

Let's get to the point*

Budget Day 2009
Summary of the
Dutch Tax Package 2010.





2010 Tax Package announced on 2009 Budget Day

On 2009 Budget Day, 15 September 2009, the Dutch Government published the five bills that make up the 2010 tax package. The bills reflect the Dutch government's policy to stimulate and to accommodate entrepreneurship. The Government's main focus points are: i) stimulation of innovative entrepreneurship, ii) boosting the cash flow for businesses with regard to the economic crisis, and iii) liberalisation of the participation exemption regime.

We have summarised the most important changes that were proposed in the five bills. Since both the House of Representatives and the Senate have to approve the bills, they may still undergo significant changes. Most proposals included in the 2010 Tax Package are set to take effect on 1 January 2010.

Corporate income tax/ entrepreneurship

Liberalisation of participation exemption regime

The participation exemption regime was revised as part of the 2007 corporate income tax reform. In general, the participation exemption currently applies to 5% shareholdings, unless the participation is considered a low-taxed portfolio investment (passive). In case of a passive portfolio investment participation, a credit system applies instead of the full participation exemption. A subsidiary is not considered a passive portfolio investment if the subsidiary's aggregated assets consist for 50% or more of "good assets" (the so-called asset test). Generally speaking "good assets" are assets that are used in the direct subsidiary's active business or in lower tier subsidiaries' active businesses. "Bad assets" are assets that generate passive income such as interest, royalties and rental income. It is now proposed to accelerate the improvements of the current participation exemption regime, i.e. as of 2010. As was announced in the Consultation document, it is proposed to partly return to the pre-2007 rules, meaning that the participation exemption is applicable as long as the participation is not held as a portfolio investment. Under these rules the active involvement and the intent of the Dutch parent company or central group management are decisive criteria. If there is active involvement in the central management of the group, regarding the company strategies of the subsidiary and its (sub-) subsidiaries, then the participation exemption will apply. In case of a participation that is both (passively) investing and (actively) conducting a business, it needs to be verified what the core activities are.

If based upon this new main rule, the participation exemption would not be applicable, then the conditions for the application of the participation exemption may still be met if the new sufficient tax test (subject to a real profit tax of at least 10%) or if the revised asset test (in which, among other things, portfolio investments that are sufficiently taxed are marked as "good assets") are met.

Optional extension of carry back period for losses from one to three years

Taxpayers are currently allowed to carry back their losses to one preceding fiscal year. It is now proposed to provide a possibility for corporate taxpayers to opt for a temporary extension of the tax loss carry back period with two extra years to three years. This choice will however also mean that the maximum period for tax loss carry forward will be reduced from nine to six years.

The extended measure for carry back is limited to € 10 million loss carry back per extra year.

As mentioned, this option is a temporary measure which will apply to the losses arising in the tax years 2009 and 2010.



Extension of the accelerated depreciation measures

As part of the measures taken with regard to the economic crisis in 2008 and 2009, the government introduced a temporary measure for accelerated depreciation. The initial measure only applies to investments that are made in 2009. It is now proposed to extend this measure to 2010. This means that the accelerated depreciation can also be applied by businesses that purchase new company assets in 2010. These assets may then be fully depreciated in 2010 and 2011 (with a maximum of 50% per year).

Further liberalisation of patent box leads to innovation box

A special regime for income derived from certain self-developed intangibles, the patent box, was introduced in the Corporate Income Tax Act per 1 January 2007. If a corporation has developed an intangible asset, for which a patent (or as of 2008 a special R&D-qualification) has been granted, it can opt for the application of the patent box. In that case the income derived from this asset will be taxable against an effective tax rate of 10% (taking a threshold and a maximum limit into account). This effective tax rate will be lowered to 5% as of 1 January 2010. Furthermore, the different limits for patented assets and R&D assets will be cancelled, resulting in an equal treatment of all innovative activities and a wider scope of the regime. Therefore, the patent box will be renamed innovation box. In addition it will be laid down in the law that the lower effective tax rate of 5% only applies to positive income, allowing innovation losses to be taken into account in full.

Dividend withholding tax

Extension of exemption and refund possibilities for dividend withholding tax for Norway and Iceland

As of 1 January 2010 the scope of the withholding exemption in the dividend withholding tax will be extended in order to apply (under conditions) to dividend distributions from companies established in Norway or Iceland. In addition, two conditions for the exemption from withholding within the EU, regarding the legal form and being subject to tax, will be cancelled.

Further, the refund possibility in the dividend withholding tax will also be available to pension funds and similar entities that are established in Norway or Iceland as of 1 January 2010.

Other measures

Packaging tax

As of 2010 the threshold for liability to packaging tax will be increased from 15.000 kg to 50.000 kg. On the other hand, the tax rates of the packaging tax will rise with more than 8%. Further, the refund of packaging tax regarding indirect export will also be available to foreign entrepreneurs.

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