KPMG Meijburg & Co Tax & Legal

Year end 2024 tax accounting considerations

Dutch tax measures for 2025

December 2024

Introduction

On September 17, 2024, the 2025 Tax Plan package has been presented by the Dutch government. On December 17, 2024, the Upper House of Parliament adopted the 2025 Tax Plan package based on which the legislation is considered substantively enacted.

Many of the proposed measures will take effect on January 1, 2025 or as from the financial year that starts on or after January 1, 2025. However, this could still impact the tax position of your 2024 financial statements as the proposed measures have been (substantively) enacted before December 31, 2024.

This memorandum outlines the main tax accounting consequences of the 2025 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, 2024 for a complete overview and description of the tax measures of the 2025 Tax Plan. In addition, the impact of Pillar Two on the 2024 financial statements is described. In this memorandum it is assumed that the taxpayer has a book year equal to the calendar year.

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1. Corporate income tax

1.1 Increase in percentage for generic interest deduction limitation (earnings stripping measure)

The generic interest deduction limitation (earnings stripping measure) stipulates that the net interest payable by a taxpayer may only be deducted up to 20% of the EBITDA for tax purposes, or up to EUR 1 million if that is higher. That percentage was originally 30%; the 2022 Tax Plan reduced it to 20%. The government has now proposed to partially reverse that tightening by increasing the percentage to 24.5%, so that it is more in line with the EU average. The threshold of EUR 1 million remains unchanged. The increase in the percentage will apply for the first time to financial years commencing on or after January 1, 2025.

The increase in the percentage of the earnings stripping measure might result in a change of the deferred tax asset ("DTA") to be recognized for interest available for carry-forward. This depends on the availability of sufficient (future) fiscal EBITDA and/or net interest income against which the carry-forward interest can be utilized. For companies subject to Pillar Two, please note that unrecognized DTAs that are now being recognized as a result of the increased room for deduction in 2025 and onwards, result in a tax benefit which could have an adverse impact on the possibility to invoke the simplified Effective Tax Rate ('ETR') test under the Transitional Safe Harbour.

Expected ETR impact

Actions needed

Update reversal schedule and consider additional recognition of DTA

1.2 Overlap loss set-off and exemption for debt relief income tax

Since 2022, only 50% of profits exceeding EUR 1 million are available for loss set-off for corporate income tax purposes (see our memorandum of June 1, 2021). This temporal loss set-off may lead to obstacles when restructuring loss-making entities, because it means that these entities – despite the exemption for debt relief income tax – face being taxed on the exempted debt relief/debt forgiveness. This can occur if there is more than EUR 1 million in carried-forward loss set-off.

In the proposed scheme, this overlap is overcome by fully exempting the debt forgiveness – after taking the loss set-off in the relevant year – if the carried-forward losses exceed EUR 1 million. The amount in carried-forward losses from previous years is thereby reduced by the amount for which the debt forgiveness exemption was granted. The debt forgiveness is thus effectively no longer subject to the 50% threshold applying to the loss set-off.

These measures will result in a higher loss set-off in case of debt relief/debt forgiveness in combination with carried-forward losses that exceed EUR 1 million. This could therefore positively impact the DTA recognition for carried-forward tax losses. For companies subject to Pillar Two, please note that unrecognized DTAs that are now being recognized, result in a tax benefit which could have an adverse impact on the possibility to invoke the simplified Effective Tax Rate ('ETR') test under the Transitional Safe Harbour.

Expected ETR impact

Actions needed

Update reversal schedule and consider additional recognition of DTA if debt relief/debt forgiveness is envisaged

1. Corporate income tax

1.3 Changes to liquidation loss scheme

The following two elements of the liquidation loss scheme for corporate income tax purposes are amended:

1. In calculating the taxpayer's adjusted acquisition cost for a participation, any write-down of a receivable from that participation which has been reclaimed by the taxpayer and included in the taxable profit, without an amount corresponding to the write-down being added to the revaluation reserve (Section 13ba(1), first sentence, CITA 1969) must be taken into account. The adjusted acquisition cost can thus be increased by the reclaimed write-down directly included in the taxable profit.
2. From now on, the holding company scheme will take account of both decreases in value since the direct acquisition of the participation in the dissolved entity and increases in value since the indirect acquisition thereof. The aim is to prevent a non-deductible loss (for example, a capital loss) being converted into a deductible liquidation loss.

The above might affect the deductible liquidation loss (upwards or downwards) and hence could affect the associated DTA positions and therefore the ETR. For Pillar Two reporters, timing of accounting impairments, decision to liquidate and actual liquidation can have significant impact on the GloBE ETR in the applicable years and attention is required.

Expected ETR impact

Actions needed

Reassess potential liquidation losses (if any).

1.4 Revision of legal forms tax qualification policy (not part of the 2025 Tax Plan package)

As of 2025 the Legal Forms Tax Qualification Policy Act will adjust the qualification policy for (foreign) legal forms for Dutch tax purposes. These adjustments will mean the Netherlands is more internationally in step.

The first adjustment is the codification of the Dutch qualification policy for foreign legal entities on the basis of the legal form comparison method, supplemented by two additional methods (the fixed method and the symmetrical method) if the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law. This will be anchored in personal income tax, corporate income tax, dividend tax and withholding tax as much as possible.

The second adjustment is the discontinuation of the open limited partnership. As a result of this, the independent tax liability (for, among other things, corporate income tax) of the open limited partnership is terminated, as well as the fiction that the interest of the limited partner in the open limited partnership is regarded as a share. This has consequences for the assessment of similar foreign limited partnerships, i.e. that they also become transparent by definition. The transparency of the limited partnership has consequences for both personal and corporate income tax.

These measures could affect the Dutch tax qualification of entities / partnerships, resulting in potential changes in the level / entity the corporate income tax should be accounted for, the size of the temporary differences as well as meeting the conditions for recognition exception related to outside basis differences. The change in Dutch tax qualification could also have an impact on the characterization of the entity for Pillar Two purposes.

Expected ETR impact

Actions needed

Assess tax implications of changes in Dutch tax qualification (if any).

2. Withholding taxes

2.1 New group concept for the Withholding Tax Act 2021: qualifying unit

Under the Withholding Tax Act 2021, the levying of withholding tax is subject to the condition that the entities paying the interest, royalties or dividend (withholding agents) and the recipient entity (beneficiary) are affiliated. This affiliation is assessed on the basis of a qualifying interest. Such a qualifying interest may be held at the individual level, but also jointly by group entities if there is a cooperating group as referred to in Section 10a(6) of the Corporate Income Tax Act 1969.

The government has received indications that, in practice, the current concept of cooperating group does not really suit the objectives of the Withholding Tax Act 2021. It is therefore proposed to introduce a new group concept in withholding tax to replace the current group concept. The proposed new group concept is referred to as 'qualifying unit'. According to the proposed legislative text and explanatory notes, there is a qualifying unit if entities act jointly with as main purpose or one of the main purposes being to avoid the levying of withholding tax at one of those entities. The qualifying unit must also apply for the purposes of the rebuttal rule in the hybrid provision, which, according to the proposal, will have a slightly different structure.

The burden of proof for the existence of a qualifying unit rests on the tax inspector. The tax inspector must state the facts, and if these are disputed, convincingly demonstrate that there is a qualifying unit. This division of the burden of proof must also apply under the revised rebuttal rule in the hybrid provision. The measure must take effect as of January 1, 2025.

The definition of a qualifying unit may affect whether conditional withholding tax will be due as from January 1, 2025. This will affect the ETR of the recipient of the income if a DTL for outside basis differences should be (de)recognized.

Expected ETR impact	↓	=	↑

Actions needed

Assess impact on application of conditional withholding tax (if any).

3. Pillar Two

3.1 Disclosure in the 2024 financial statements

For many financial reporters, 2024 will be the first year in which the Pillar Two legislation is effective and/or enacted in the jurisdictions the reporter operates in. As a consequence, reporters are required to provide specific disclosures about Pillar Two taxes in their consolidated financial statements, whereby its contents are heavily impacted by the implementation status and the structure of the group. In our experience, the following situations occur in practice:

1. When Pillar Two is effective in all applicable jurisdictions (either because of own legislation in the jurisdiction or because entities in the jurisdiction are (in)directly owned by entities in jurisdictions in which Pillar Two legislation is effective which contains the Income Inclusion Rule), to meet the requirements of IAS 12.88A an entity needs to disclose that it has applied the exception to recognising and disclosing information about deferred tax assets and liabilities related to Pillar Two income taxes. In addition it needs to disclose its current tax expense related to Pillar Two income taxes separately in accordance with IAS 12.88B.
2. When Pillar Two is enacted in some or all applicable jurisdictions, but only effective in some jurisdictions it is required to include the disclosure described in situation 1. In addition, for jurisdictions where the Pillar Two legislation is not yet effective, to meet the requirements of IAS 12.88C the reporter needs to disclose known or reasonably estimable information that helps users to understand the reporters exposure to Pillar Two income taxes arising from that legislation, which may consist of qualitative and quantitative information.
3. When Pillar Two is enacted but not yet effective in any applicable jurisdiction, the disclosure is limited solely to the previously mentioned requirements of IAS 12.88C described in situation 2.
4. When Pillar Two legislation is under development in all applicable jurisdictions, IAS 12 does not require disclosure, but companies still need to consider whether to provide disclosure on their expected exposure, to meet expectations of stakeholders.

In the separate financial statements, the disclosure could be limited to the reporter's own exposure if applicable. For further information, we refer to this KPMG article.

3.2 Accounting positions may have effect on Pillar Two and associated Top up Tax

Attention for the potential adverse Pillar Two effects is required when electing accounting policy choices as well as formulating accounting positions, including the (deferred) tax accounting consequences thereof. Such could apply for a wide range of topics, including consolidation, the option to account for certain transactions or movements through Other Comprehensive Income and recognition of deferred tax assets associated with carried-forward tax losses or interest available for carry-forward (especially with application of Transitional Safe Harbour Simplified Effective Tax Rate test).

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