

## **Dutch corporation tax plans in 2012 Budget, cooperatives under attack?**

By mistake the 2012 Budget was published yesterday afternoon. The bill will go to the parliament soon and enters into force at January 1, 2012. We will have to see how much of the current plan will be changed by the parliament.

The 2012 Budget introduces the following changes for the corporation and dividend tax:

1. limiting the interest deduction excessive holdings through the acquisition;
2. exemption for permanent establishments;
3. tax obligation of foundations and associations;
4. substantial interest in Dutch entities;
5. R & D deductions.

An unexpected change is about a substantial interest in Dutch entities. This includes the introduction of a dividend tax for memberships in cooperatives, which are (or as of today were?) used for one main purpose: to avoid the Dutch dividend withholding tax. Will this end the use of Dutch cooperative in international structures? Read more in section 4 and make up your mind.

### **1. Limiting the interest deduction excessive holdings through the acquisition**

Interest deduction will be limited for acquisition holdings. In designing this measure the government intends to take into account the importance of Dutch business climate. Therefore, existing structures will be grandfathered. The deduction of interest will only be limited for takeovers on or after 1 January 2012. These measure will impact buyers of Dutch companies, which finance the takeover with a lot of debt in order to offset the interest against taxable profits. Due to this the government is of the opinion that the Dutch taxable base has been eroded to much. The same can be achieved with a demerger or merger. The provisions in this bill ensure that interest on the acquisition debt cannot be deducted unlimited anymore. Interest deductions to an amount of € 1,000,000 will remain unaffected. Also, interest deductions will remain to be possible in case the company is healthy funded.

### **2. Exemption for permanent establishments**

At present, international companies can offset losses of their permanent establishments abroad against Dutch taxable profits in the year the loss is suffered. If the permanent establishment makes profits in later years again, this loss compensation is reversed. However there are techniques to defer the reversal of losses. International companies with foreign subsidiaries cannot offset the “same” losses against Dutch taxable profit. Only when a subsidiary is liquidated the remaining losses are taken into account. By introducing an exemption for PE's, the tax treatment of foreign permanent establishments and subsidiaries are more aligned.

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## 3. Tax obligation of foundations and associations

Foreign entities (f.e. Churches, charities, foundations) are subject to corporation tax in the Netherlands if they receive Dutch sourced income, while similar Dutch entities would be exempt for that same type of income. The law will be changed in such a way that foreign and Dutch entities will be taxed the same, which means that these entities will only be subject to corporation tax in case they have business activities.

## 4. Taxation of participations in Dutch (holding) companies

A foreign company that holds an interest of 5% or more in a Dutch company is subject to corporation tax for the dividends and capital gains received, unless this so-called substantial interest is part of the business assets of the foreign company. Since Dutch substantial interest holders do not have the business asset test, the test violates EU law.

The government does not want to remove the substantial interest rule, as it is advocated. They reason that it plays an important role in counteracting scheme's to avoid dividend withholding tax. Therefore it is proposed to explicitly express the anti-avoidance character of the rule in the law. An additional condition will be added that income and capital gains realized from a substantial interest is taxed in case one of the main purposes for having substantial interest is to avoid Dutch dividend, income or corporation tax for someone else (i.e. the ultimate beneficial owner). The income and capital gain is not taxed in case the substantial interest belongs to the business assets. The intention is that the proposed measure does not change the current practice.

If the substantial interest fails the business asset test the corporation tax is set at 15%, which is the same rate as the dividend withholding tax.

In addition, an accompanying measure in the dividend withholding tax is proposed. Under these anti-abuse measure a cooperative, which directly or indirectly holds shares to avoid Dutch dividend withholding tax or foreign tax for someone else, will be obliged to withhold dividend tax on profit distributions. Currently cooperatives are not designated as withholding agents. As a general rule, this remains the same. Only for tax avoidance structures the cooperative will be a withholding agent for dividend withholding tax. This measure prevents use of cooperatives only to avoid tax without the presence of real economic significance. No dividend tax will be withheld in case the membership belongs to the business assets and no dividend tax would have been due in case the membership would have been a shareholding.

## 5. R&D deductions

Because the Netherlands wants to stay attractive for companies for research and development (R & D) in the future, the government will introduce a research and development allowance (RDA). The RDA includes a new generic tax incentive aimed to reduce the direct cost of R&D, other than wage costs (for which a tax incentive already exists). Because the plan for the RDA has not yet been completed yet, the plan will be included in the bill by a separate amendment.

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## Importance to practice?

The cooperative was the solution which enabled the Dutch financial service industry to compete with other holding and finance jurisdictions. Apparently the Dutch financial service industry does not contribute enough to the Dutch GDP with these financial structures and is it necessary to kill it. A shame because the structures will be transferred overnight and the other competing jurisdictions will welcome them with open arms. The other measures are in line with what was announced already.

[Source \(translated with Google\): Belastingplan 2012](#)

Ton Krol, Friday, 16 September 2011