NautaDutilh

Newsletter

May 2005

Corporate tax reforms to be proposed by Dutch government

On Friday 29 April 2005, the Dutch government published an outline of the proposals it aims to submit later this year to reform the Dutch Corporate Tax Act. Pursuant to the outline the government intends to propose the following reforms:

A. Lowering of the corporate tax rate to 27%

Under present plans, the corporate tax rate is gradually going to be lowered from its current 31.5% to 30% (to apply from 2007). The government now wants to implement a greater reduction, whereby the rate applicable from 2007 would be 26.9%.

B. Replacement of the regime for group financing activities

The current regime for group financing activities is being phased out, in view of the EU rules on state aid and because the regime is considered as harmful tax competition. The government is considering the introduction of a new group financing regime, for which all corporate taxpayers would be eligible and under which group financing profits would be taxed at 10% instead of 26.9%

C. Abolition of the capital tax

This non-recurring tax of 0.55% on contributions of capital would be abolished as from 2006.

D. Extension of loss relief to foreign losses

The well known Marks & Spencer case is forcing the government to consider opening the fiscal unit regime, a regime for tax consolidation, to EU subsidiaries of Dutch companies. This would allow relief to be obtained in the Netherlands for losses incurred by EU subsidiaries. The method for the relief would be the same as that for foreign permanent establishments. At the same time, the rules currently governing the tax treatment of losses of foreign permanent establishments would be tightened.

E. Limitation of loss carry-over

The periods for loss carry forward and loss carry back would be shortened.

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F. Amendment of the participation exemption

The government is considering replacing the current subject-to-tax and passive-investment-purposes tests by the condition that the subsidiary must not be a passive company. The government also plans to stop applying the participation exemption to shareholdings comprising less than 5% of the nominal issued share capital, abolish the deduction of liquidation losses and the temporary depreciation of qualifying shareholdings for corporate tax purposes.

G. Reconsideration of the rules denying the deduction of interest expenses

Although interest expenses are, in general, deductible for corporate tax purposes, the Corporate Tax Act now contains many complex provisions denying the deduction of interest expenses in cases perceived as abusive. The government may decide to drop some of these provisions if the thin-cap rules are found to be sufficiently effective against base erosion.

H. Changes in the method for the depreciation of buildings

The depreciation of a building for corporate tax purposes would stop in the event that it causes the building's book value to drop below its actual market value.

I. Other changes

The outline also sets out a number of other changes that are to be proposed. These are less important and are therefore not discussed here.

The aim of the reforms is to put the Netherlands back on the 'shortlist' for multinational enterprises (MNEs) and to pre-empt any developments in the case law of the European Court of Justice that could have major consequences for the country's corporate tax intake. It is intended that the reforms should not affect the government's corporate tax revenues. Consequently, measures such as the lowering of the corporate tax rate to 27% will be offset by a broadening of the taxable base.

The changes proposed in the outline are described in somewhat more detail in the document which can be downloaded by clicking the icon below.

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