2017 DUTCH COALITION AGREEMENT – TAX IMPACT ON FINANCIAL INSTITUTIONS

On 10 October 2017, the new Dutch government published its coalition agreement. This briefing provides an overview of the key tax measures relevant for financial institutions.

Key issues

- Interest limitation rules will be reformed
- Corporate tax rate will reduce to 21% (but broader tax base)
- Withholding tax on dividends abolished
- However, in certain "abusive" situations, there may be withholding tax on all passive income (dividend, interest and royalties)

Corporate tax

The following measures may impact financial institutions:

- A new earnings stripping interest deduction limitation is introduced as per 2019 on net interest expenses exceeding 30% of EBITDA (in line with the EU Anti- Tax Avoidance Directive) with a EUR 1 million threshold. Contrary to what is allowed under the ATAD, there will be no 'group escape' (financial sponsors could regularly benefit from such a group escape under the thin capitalisation rules applicable until 2013). Certain existing interest limitations will be abolished.
- A generic thin capitalization rule for banks and insurers will be introduced as per 2020 that would limit the deduction of interest on debt exceeding 92% of the commercial balance sheet total. Although the heading in the coalition agreement suggests that it will apply solely to banks and insurers, it cannot be ruled out that the new thin cap interest limitation may have a generic application and consequently it may also apply to other taxpayers.
- The CIT rate is reduced from 2019 to 2021 from the current 25% to 21% of 2021 (16% for income up to EUR 200,000; the increase of the first bracket to EUR 350,000 income is rescinded).
- The effective CIT rate for the "innovation box" increases from 5% to 7% as per 2018.
- The carry forward of tax losses is restricted to 6 years (currently 9 years).
- As from 2019, depreciation of (all) real estate assets is limited to their registered market value as estimated by municipalities (also known as the "WOZ value").
- As from 2020, the fiscal investment institution regime (the so-called "FBI regime") will no longer be available for direct real estate investments.

Income tax

- The maximum term for 30% rulings (from which foreign managers can benefit when relocating to the Netherlands) is reduced from 8 years to 5 years. 30% rulings do not only reduce the effective tax rate on employment income, but also allow keeping net wealth effectively outside the Dutch tax jurisdiction.

Withholding Tax

- The dividend withholding tax is abolished as of 2020, except for certain abuse situations. This could provide for tax efficient profit repatriation from the Netherlands without using typical foreign intermediate holding structures.
- As from 2023, a withholding tax is introduced for so-called Dutch letter-box entities on certain interest and royalty payments to specific low tax jurisdictions (i.e. less than 10% tax on profits). This may affect gross up provisions in finance documentation, certain back-to-back structures and structures leveraged with shareholder loans from offshore lenders or funds.

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