Meijburg & Co
Tax & Legal

Year end 2020 tax accounting considerations

Dutch tax measures for 2021

November 2020

Introduction

On September 15, 2020, the 2021 Tax Plan package has been presented by the Dutch government.

Many of the proposed measures will take effect on January 1, 2021 or as from the financial year that starts on or after January 1, 2021. However, this could still impact the tax position of your 2020 financial statements when the proposed measures are (substantively) enacted before 31 December 2020.

This memorandum outlines the main tax accounting consequences of the 2021 Tax Plan under IFRS and the impact it may have on the tax position of your financials. Reference is also made to our memorandum released on September 17, 2020 for a complete overview and description of the tax measures of the 2021 Tax Plan.

Content

1. Corporate income tax

1.1 No reduction of headline corporate income tax rates

1.2 Preventing an exemption via a specific interest deduction limitation

1.3 Clarification of overlap hybrid mismatches and interest deduction limitations

1.4 Maximum annual loss off-set, however unlimited carry-forward

1.5 Corona tax reserve

1.6 Not applying the arm's length principle if this results in a mismatch

1.7 Increase of the Innovation Box tax rate

1.8 Limitation of the liquidation and cessation loss scheme

1.9 Changes to thin cap rule for banks and insurers

1.10 Payment discount abolished

2. Withholding taxes

2.1 Introduction of a withholding tax on interest and royalties

2.2 Expansion of withholding tax on dividends to low tax countries

2.3 Private Member's bill on conditional final settlement of dividend withholding tax

3. Other tax developments

3.1 Relief and recovery package for the economy and labor market

3.2 Job-related Investment Discount (BIK)

3.3 Report by the Advisory Committee on the Taxation of Multinationals

3.4 Progress of new group corporate income tax scheme

3.5 OECD Pillar 1 and Pillar 2: taxation of the digital economy

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1. Corporate income tax

1.1 No reduction of headline corporate income tax rates

The government will cancel the gradual decrease of the Corporate income tax ("CIT") rates that was enacted in December 2019. Under the new updated legislation the headline CIT rate will remain at 25%. However, the reduction of the low CIT rate from 16.5% to 15% will go ahead together with a gradual increase of the SME bracket:

Enacted 2019	2020	2021	2022	Bill 2020	2020	2021	2022
≤ € 200,000	16.5%	15%	15%	≤ € 200,000	16.5%		
				≤ € 245,000		15%	
				≤ € 395,000			15%
> € 200,000	25%	21.7%	21.7%	> € 200,000	25%		
				> € 245,000		25%	
				> € 395,000			25%

This will have an impact on the reported deferred taxes, as these will have to be remeasured once the tax rate changes have been (substantively) enacted.

The effect of the rate changes should generally be recorded in the profit and loss account. The effect of the rate change is recorded through OCI or directly in equity if the underlying item (or transaction) to which the temporary difference relates is recognized outside profit and loss account.

Whether the increase of the CIT rates results in an increase or decrease of the Effective Tax Rate ("ETR") in 2020 depends on whether the company has recognized deferred taxes for deductible temporary difference and or tax losses (decrease ETR) or a taxable temporary difference (increase ETR).

Expected ETR impact

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Actions needed

Update reversal schedule for remeasurement deferred tax asset ("DTA") / deferred tax liability ("DTL") on temporary differences and tax losses & credits

1.2 Preventing an exemption via a specific interest deduction limitation

It is proposed, with effect from financial years commencing on or after January 1, 2021, that insofar Section 10a Corporate Income Tax Act ("CITA") debt would lead to an exemption of negative interest and/or positive foreign exchange results the calculated net gain will no longer be exempted due to the proposed change to Section 10a CITA. In the proposal it is stated that the interest charges, costs and currency results (negative and positive) must be determined for each debt separately.

The effect on the company's ETR strongly depends on the net result reported on the debt. In general, application of the proposed prevention would result in a higher taxable amount and hence an increase of the ETR. To limit this impact, one could consider to settle the Section 10a CITA-debt prior to year-end.

Expected ETR impact

Actions needed

Assess whether the company has Section 10a CITA debts with negative interest or positive unrealized fx-results

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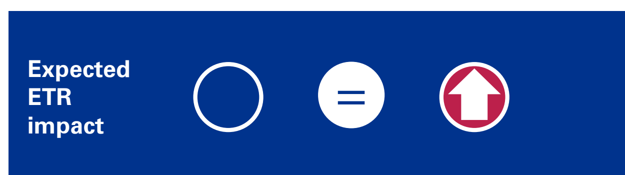
1. Corporate income tax

1.3. Clarification of overlap hybrid mismatches and interest deduction limitations

In line with ATAD2, as of January 2020 hybrid mismatch rules apply. Depending on the mismatch and the treatment outside the Netherlands, this occurs by refusing the deduction or taxing the income in the Netherlands. These measures can create an overlap with certain interest deduction limitations. In the proposal a clarification is provided when there is an overlap between hybrid mismatch rules and certain interest deduction limitation rules. In that case, first the hybrid mismatch measures will be applied and, insofar as deductible interest still remains, the earnings stripping measure and the thin cap rule for banks and insurers will be applied in respect of that interest.

The proposal also clarifies situations where according to hybrid mismatch rules, the interest may be still deductible in the event the corresponding income is taken into account twice (exception to hybrid mismatch measures) while also the aforementioned general interest deduction limitation rules apply. In such a case, the interest that has been considered deductible due to the exception may still be non deductible on the basis of these earnings stripping measures and thin cap rules

This proposal is intended as a clarification and hence should in principle not affect the ETR. However, this might result in additional non-deductible interest based on the earnings stripping measure or thin cap rule, which has a (potential) increasing impact on the ETR.



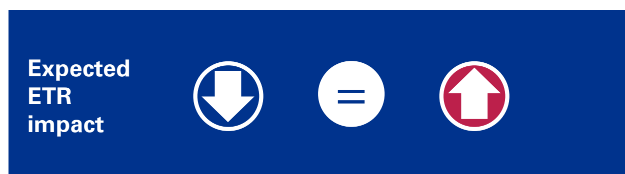
Actions needed

Reassess whether hybrid mismatch rules apply and if so, to which extent overlap with the earnings stripping measure/thin cap rule exists.

1.4 Maximum annual loss off-set, however unlimited carry-forward

The government proposed an unlimited loss carry-forward as of January 1, 2022 (currently a carry-forward period of six years applies; the carry-back period is and will remain one year). However, losses will only be fully available for carry-forward and carry-back up to an amount of EUR 1 million of taxable profit. In the case of a higher profit, the losses will be able to be offset up to EUR 1 million + 50% of the taxable profit that exceeds EUR 1 million. The proposed changes will apply to all off settable losses incurred as of January 1, 2022 or that are still available for carry forward loss set-off at year end 2021.

Whether the unlimited carry-forward will result in a higher deferred tax asset depends amongst others on the availability of future taxable profits against which the unused tax losses can be utilized. As such, the limitation to utilize losses up till a maximum of 50% of the excess of EUR 1 million although unlimited in time might impact the recognition of deferred tax asset. At the same time, a company might become in a tax paying position while it also has tax losses available for carry-forward.



Actions needed

If tax losses are expected to be available as at January 1, 2022 consider the impact on deferred tax asset measurement and cash tax payable (for cash flow forecast)

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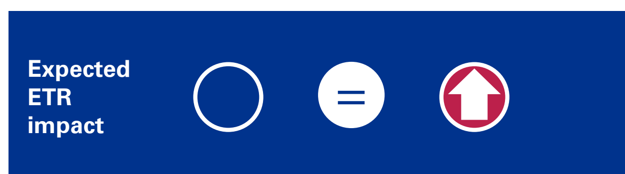
1. Corporate income tax

1.5. Corona tax reserve

Further to and along the lines of the Corona Crisis Emergency Measures Decree, the 2021 Tax Plan contains the legal rules that make it possible, under certain conditions, to create a corona tax reserve ("CTR"). In short, companies that expect a corona-related taxable loss for 2020 may create a CTR in the 2019 corporate tax return (to be) filed which reduces the taxable income of that year. A CTR created in 2019 must be included in the profit in the following year (2020). The CTR amounts to the lower of the expected 2020 taxable loss related to the corona crisis and the 2019 taxable amount without taking the CTR into account.

The CTR reduces the 2019 current tax expense (prior-year adjustment), whereas the potential deferred tax asset for the 2020 loss reduces with the same amount. Should a 2020 loss remain after taking into account the CTR, then the regular valuation rules for deferred tax assets should be taken into account. The CTR would only affect the ETR (upwards) if the DTA for the remaining 2020 loss is not recognized in full.

The CTR also could have reduced the preliminary tax assessment over 2019. If the CTR in the final tax return over 2019 is lower than the CTR that has been taken into account with the preliminary tax assessment this could result in an additional interest on tax to be paid.

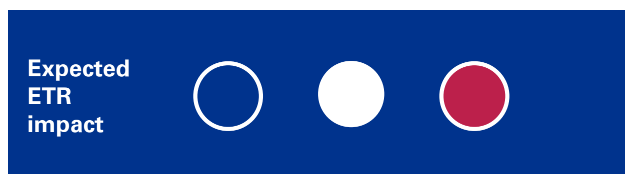


Actions needed

If a 2020 tax loss is expected, assess to which extent the loss is corona related and the amount of CTR to be taken into account.

1.6. Not applying the arm's length principle if this results in a mismatch

Under the arm's length principle entities that enter into an intercompany transaction should agree the same terms and conditions, incl. price, which would have been agreed as if they were independent parties to each other. The government announced that a bill will be presented in the spring of 2021 to limit the deduction of so called downward adjustments that reduces profits in the Netherlands insofar as the other country does not tax the corresponding revenue. This measure aims to combat tax avoidance, such as the so called informal capital contribution schemes. This announcement may result in an increase of the ETR compared to the current situation when the bill is (substantively) enacted .



Actions needed

Assess whether any adjustments to the Dutch tax base are made based on the at arm's length principle for which no corresponding adjustment is taken into account.

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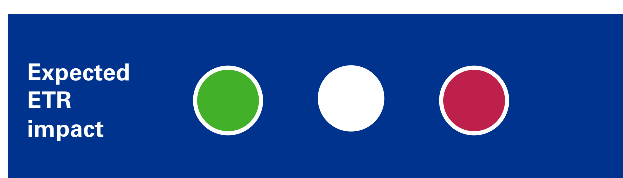
1. Corporate income tax

1.7 Increase of Innovation Box tax rate

As announced last year, the effective rate in the Innovation Box will be increased from 7% to 9% as of financial years commencing on or after January 1, 2021. The new rate will also apply with regard to royalty withholding tax credit for Innovation Box profits.

Consequently, the deferred tax positions on which the Innovation Box regime has an impact have to be remeasured (including withholding tax credit).

The increase of the effective Innovation Box rate will effectively result in an increase of recognized deferred tax positions, therefore positively impacting the ETR in case of deferred tax assets while negatively impacting the ETR in case of deferred tax liabilities.



Actions needed

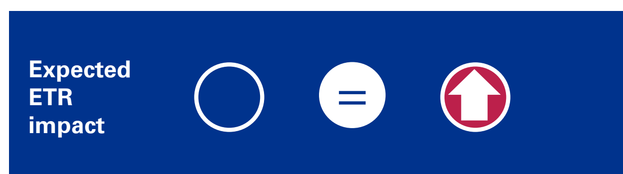
Update reversal schedule for remeasurement DTA/DTL on temporary differences and tax losses & credits

1.8 Limitation of the liquidation and cessation loss scheme

The liquidation and cessation loss schemes will be tightened as of financial years commencing on or after January 1, 2021. A liquidation loss of a participation, insofar as it amounts to more than EUR 5 million per participation, will only be deductible if 1) the taxpayer controls the participation and 2) it is established in the EU/EEA. In addition, provided for a rebuttal provision, the liquidation should take place within three years after the business ceased/the decision thereto was made. Comparable limitations are proposed for the cessation loss scheme for permanent establishments.

Temporary differences will generally arise when, for example, investments on subsidiaries have been written off for book purposes, while for tax purposes no deduction has been claimed yet. In the event under the amended liquidation loss regime still a tax deduction can -and will -be claimed, a deferred tax asset is recognized when the general DTA recognition and measurement principles have been met (no impact on the ETR on stand alone level).

However, companies that already have recognized a DTA for liquidation losses relating to subsidiaries outside the EU could be impacted by the new proposal (negatively impacting the ETR).



Actions needed

Assess limitation liquidation loss applies

Remeasure (un)recognized DTA accordingly

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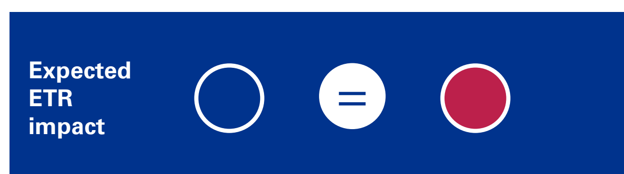
1. Corporate income tax

1.09 Changes to thin cap rule for banks and insurers

As of January 1, 2021, the additional Tier 1 capital ("AT1") will no longer be included as capital in determining the capital base for the leverage ratio for banks and the equity ratio for insurers used for the purposes of the thin cap rule. As a result of the May 15, 2020 judgement, AT1 capital qualifies as debt, which means that the remuneration on AT1 capital is deductible for tax purposes. In addition, the percentage for the thin cap rule will be increased from 8% to 9%.

As the thin cap rule for banks and insurers does not allow in a carry forward of non-deductible interest, the ETR will be negatively impacted if the changes would result in additional non-deductible interest.



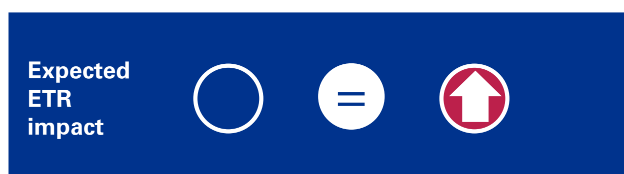
Actions needed

Update CIT determination for 2021 / reassess unrecognized DTA for deductible temporary differences, unused tax losses and unused tax credits.

1.10 Payment discount abolished

The government had intended to abolish, as of 2021, the payment discount that is currently granted for the payment, in full, of any corporate income tax payable that is paid before the first installment deadline (instead of in installments). Although the payment discount will not be abolished after all, it will be extremely small in 2021 due to the calculation percentage of 0.01% (linked to late payment interest).

Using payment discount only increases the ETR if the payment discount is booked in the tax line. The payment discount does not affect the ETR if it is booked above the tax line.



Actions needed

(Re)assess use of payment discount and commercial treatment.

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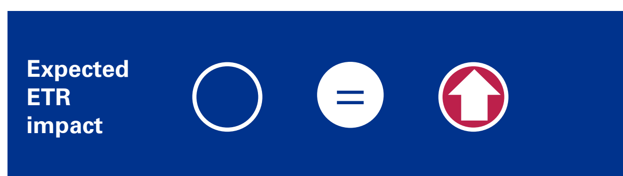
2. Withholding taxes

2.1 Introduction of a withholding tax on interest and royalties

As part of the last years Tax Plan (2020), a withholding tax of 25% (proposed headline CIT rate) on interest and royalties was enacted that will apply as of January 1, 2021. This withholding tax is levied on interest and royalty payments from an entity established in the Netherlands, including permanent establishments, to an affiliated entity established in a low-taxed country (CIT rate of less than 9% or appearing on the EU list of non-cooperative jurisdictions) or in abusive situations. The tax rate is equal to the headline CIT rate applicable at that time. In 2021 this will remain at 25% as noted before.

The withholding tax is due on any accrued - for this act qualifying - interest and/or royalty charges as per 31 December. In other words, interest and royalties accrued during the year but not paid are deemed to be realized on 31 December of the relevant year and subject to withholding tax. Consequently, a liability for the withholding tax effect may have to be recognized for the accrued interest/royalty.

If the company classifies the withholding tax as an income tax, the ETR is negatively impacted by the withholding tax. Withholding taxes generally have to be recognized at the level of the entity receiving the interest or royalty.



Actions needed

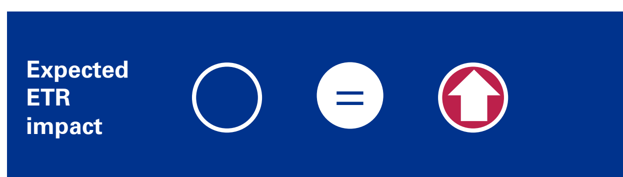
Perform WHT risk assessment

Assess whether withholding taxes are considered income taxes (IAS 12)

2.2 Expansion of withholding tax on dividends to low tax countries

By letter dated May 29, 2020 to the Lower House of Parliament, the Deputy Minister of Finance announced that as of January 1, 2024 dividend flows to low tax jurisdictions will be taxed. Measures to realize this will be worked out in detail before the government's term of office ends. With a view to this, as of 2024 the withholding tax on interest and royalties will be supplemented by a withholding tax on dividends.

Although the (draft) legislation is still to be expected, probably the withholding tax will have similar features as the withholding tax on interest and royalties (item 2.1). Hence, if the company classifies the withholding tax as an income tax, the ETR is negatively impacted by the withholding tax. Withholding taxes generally have to be recognized at the level of the entity receiving the dividend impacting the ETR once (substantively) enacted.



Actions needed

Perform WHT risk assessment

Assess whether withholding taxes are considered income taxes (IAS 12)

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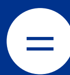
2. Withholding taxes

2.3 Private Member's bill on conditional final settlement of dividend withholding tax

On July 10, 2020 Lower House MP Bart Snels (of the GroenLinks parliamentary party) presented a private member's bill to the Lower House of Parliament in which he proposes introducing a final settlement obligation for dividend withholding tax purposes for certain types of cross-border relocations of the registered office, cross-border mergers, cross-border divisions and cross-border share mergers. In short, it proposes a dividend withholding tax on retained earnings of a Dutch company in case this company is moving towards another jurisdiction that can be considered a 'qualifying state'. These are states that do not have a withholding tax on dividends comparable to the Netherlands. In these situations the Dutch company is considered to have paid a dividend to its shareholders. In the event the shareholder is an entity that is part of the group (i.e. consolidated financials), this may have an impact on the withholding tax consequences to be recognized for the taxable reserves.

By amendment of September 18, 2020 the private member's bill is no longer limited to groups with a consolidated group revenue of at least EUR 750 million and the retroactive effect has been changed into September 18, 2020 12:00 CET. By second amendment on October 9, 2020 a completely new text and Explanatory Memorandum were submitted to the Lower House of Parliament. Based on this amendment, the dividend withholding tax will only be payable insofar as the withholding agent's distributable profit is more than EUR 50 million at the time the taxable event occurs. We refer to our memorandum for a more detailed explanation.

Expected ETR impact



Actions needed

Perform WHT risk assessment

Assess whether withholding taxes are considered income taxes (IAS 12)

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3. Other tax developments

3.1 Relief and recovery package for the economy and labor market

On August 28, 2020, by letter to the Lower House of Parliament, the government presented a relief and recovery package for businesses and workers, which follows on from the two previous emergency packages. The new package aims to provide perspective and clarity and is based on three pillars: (i) the continuance of relief; (ii) stimulating and accelerating investments; and (iii) a supplementary social package. The extension of the relief measures will take place under a (phased) tightening of the conditions, so that these are more focused on the long-term. An important part of the new package concerns the phasing out of the more flexible special deferral of payment policy for tax debts, including a payment arrangement for the accrued tax debt, and changes to several related measures. The relief and recovery package is discussed in more detail in this memorandum.

3.2 Job-related Investment Discount (BIK)

On October 5, 2020, the Job-related Investment Discount (BIK) was introduced in the second memorandum of amendment to the Tax Plan 2021. The government wishes to use the BIK as a temporary measure to encourage companies to make investments and to retain jobs. If companies make an investment between October 2020 and December 2022, for example through purchasing new equipment, they will receive a credit that they can set off via their payroll tax and social security contributions as a remittance reduction.

The BIK remittance reduction amounts to 3.9% per calendar year for investment amounts up to and including EUR 5,000,000 and 1.8% for amounts in excess thereof. It is explicitly stated that for corporate tax purposes the BIK is not part of the acquisition costs of the investment, based on which the BIK is subject to corporate tax and therefore increases the current tax liability.

Depending how the BIK will be accounted for in the financials (e.g. as a reduction on the investment) temporary differences may arise.

3.3 Report by the Advisory Committee on the Taxation of Multinationals

The 145-page Committee report ‘Striking a balance in corporate income tax’ was published by the Ter Haar Committee on April 15, 2020. More information can be found in our previous memorandum about this. The government has announced that it will introduce legislation during the remaining term of this government in order to have two important measures from the report to take effect on January 1, 2022: the limitation of the loss set-off (see 1.4) and not applying downward adjustments by virtue of the arm’s-length principle if this leads to a mismatch (see 1.6). With regard to the other measures outlined, such as, for example, tightening up the existing CFC rules and headquarter costs the government believes that further investigation or international consensus is desirable first.

3.4 Progress of new group corporate income tax scheme

Work is in progress on a new group corporate income tax scheme. On Budget Day, the Deputy Minister of Finance, Mr. Vijlbrief, sent a letter to the Lower House of Parliament in which he outlined, among other things, the main features of a potential new group scheme and the follow-up process. In this letter four possibilities are outlined out of which two seem to be most favored: 1) maintain the existing scheme or 2) a new loss / profit transfer scheme or result pooling system. The decision to present a bill to the Lower House will be left to a following government.

The impact of the new group corporate income tax scheme on the ETR will depend on the features of the new scheme and hence cannot be predicted yet.

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3. Other tax developments

3.5 OECD Pillar 1 and Pillar 2: taxation of the digital economy

The OECD, together with the countries belonging to the Inclusive Framework, has drawn up a Programme of Work to find a global solution to the taxation of profits in the digital economy. This Programme of Work comprises two pillars:

1. Pillar 1 deals with new rules on taxable presence and profit allocation.
2. Pillar 2 concerns measures directed towards ensuring a minimum level of taxation for internationally operating companies.

Initially the aim was to reach a compromise on a global solution by 2020 at the latest, but this is unlikely to be achieved. Indeed, the date by which important decisions for both Pillars should be taken has been postponed to 2021.

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