KPMG Meijburg & Co
Tax & Legal

Deputy Minister provides more insight into his future tax plans

On April 16, 2024 the Deputy Minister of Finance sent a letter and the Tax Policy and Implementation Agenda to the Lower House of Parliament, in which he provides, among other things, general insights into the upcoming 2025 Tax Plan package. The most important tax aspects of the letter and agenda are addressed below.

Corporate income tax

Overlap loss set-off and exemption for debt relief income tax
Since 2022, for corporate income tax purposes profits exceeding EUR 1 million are only available for loss set-off at half their amount (see our memorandum of June 1, 2021). In certain cases, this temporal loss set-off leads to obstacles when restructuring loss-making entities, because it means that – despite the exemption for debt relief income tax – these entities nevertheless face being taxed on the exempted debt relief. An amendment to the exemption for debt relief income tax intended to remove this obstacle will be proposed in the 2025 Tax Plan package.

Subject-to-tax tests in the Corporate Income Tax Act 1969
Various provisions in the Corporate Income Tax Act 1969 (CITA 1969) include a subject-to-tax test. The question that has arisen is whether an (additional) tax under Pillar 2 legislation constitutes a profit tax and, if so, whether this is (in fact) sufficiently subject to tax. This has been analyzed and as a result of this analysis the 2025 Tax Plan package will propose changes to the subject-to-tax tests for corporate income tax purposes.

Implementation of the General Anti-Abuse Rule (GAAR) appearing in the ATAD1 Directive
The first Anti-Tax Avoidance Directive (ATAD1) from 2016 required EU Member States to implement a general anti-abuse provision, more commonly referred to as the GAAR (General Anti-Abuse Rule). So far, the Netherlands has not transposed the GAAR into law, because the unwritten doctrine of fraus legis is essentially an anti-abuse provision. At the request of the European Commission, the Netherlands will enshrine the GAAR from ATAD1 in CITA 1969. It is stressed that no substantive change is envisaged in relation to the application of fraus legis.

Earnings stripping measure (generic interest deduction limitation)
In accordance with the 2023 Spring Memorandum, the 2025 Tax Plan package will incorporate an anti-fragmentation measure into the earnings stripping measure of Section 15b CITA 1969 for real estate entities that lease property (to third parties). This means that the franchise of EUR 1 million will be disregarded in those cases.

No changes to Section 8c CITA 1969
In recent years advisory committees have proposed changing the current ‘equity requirement’ for interest and royalty conduit companies as referred to in Section 8c CITA 1969 to an open standard. Such a change will lead to a loss of tax revenue. Due to this loss of tax revenue and the fact that the government is a caretaker government, it

does not foresee this measure being followed up in the 2025 Tax Plan package, and will leave any decisions to a new government.

Withholding tax and dividend tax

New group concept for the Withholding Tax Act 2021
Tax liability under the Withholding Tax Act 2021 can only arise if there is affiliation between the paying entity and the receiving entity. The affiliation between entities is determined by the presence of a qualifying interest. A qualifying interest can be held independently but also collectively via a 'cooperating group' as referred to in Section 10a(6) CITA 1969. In practice, there are indications that the effect of the 'cooperating group' concept is unclear in many cases. A new group concept will therefore be proposed for the purposes of the Withholding Tax Act 2021 (to replace the cooperating group concept).

Withholding exemption
The 2025 Tax Plan package will also contain a proposal to make the national withholding exemption in dividend tax mandatory (binding). This will guarantee that the shareholder/beneficiary to the income can also successfully appeal the withholding.

Personal income tax

Reduction of threshold for top rate
On top of the annual adjustment for inflation of range limits in the Personal Income Tax Act 2001 (PITA 2001), the threshold for the top rate through to 2031 will be increased annually by approximately EUR 1,000 to EUR 1,100. The government intends to reduce the latter increase (the increase on top of the annual adjustment for inflation) by EUR 557, which means that the top rate will apply sooner.

SME profit exemption to be reduced to 12.03%
As a result of the 2024 Tax Plan, the SME profit exemption would be set at 12.7% as of January 1, 2025. The 2025 Tax Plan package will contain a measure that will further reduce the SME exemption to 12.03% as of 2025.

VAT

Currently VAT regulations do not offer the option of multi-year revision of the VAT deducted on services to immovable property. It is proposed to introduce changes in this area, see our memorandum of March 7, 2024 for more about this.

Climate measures

Generic increase in energy tax rate for bulk users
There will be a proposal to increase the energy tax rates for natural gas in the third, fourth and fifth brackets (more than 170,000 m^3 natural gas per year) by 22.4% as of 2025. The rate will be increased by an additional 2.7% in 2030.

Tightening of CO_2 tax on industrial emissions
The Netherlands has a CO_2 tax on industrial emissions. It is proposed to use new price forecasts as of 2028 for emissions above 50,000 kilotons (after deduction of dispensation rights), rising to EUR 216 per ton of CO_2 in 2030 instead of EUR 150.

Status of share redemption, 30% ruling and PITA rates

In our memorandum of December 20, 2023 we reported that the Upper House of Parliament had adopted several motions during the debates on the 2024 Tax Plan package. The motions asked the government to, among other things, come up with a less economically harmful alternative for (further) scaling back the 30% ruling, and to not abolish the share redemption tax relief for listed companies for dividend tax purposes and come up with other (coverage) options for this. Additionally, the Upper House had concerns about the tax rate increases in Box 2 and Box 3 (to 33% and 36% respectively) and the increase in the bank tax. The Deputy Minister promised to also come up with other (coverage) options for these measures, which he did in his Letter to the Lower House of Parliament dated April 5, 2024.

30% ruling
The evaluation of the 30% ruling has been expedited. The Deputy Minister expects to present the interim report with preliminary conclusions to the Lower House of Parliament on June 1, 2024. The interim report contains all the main conclusions about the extraterritorial expenses scheme and the 30% ruling, and an overview of policy options that can already be found in amongst the schemes in the 2025 Tax Plan package.

Share redemption tax relief, PITA rates and bank tax
The tax rate increases in Box 2, Box 3 and the bank tax and the abolition of the share redemption tax relief were intended to also cover the increase of the statutory minimum wage. However, on April 16, 2024 the Upper House of Parliament rejected the bill to increase the minimum wage, which means a permanent write-back of EUR 820 million on the expenditure side. In connection with this, the Upper House of Parliament adopted a motion asking the government to reverse or not introduce the equivalent amount in tax increases intended to cover the bill to increase the minimum wage (36488, letter F). Although the Deputy Minister thinks it logical to link this write-back to (the reversal of) the share redemption tax relief, it is up to Parliament to decide how to do this.

The letter sent to the Lower House of Parliament on April 5, 2024 and the motion adopted on April 16, 2024 in general lead to the following coverage options per measure:

Reversing the share redemption tax relief (EUR 814 million): abolishing or scaling back negatively evaluated VAT schemes, increasing the top rate for the occupational disability contribution by 0.38 percentage points, increasing the CIT basic rate by 1.5 percentage points, reducing the bracket limit for the CIT basic rate to EUR 125,000, increasing the normal CIT rate by 0.8 percentage points or using the tax revenue/write-back from not increasing the minimum wage.

Reversing the increase of the top Box 2 rate (EUR 220 million): reducing the SME profit exemption by 1.6%, increasing the low Box 2 rate to 26.5% or partially using the tax revenue/write-back from not increasing the minimum wage.

Reversing the increase of the Box 3 rate (EUR 342 million): increasing the low imputed income from home ownership by 0.05 percentage points, increasing the gift and inheritance tax rates across the board by 1.9 percentage points, reducing the tax-free amount to EUR 42,193 or partially using the tax revenue from not increasing the minimum wage.

Increasing the bank tax (EUR 150 million): there are no suitable tax options available within the tax system's profit domain to compensate the same group for the loss of revenue resulting from reversing this amendment. However, (since April 16, 2024 in theory) part of the tax revenue/write-back from not increasing the minimum wage could be used.

KPMG Meijburg & Co comments

The Tax Policy and Implementation Agenda provides insight into what to expect on Budget Day this year. A complicating factor is the fact that the government is a caretaker government and does not have a majority in either the Lower and Upper Houses of Parliament. It is thus uncertain whether the proposals will be successful. Moreover, it cannot be ruled out that the coalition parties will eventually agree on a program and form a program government. Obviously, this will be accompanied by new, other and/or additional tax measures. If there is still no program or program government on Budget Day, the fluctuating majorities in the Lower or Upper Houses of Parliament can prevent, amend, enforce or initiate tax measures. This uncertainly will mainly apply to the more controversial measures or measures requiring more tax revenue. For example, the 30% ruling, reversing the tax rate increases in Box 2 and Box 3 and reversing the share redemption tax relief.

KPMG Meijburg & Co
April 17, 2024