



The Netherlands: Japan Desk Updates

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Headlines from the Fiscal Agenda of the Dutch State Secretary of Finance

On April 14 2011, State Secretary of Finance Weekers published his tax plans for this cabinet period in the Fiscal Agenda, with the subtitle "Towards a more simple, more solid and fraud-proof tax system".

We have summarised the items which are the most relevant for businesses. These are the following:

- Lowering of the corporate income tax rate from 25% to 24%
- Broadening of the corporate income tax base by dealing with takeover companies and the import of foreign losses of permanent establishments
- Amendment of the tax treatment of interest for participations
- Amendment of the rules for foreign entities with a substantial interest in a Dutch corporation
- No proposal for cancelling the dividend withholding tax
- Raising the low VAT rate and exploration of the introduction of an integral levy on wages

The plans in the Fiscal Agenda will be translated into legislative proposals during this cabinet period. With regard to the measures in the corporate income tax, it has been announced that a bill for amending the corporate income tax act will be published on Budget Day 2011 (September 20 2011).

1. Tax rate

The government aims at a further reduction of the main corporate income tax rate, in order to further improve the fiscal investment climate. The reduction should be financed from the extra revenue resulting from the measures to broaden the tax base, as discussed below. Initially, this would lead to a lowering to 24%, however a further reduction has not been ruled out.

2. Broadening of the corporate tax base

Along with the reduction of the corporate income tax rate comes a proposal to introduce two measures that are meant to broaden the tax base. These measures are a limitation of interest deduction for takeover companies and an object exemption for foreign permanent establishments, as already announced in December 2009.

Takeover companies

The government will propose a regulation providing for a limitation of the deductibility of interest for takeover companies in case of a highly leveraged takeover of a Dutch target, if the target is part of a fiscal unity with a Dutch takeover company after the acquisition. The interest will only be tax deductible if the buying company has enough taxable profits on its own. To reduce the administrative burden and to spare relatively small takeovers, there will be a threshold of € 500,000, above which the deduction of interest can be limited.

In addition, real financial structures will be spared as much as possible, as the measure will only apply if the debt equity ratio of the fiscal unity after the takeover exceeds a certain ratio. For this purpose, participations will be deducted from the equity. Also, the objections that came up in the consultation document of June 15 2011 regarding the so-called goodwill gap will be taken into account.

Foreign permanent establishments

The second measure is the introduction of an object exemption for foreign permanent establishments. This proposal will establish that the results from foreign branches will be excluded from the Dutch tax base. The subject-to-tax requirement for the avoidance of double taxation with regard to foreign permanent establishments will then be cancelled, so it will no longer be relevant whether the gains are taxed in the country of the permanent establishment. Due to this measure, losses of permanent establishments can no longer be immediately deducted from the taxable profits in the Netherlands. Losses upon liquidation of permanent establishments will however continue to be deductible. For passive permanent establishments in low tax countries, a credit system will apply instead of the exemption, as already applies in the current regime.

3. Tax treatment of interest for participations

Currently, the Dutch Corporate Income Tax Act includes numerous provisions that restrict the extent to which related party interest can be deducted for CIT purposes. The aim of these provisions is to prevent multinational groups from eroding the Dutch tax base by providing intra group loans to Dutch companies. The Dutch government intends to simplify the rules regarding the deduction of interest for participations. At an earlier stage, in the so called consultation document, proposals had already been prepared for a complete revision of these rules. However, these proposals have not been implemented eventually. In the Fiscal Agenda the Dutch government still has not made a final decision on how the tax treatment of related party interest should be amended. Several specialist teams will be appointed, in order to prepare an opinion about the tax treatment of interest for participations, which will be sent to the Dutch State Secretary of Finance on June 14 2011. Subsequently the Dutch government will decide on the new rules on the deduction of interest for participations.

4. Substantial interest held by foreign entities

Under certain conditions foreign entities that hold an interest of at least 5% in a Dutch company (a so called "substantial interest") can be subject to Dutch tax with respect to income derived from such an interest. Often it is not clear whether or not in such a case a foreign entity is indeed subject to Dutch tax, especially if it concerns foreign investment companies that hold interests in Dutch companies. The Dutch government intends to amend the legislation regarding this matter.

5. Dividend withholding tax

Although the Dutch business community and Dutch tax advisors have often insisted on abolishing the Dutch dividend withholding tax, the Dutch government holds the view that this would not be expedient. This is due to the fact that foreign shareholders that hold Dutch portfolio investment shares would not (effectively) benefit from this. Generally the recipient of the dividend would still pay the same amount of total tax on such a portfolio dividend, as the state of which he is a resident will no longer grant a tax credit for the Dutch withholding tax. Furthermore, dividend withholding tax is often of importance when the Netherlands negotiates tax treaties. Another reason for not abolishing the Dutch dividend withholding tax is that the reduction in revenues that would result from this, would have to be compensated by an increase in other taxes. This is due to the fact that in the current situation the Dutch government is not in a position to reduce the total tax revenue.

6. VAT and integral levy on wages

During the current cabinet term the Dutch government intends to decrease the direct tax on labor, and increase the indirect tax on consumption. In this respect a measure that the Dutch government would like to consider in the short term, is to increase the low VAT rate of 6% to 8%. In the long term it may be considered to implement a system under which VAT is levied at a single rate, which will be set at the current normal rate of 19%.

In the coalition agreement it has already been pointed out that the Dutch government strives to implement an integral levy on wages, in order to simplify the levy of wage tax and social security premiums. This is intended to decrease the administrative burden for the Dutch business community. The results of a further exploration of the possibilities of an integral levy on wages is expected to be published in the fall of 2011.

For more detailed information, please do not hesitate to contact your Japan Desk contacts or any of the following members:

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