



## Dutch Tax Legislation changes as per January 1, 2010

With our Tax Mail of September 2009 we have informed you about the Dutch Tax Package 2010, which was at that moment, presented by the Dutch Government. On November 19, 2009 four out of five of the Bills, with a number of amendments, were approved by the House of Representatives, followed by approval by the Senate on December 22, 2009.

The fifth Bill, which concerns proposals to achieve uniformity in the different concept of wages, will be discussed in 2010 and will probably enter into force on January 1, 2011 (or later).

Furthermore the Dutch Inheritance Tax was modernized as per January 1, 2010.

### Update

We herewith start with a short review and update to our September 2009 Tax Mail concerning the Dutch Budget 2010.

#### 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.

As per January 1, 2010 the definition of passive investments is narrowed, so we 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. This measure is extended 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. The carry back term will, on request, be extended 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).

If requested for the extension of the carry back term the carry forward term is being narrowed from 9 years to 6 years.

For investments in 2009 and 2010 accelerated depreciation can be applied (see above).

Accelerated depreciation will lead to lower profits or even losses over 2009 and 2010. These losses can be carried back to the profits over the last 3 years, so investing in 2009 and 2010 might lead to a 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%).

## **Other changes**

### Dividend withholding tax

As per January 1, 2010 the conditions for the exemption from withholding of dividend withholding tax within the EU, regarding the legal form of

the parent company and this being subject to tax, are cancelled.

Furthermore the exemption from dividend withholding tax is extended to companies established in Norway and Iceland.

## **Proposal**

### Wage tax

As per January 1, 2011 completely new rules for reimbursing business expenses are proposed.

Based on these proposals tax exemptions and benefits will no longer be assessed for each employee, but on the basis of the aggregate amount for the employer. The employer will be narrowed on the tax-free reimbursements and benefits up to a certain percentage of its total wage bill.

The distribution of the permitted amount among individual employers will no longer be relevant. As per today several amendments have been made resulting in a proposed optional regime up to and including 2013 for the current rules.

As already mentioned the proposal will be discussed by the House of Representatives and the Senate during 2010.

If any relevant matters concerning the proposal might arise we will inform you about these.

## **Modernization of the Dutch Inheritance Tax**

As per January 1, 2010 the new Dutch Inheritance Tax became applicable. The previous Inheritance Tax dated from 1956 and was considered to be outdated.

Beside the adjustments in tax rates, the height of exemptions and the reduction in the number of groups of receivers a couple of other provisions were changed.

### Split ownership

Under the previous Inheritance Tax the waxing of bare ownership into full ownership was not taxed if the asset (real estate property) was purchased in a split manner: the bare ownership by the children and the usufruct by the parents.

When parents decease under the new Inheritance Tax the property is included in the assessment of inheritance tax with the children.

### Allocated funds

Capital placed in an allocated fund will be directly attributable to the settler of the fund and to the

settlers heirs upon his death (fiscal transparency).

### Business Succession Facility

The acquisition of company capital (also shares in a company) is exempt from Inheritance Tax up to an amount of € 1.000.000. If the company capital is more than € 1.000.000 for all acquired above € 1.000.000 83% is exempt from Inheritance Tax.

### Abolishment of Transfer Duty

As per January 1, 2010 the transfer duty, which was due when real estate property located in the Netherlands was inherited, were abolished.

### Fictions

To eliminate the avoidance of Inheritance Tax by fiscal structures and certain types of wills the so called “Fiction provisions” were strengthened.

For more detailed questions concerning inheritances with Dutch aspects please contact our Tax Department.

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.

#### **Gijs Vernoijs**

F +31 (0)76 – 530 38 00  
E [g.vernoijs@vanoers.nl](mailto:g.vernoijs@vanoers.nl)

#### **Eddy van Oosterhout**

F +31 (0)165 – 58 26 00  
E [eddyvanoosterhout@vanoers.nl](mailto:eddyvanoosterhout@vanoers.nl)

#### **Kurt van Heerewaarden**

F +31 (0)76 – 530 38 00  
E [k.vheerewaarden@vanoers.nl](mailto:k.vheerewaarden@vanoers.nl)

Ginnekenweg 145  
4818 JD Breda  
Postbus 2039  
4800 CA Breda  
T +31 (0)76 530 38 00  
F +31 (0)76 530 38 01  
E [breda@vanoers.nl](mailto:breda@vanoers.nl)

Bovendonk 7  
4707 ZH Roosendaal  
Postbus 50  
4700 AB Roosendaal  
T +31 (0)165 58 26 00  
F +31 (0)165 58 26 01  
E [roosendaal@vanoers.nl](mailto:roosendaal@vanoers.nl)

Hofdreef 24  
4881 DR Zundert  
Postbus 88  
4880 AB Zundert  
T +31 (0)76 597 88 00  
F +31 (0)76 597 88 99  
E [zundert@vanoers.nl](mailto:zundert@vanoers.nl)

Europark 5  
4904 SX Oosterhout  
Postbus 60  
4900 AB Oosterhout  
T +31 (0)162 49 70 60  
F +31 (0)162 49 70 61  
E [oosterhout@vanoers.nl](mailto:oosterhout@vanoers.nl)

Bredaseweg 117  
4872 LA Etten-Leur  
Postbus 165  
4870 AD Etten-Leur  
T +31 (0)76 502 57 00  
F +31 (0)76 502 57 01  
E [ettenleur@vanoers.nl](mailto:ettenleur@vanoers.nl)

Taxmail is a publication of Van Oers International. Van Oers International is a practice group of Van Oers Accountancy & Advies, one of the largest regional accounting and tax advisory offices in the Netherlands. This publication is for information purposes only. Its contents does not constitute any advice and should not be regarded as a substitute for detailed advice in individual cases.