of a step-up in basis if an asset is transferred by a group company to a Dutch company in scenarios where built-in gains were not taxed or not taxed to a sufficiently high rate in the jurisdiction of the transferor.

Besides these recommendations, the advisory committee also lists some other potential measures for the Government to consider. It is however important to note that there was no consensus within the advisory committee for these measures, so these potential measures may be considered to be very controversial.

The following potential measures are included in the report:

- Further adjust the earning stripping rules, whereby currently 30% of the EBITDA (earnings before interest, taxes, depreciation and amortization) can be deducted as interest costs, the committee recommends consideration to lower that percentage to 25%.
- Introduction of an additional interest deduction limitation for interest costs on loans taken to finance the acquisition of a participation.
- Introduction of a general rule denying the deduction of costs paid to group companies in low-taxed jurisdictions.
- Introduction of a general withholding tax on interest and royalties, not only for intragroup payments to low-taxed jurisdictions and in other abusive situations which will be introduced as of 1 January 2021.
- Further extension of the CFC rules, to, for example, also apply on the active income of CFCs.
- Adjust the rules for the required equity of conduit companies (conduiting interest and royalty payments).
- Introduction of a unilateral digital services tax.
- Adjust the amount of corporate income tax payable to some extent dependent of the number of jobs created by the taxpayer in the Netherlands.

To further improve the investment climate, the advisory committee recommends taking into consideration allowing the deduction of costs related to the acquisition or disposition of a participation (currently these costs are non-deductible under application of the participation exemption), to lower the general corporate income tax rate and the innovation box tax rate (for research and development activities) and soften a current legislative proposal that limits the deduction of losses resulting from the liquidation of a participation.

The Government now will study the advisory committee report and is expected to respond on the recommendations over the summer.

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