CLIFFORD CHANCE

2017 DUTCH FORMATION DOCUMENT - IMPACT ON FINANCIAL SPONSORS

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 sponsors.

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 after-tax returns:

- 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.
- 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25% to 21% of 2021 (16% for income up to EUR 200,000; the increase of the first bracket to EUR 350,000 income is rescinded).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%.
- Depreciation of (all) real estate assets is limited to their registered market value as estimated by municipalities ("WOZ value").
- The carry forward of tax losses is restricted to 6 years (currently 9 years).

Income tax

The so-called Box 2 tax rate increases from 25% to 28.5% in 2021 (27.3% in 2020), which affects typical (sweet) management equity participation plans.

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, except for certain abuse situations. This could provide for tax efficient profit repatriation from the Netherlands without using typical foreign intermediate holding structures.

A withholding tax on certain interest and royalty payments to specific low tax jurisdictions is introduced. This may affect eg Dutch structures leveraged with shareholder loans from offshore private equity funds.

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