DUTCH TAX REFORMS - IMPACT ON US MULTINATIONALS

This briefing sets out the key tax changes for US multinationals as proposed by the new Dutch government last week.

Withholding Tax

The dividend withholding tax is to be abolished, except for certain abusive situations. Companies should consider deferring distributions and seek for alternatives to repatriate cash.

A withholding tax on certain interest and royalty payments to specific low tax jurisdictions is introduced. This may affect the tax efficiency of the use of shareholder loans and licenses from offshore jurisdictions since the withholding tax is likely to become an irrecoverable cost.

The Dutch tax rules to comply with the Anti-Tax Avoidance Directive from the EU ("ATAD") will in due course restrict the deductibility of payments of interest and royalties by, for example, a Dutch BV to a reverse hybrid (such as a CV). These measures are highly relevant for US multinationals with a typical CV-BV structure and require a rethink of the current structure.

Other relevant proposals

The following proposals may impact US multinationals as well:

- 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25% to 21% of 2021 (16% for income up to EUR 200,000; the increase of the first bracket to EUR 350,000 income is rescinded).
- 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’. Certain existing interest limitations will be abolished.
- 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).
- 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.

Are you prepared?

The above measures are highly relevant for US multinationals that have routed their overseas operations through the Netherlands. We have a dedicated corporate restructuring team available with ample experience in international corporate restructurings, working seamlessly together with your in-house legal and tax teams, as well as your outside (US tax) advisors.

CONTACTS

Michiel Sunderman
Partner

T +31 20 711 9658
E michiel.sunderman
@cliffordchance.com

Mark-Jan Arends
Partner

T +31 20 711 9212
E markjan.arends
@cliffordchance.com

Folko de Vries
Partner

T +31 20 711 9390
E folko.devries
@cliffordchance.com

Thomas Vinje
Partner

T +32 2533 5929
E thomas.vinje
@cliffordchance.com

Joachim Fleury
Partner

T +44 207006 8050
E joachim.fleury
@cliffordchance.com

Benjamin Sibbett
Partner

T +1 212878 8491
E benjamin.sibbett
@cliffordchance.com

Philip Wagman
Partner

T +1 212878 3133
E philip.wagman
@cliffordchance.com