

## Dutch budget 2010

On September 15, 2009 the Dutch government presented it's 2010 Tax Package to the Lower House. This Tax Package comprises five bills which must stimulate and accommodate entrepreneurship in the Netherlands.

Hereinafter we will describe the Highlights of Tax Package 2010, which may still undergo significant changes since the bills have not been approved yet

### 1. Participation Exemption

With the reform of the Dutch Corporate Income Tax Act in 2007 the regime of the participation exemption has been revised concerning so called "passive" investments. In general the participation exemption applies to all participations with a minimum of 5%, unless the participation is considered a low-tax portfolio investment (passive). Such investments cannot apply for the participation exemption. In stead of the participation exemption passive investments can apply for a credit system, which is, in general, less beneficial.

A participation is considered to be a passive investment when it's aggregated assets consist for 50% or more out of assets which generate passive income, like interest, rental income and also royalties. A number of categories of assets will no longer be qualified as such under the proposal for the Dutch Budget, such as real estate, assets that are uses in an active leasing business.

In Tax Package 2010 it is proposed to narrow the definition of passive investments, and thus partly return to the "pre-2007 situation". Decisive criteria under this situation are active involvement and central management of the group. If there is active involvement in central management concerning the subsidiary(s) the participation exemption will apply.

In case the participation exemption will not apply because of a lack of active involvement there are two "safety net" clauses, which are:

- Sufficient tax test: the participation is subject to a real profit tax of at least 10%;
- Revised asset test: portfolio investments of the subsidiary which are subject to a real profit tax of at least 10% will no longer qualify as passive income for the subsidiary and thus the 50% test will work out different (better).

## 2. Depreciation Measures

Because of the economic crisis, last year the Dutch government has introduced a temporary measure for accelerated depreciation for investments made in 2009. It is proposed to extend this measure for investments made in 2010. These investments can be fully depreciated in 2010 and 2011 (with a maximum of 50% a year).

## 3. Carry back

With the reform of the Dutch Corporate Income Tax Act in 2007 carry back terms were being narrowed from 3 years to only 1 year. In current proposal this term will be extended to three years again. The taxpayer has to elect for this temporary measure. This temporary measure is applicable for tax years 2009 and 2010, so losses over 2009 and 2010 can be carried back for three years, limited at € 10 million per year (to which the loss is carried back to).

On the opposite of the extension the carry forward term is being narrowed from 9 years to 6 years. If you don't elect for the temporary measure, then the carry back remains 1 year and the carry forward remains 9 years.

For investments in 2009 and 2010 accelerated depreciation can be applied (see above). Accelerated depreciation will lead to lower profits or even losses. These losses can be carried back to the profits over the last 3 years, so investing in 2009 and 2010 might lead to benefit.

## 4. Innovation Box

As per January 1, 2007 the Patent Box was introduced in the Corporate Income Tax Act. Income derived out of patented intangible (and R&D) assets were taxable against an effective rate of only 10% (taking into account a threshold and a maximum limit).

This Patent Box will be renamed into Innovation Box.

As per January 1, 2010 the effective rate will be lowered to 5% and the different limits for R&D assets and patented assets will be cancelled. Furthermore the effective lower rate of 5% will only apply to positive income, so innovation losses can be taken into account against the regular Corporate Income Tax rates (20 – 25,5%).

For additional information regarding any of the issues raised in this Taxmail, please contact any of the professionals of Van Oers International listed below or your local Van Oers contact person.

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