2019 DUTCH TAX PLAN

INTRODUCTION

During Budget Day (18 September 2018) in the Netherlands a number tax plans were published. Please find below a selection of the most relevant proposals

2019 TAX PLAN

PERSONAL INCOME TAX

The Dutch tax plan 2019 contains several measures that aim to decrease the tax burden on wages to make work more beneficial. These measures include the following.

Introduction of a two-bracket system

The wage- and personal income tax rates will be gradually reduced and should ultimately result in a two-bracket system as per 2021. The tax rate of the first bracket of this new regime (up to an income of € 68,507) is 37.05% and the tax rate of the second bracket (income exceeding € 68,507) is 49.5%.

As stated above, the changes will be gradually introduced. In 2019 the tax rate of the first bracket (up to an income of € 20,384) is 36.65% and the tax rate of the second and third bracket (up to an income of € 68,507) is 38.10%. Income exceeding € 68,507 will be taxed at a rate of 51.75% in the fourth bracket.

Increase of the tax credits

In the Dutch tax plan 2019 it is contemplated to gradually increase the general tax credit in 2019, 2020 and 2021 with a total amount of € 358. Also the maximum amount of the employed person's tax credit will be gradually increased during these years. The maximum income-related combination tax credit remains the same.

Scaling back of tax allowance

As of January 1, 2019, tax allowances will be deductible at a rate of 51.75% in the highest personal income tax bracket. As per January 1, 2020 a large number of tax allowances will be scaled back. In this respect, the deductibility in the highest bracket is reduced to 46% and this will gradually be further reduced with 3% annually. As a result of this gradual reduction, as per January 1, 2023 tax allowances will only be deductible against the tax rate of the first bracket (37.05%).

The notional rental value of residences ('eigenwoningforfait') will be gradually decreased. For persons owning a residence with a real estate value ('WOZ-value') between € 75,000 and € 1,060,000 (amount in 2018), the notional rental value will be gradually decreased from 0.70% to 0.45% in 2023 (expected).

Year	2018	2019	2020	2021	2022	2023
Maximum deductible rate expenses owner occupied homes	**49.5%**	**49%**	**46%**	**43%**	**40%**	**37.05%**
Maximum deductible rate other taxable base reduction items	**51.95%**	**51.75%**	**46%**	**43%**	**40%**	**37.05%**

Abolishment of the so-called 'Hillen Act'

As per January 1, 2019 the so-called Hillen Act will be abolished. This means that tax payers without debt on their main residence will be effectively taxed on the value of their main residence. This abolishment will be realized in 30 years.

Increase box 2 rate

In deviation to the Government Agreement the increase of the tax rate for taxable income from substantial interest (BOX 2) will be smaller to maintain the global balance of the tax burden between entrepreneurs subject to income tax rules and shareholders of BVs. The tax rate for taxable income from substantial interest will be increased in phases from 25% in 2019 to 26.25% in 2020 and 26.9% in 2021.

Box 2 loss set-off

It is proposed to reduce the carry-forward period of losses in box 2 from nine to six years in accordance with the loss carry-forward period for corporate income tax.

Discourage the excessive loan from the private limited liability company

The government has announced to implement a new regulation to discourage majority shareholder-directors to borrow from their private limited liability companies amounts in excess of EUR 500,000.

If the aggregate amount of the debts exceeds this threshold, the excess will be regarded as a dividend distribution that is taxable in box 2 as from 1 January 2022. A transitional measure will be implemented for existing debts in respect of the owner-occupied property.

Box 3 income from savings and investments in 2019

In the tax plan 2018 is announced that the considered fixed return on savings and investments will be more in line with the actual average income. For 2019 the average return on savings is based on the period July 2017 to June 2018. The actual interest on savings has been reduced in this period.

The considered return on savings for 2019 will therefore be determined on 0.13%. The long term return on investments for 2019 will be determined on 5.6%. The tax free threshold is to be increased to EUR 30,360 per person.

2019 Table calculation box 3 taxable income from savings and investments

Total savings and investments	Considered return
To € 30,360	**0%**
Between € 30,360 up to € 102,010	**1.94%**
From € 102,010 to € 1,020,096	**4.45%**
Up to € 1,020,096	**5.6%**

The applicable tax rate on taxable income from savings and investment is 30%.

Preservative tax assessment for life annuities and pension plans

On 14 July 2017 the Dutch High Tax Court has answered prejudicial questions regarding the preservative tax assessment related to pension and life annuity entitlements that is imposed in case of emigration. From these answers it can be concluded that imposing such a preservative tax assessment is not in line with tax treaties in some specific cases. Therefore changes are proposed in Dutch tax law.

Monumental buildings

The current tax deduction for certain maintenance costs of National monumental buildings will be abolished as of 2019. The deduction will be replaced by a subsidy. A maximum of 35% of the costs related to keeping the building in good shape will be reimbursed by Dutch government.

Deduction for educational expenses

The government proposes to replace the current deduction for educational expenses by a subsidy for every person that has obtained a minimum level of education as determined by the government ('startkwalificatie'). This new legislation will be implemented at a later stage, an exact date is yet unknown.

WAGE TAX

Reduction 30% ruling term

The maximum term of the so-called 30% ruling for expats working in the Netherlands will be reduced from 8 years to 5 years as of 1 January 2019. A corresponding reduction of this term will also apply to the period during which an expat may opt for the partial non-resident taxpayers status for Dutch personal income tax purposes. Furthermore, also effective as of 2019, an employer can only reimburse the actual extraterritorial costs to an expat for a maximum period of 5 years.

The legislative proposal follows from an evaluation of the 30% ruling which concluded that in practice approximately 80% of the expats do not apply the ruling for a period longer than 5 years. The legislative change will also apply to existing 30% rulings. This means that expats with an existing 30% ruling issued for a period ending between 1 January 2019 and 1 January 2022, can no longer apply the 30% ruling as of 2019. This will impact 11,000 expats. For expats with a 30%-ruling that ends after 1 January 2022 the remaining application period will be reduced with 3 years. Included in this group are 6,500 employees that will loose the ruling during the course of 2019. Despite critical comments from the Dutch legislative advisory board ('Raad van State') regarding the lack of transitional rules for employees that already are using the 30%-ruling, the Dutch government sticks to it's plans.

A minimal transitional rule has been proposed related to the tax free reimbursement of school fees for international schools. If these fees are reimbursed for the pending schoolyear (2018/2019) this reimbursement can also be paid tax free after 1 Janaury 2019 as long as the original 30%-decision was valid.

Adjustment for levy rebates for non-residents

As of 1 January 2019 an employee that is not a resident of the netherlands will no longer be eligible to the entire amount of the wage tax levy rebate. Depending from the country of residence of the employee he might be entitled to a part of this levy rebate. Residents of a member state of the European Union, the European Economic Area, Switzerland and Bonaire, Saba and St. Eustatius remain entitled to the tax part of the employment tax rebate. If a non-resident is entitled to higher levy rebate than the employer has applied when processing the payroll, the additional rebate should be claimed by filing a Dutch personal income tax return. An example is a resident of Belgium who is entitled to the tax part of the general tax rebate (based on the tax treaty concluded between the Netherlands and Belgium).

Position of self-employed workers

Dutch government is trying to regulate the position of self-employed persons for tax and social security purposes for years now. The implementation of specific legislation ('Wet DBA') was intended to provide more clarity, but practice shows that this clarity unfortunately has not been obtained yet. In the proposals presented now no further clarity is given. We expect that a memorandum on this subject will be send to parliament in November and that the term 'employers authority' will be defined in more detail in the beginning of 2019. The enforcement of the 'Wet DBA' has been postponed until 1 January 2020, with an exception for malicious situations.

Tax exemption for volunteering allowances

As of 1 January 2019 the maximum tax free allowance for volunteers will be increased to € 170 per month or € 1,700 per year. The current amounts are € 150 per month or € 1,500 per year. These amounts are assumed to cover the costs that volunteers have to perform the volunteering activities and includes benefits in kind. Actual costs that exceed these fixed amounts can be reimbursed tax free, but have to be substantiated.

Company bicycles

Dutch government wants to stimulate the use of bicycles for commuting since this has positive effects for the environment.

Entrepreneurs and employees can therefore use a company owned bicycle, electrical bicycle or speed pedelec more easily for private purposes. A fixed amount of deemed income will be introduced, comparable to the existing one for company cars. Annually 7% of the consumer advice price (the original value) of the bicycle will have to be reported as deemed income. This legislation can be applied in any situation where the bicycle is (partly) used for commuting.

Under current Dutch wage tax law employers already have the option to stimulate the use of bicycles for commuting. By granting a loan to the employee for the purchase of the (electrical) bicycle that can be repaid through the tax free reimbursement of € 0.19 per kilometre with a business nature (which includes commuting).

Deemed income company car

As of 1 January 2019 a change will be introduced related to the deemed income for the private use of an electric car. The percentage to be used to calculate the deemed income for completely electric cars currently is 4%. This percentage is applicable for a period of 5 years as of the original date of admission (DAT).

As of 1 January 2019 the percentage of 4 for electric cars only applies to the first € 50,000 of the catalogue value for cars with a DAT in 2019. As far as the catalogue value exceeds € 50,000 the regular percentage of 22 applies. This legislation applies for 2019 and 2020.

The percentage that has to be used to calculate the deemed income applies for the first 5 years as of the DAT. Thereafter the percentage applies that is valid at that moment in time.

VAT

Increase reduced VAT rate from 6% to 9%

As of January 1st 2019, the reduced VAT rate of 6% will be increased to 9%. Goods and services that are subject to the reduced VAT rate may therefore become more expensive. Examples of such goods include daily groceries, consumptions, medicines and books. However, according to the Dutch parliament the price effect of the increased VAT rate will not be experienced as such, especially since similar products are already more expensive across the border and the expectation is that the purchasing power of the average Dutch citizen will also increase due to the new budget plans.

The increased reduced VAT rate does not only affect prices. Entrepreneurs will also have to process the increase of 6% to 9% in their administration and set up of their ERP systems. Entrepreneurs who now charge 6% VAT on their invoice should charge 9% VAT on invoices issued on or after 1 January 2019. There is an exception to this for invoices that are issued in 2019 but do relate to a payment received in 2018 or relate to the sale of goods or services in 2018. To these invoices, the reduced VAT rate of 6% still applies.

The VAT rate increase will also affect the "Act on the fixed book price". In this specific act regulating book prices, an amendment will be included that provides entrepreneurs the opportunity to change the determined fixed book price in order to make sure that the increase of the reduced VAT rate can be on-charged to consumers.

Expansion of VAT sports exemption

The VAT sports exemption will be expanded on 1 January 2019. The VAT sports exemption currently only applies to 'sport' services that are provided to members of sports associations. The Dutch parliament has proposed to expand the exemption per 1 January 2019, so that this exemption will also apply to sports services provided to non-members as well as to non-commercial operators of sports facilities. Since a VAT exemption can have negative financial impact on such operators, e.g. input VAT will no longer be deductible, and since the Dutch government encourages construction and maintenance of sports facilities, a compensation will be introduced for this financial impact. For this compensation, a distinction will be made between municipalities and amateur sport organizations. Amateur sport organizations will be financially compensated through a 'Subsidy for stimulating construction and maintenance of sports facilities', whereas municipalities will be compensated through the 'Regulation specific payment incentive'.

In addition, the Dutch parliament is proposing transitional arrangements for:

1. the application of the VAT revision rules to remaining construction periods of sports facilities that are intended for VAT-taxed use and need to be paid in 2019;
2. the use of sports facilities after 1 January 2019 that are intended for VAT-taxed use; and
3. cases in which the use of movable and immovable property was changed after 1 January 2019 and for which a VAT-taxed use was planned.

IMPLEMENTATION EU DIRECTIVE ON E-COMMERCE

A part of the already adopted EU Directive on electronic services and distance sales will be implemented in the Dutch VAT legislation as of 1 January 2019. These parts mainly relate to the simplification of the VAT regime for telecommunication, broadcasting and electronic services (as applicable per 1 January 2015).

Under the current VAT rules, entrepreneurs who supply digital services for small amounts should obtain VAT registrations in all EU Member States to which e-commerce services are provided to consumers. The VAT due in a Member State should be paid via a local VAT return in that particular Member State. The proposed legislative changes aim to reduce the administrative burden for smaller entrepreneurs as e-commerce services will become subject to VAT in the Member State of the entrepreneur, at the VAT rate applicable in that Member State. These new rules can only be applied if the entrepreneur has a total turnover of less than € 10,000 with e-commerce services provided to natural persons within the EU. In addition, these entrepreneurs may apply the invoicing rules of their own European Member State.

In addition, entrepreneurs who are established outside the EU, but do have a VAT registration within the EU, are allowed to use the mini One-Stop Shop System (MOSS) per 1 January 2019.

CHANGE OF VAT SCHEME FOR SMALL BUSINESSES

Under the new legislative proposal, the VAT scheme for small businesses (hereinafter "KOR") will be radically changed. The aim is to have a more practical scheme for small businesses as well as to realize a reduction on the implementation costs for the Dutch tax authorities.

The current KOR applies only to natural persons and per 1 January 2020, the KOR will apply to all small businesses, regardless of the chosen legal form. As of 1 June 2019, small businesses will be given the opportunity to announce with the Dutch tax authorities application of the new KOR to the Dutch tax authorities.

Furthermore, the new KOR will replace the current logic of the KOR by VAT exempting all activities of small businesses if the total turnover of these activities does not exceed € 20,000 per year. Businesses that do not exceed this turnover threshold can opt for the application of the new KOR. Businesses that wish to apply the exemption should send a request to the Dutch tax authorities four weeks prior to the tax period for which the exemption applies at the latest.

A major consequence of application of the new KOR is that VAT on costs incurred by the small entrepreneur opting for the KOR can no longer be deducted. Furthermore, the application of the new KOR automatically results in an exemption from filing periodical VAT returns for the sale of goods and services in the Netherlands as well as the corresponding administrative obligations. Small businesses that opt for the application of the new KOR will not charge VAT on their sale of goods and services in the Netherlands. This exemption does not apply to VAT due on the receipt of goods supplied by entrepreneurs within the EU and VAT that has been reverse charged to the small business applying the scheme. Small businesses should continue to file VAT returns for VAT that has been reverse charged to them and VAT that is due on goods that are purchased from entrepreneurs within the EU.

A transitional arrangement applies to the transition from the existing KOR to the new KOR. This transitional arrangement entails that following the VAT adjustment rules, small businesses opting for the new KOR, should repay VAT on investments that was initially deducted under the existing KOR, if the VAT amount that should be repaid exceeds € 500.

DUTCH WITHHOLDING ACT 2020

Abolishment Dutch dividend withholding tax

The 2019 Tax Plan includes a proposal for the '2020 Withholding Act' which includes the proposed abolishment of dividend withholding tax per 2020. Despite the public debate which this proposal has already triggered so far, the Dutch government sticks to this proposal (primarily) to keep and attracted multinational headquarters. To mitigate the risk of tax avoidance the abolishment of the dividend withholding tax is combined with the introduction of a 'conditional withholding tax' of 23.9% on dividend payments to related entities in 'low-tax jurisdictions' and in 'artificial structures'. This includes dividend payments by a Dutch company (i) to a related entity in a low-tax jurisdiction (even if the shares in the Dutch company are attributable to a permanent establishment of that entity in the

Netherlands), (ii) to a related entity which is not established in a low-tax jurisdiction, but in respect of which the shares held by this entity in the Dutch company need to be allocated to a permanent establishment of that company in a low-tax jurisdiction, and (iii) to a hybrid entity which does not qualify as a tax resident anywhere or is established in a low-tax jurisdiction ('CV/BV structures'). The conditional withholding tax is also levied in 'artificial structures' where the shares in the Dutch company are not directly held by a related entity in a low-tax jurisdiction, but via an intermediate holding company. In this case the conditional withholding tax applies if the intermediate holding company does not meet the relevant cumulative substance conditions which also apply for the current Dutch dividend withholding tax exemption (objective test) and withholding tax would have been due if the interest in the Dutch company would (instead of via the intermediate holding company) have been held directly by its indirect shareholder (subjective test). Only in case of an intermediate holding company established in the EU/EEA an additional counter-evidence rule may apply if the objective and subjective test are not met. The tax base for the conditional withholding tax largely follows the current Dutch dividend withholding tax base, albeit that (i) possibilities for a tax-free repayment of capital are reduced and (ii) the conditional withholding tax will in the situations mentioned above also apply in case of a(n) (indirect) alienation of the shares in the Dutch company (to the extent the capital gain realized relates to (built-in) retained earnings in the Dutch company). Subject to conditions, advance certainty may be obtained from the Dutch tax authorities as to whether the conditional withholding tax would be due.

Dutch corporate income tax rate reduction

The Dutch government proposes to gradually reduce the Dutch corporate income tax rate to 16% in the first bracket (for taxable profits up to EUR 200,000) and 22.25% in the second bracket (for taxable profits in excess of EUR 200.000) in 2021. This gradual reduction will occur in three steps: effective as of 2019 the rates are reduced to 19% (first bracket) and 24.3% (second bracket), per 2020 the rates are further reduced to 17.5% and 23.9%, respectively, and in 2021 to 16% and 22.25%, respectively.

Abolishment specific limitation on interest deductions

The reduction of the corporate tax rate is predominantly financed from tax base increases. The most important tax base increase measure is the earningsstripping measure in the Implementation Act ATAD 1. With the introduction of this generic limitation on interest deduction rule the specific limitation on interest deduction rules with respect to excessive participation debt financing (Article 13l Dutch Corporate Income Tax Act) and the leveraged acquisition debt rules (Article 15ad Dutch Corporate Income Tax Act) will be abolished. Furthermore, the tax loss compensation limitation for tax losses incurred by holding and financing companies (Article 20(4) Dutch Corporate Income Tax Act) will be abolished. Technically, this last rule is not a limitation on interest deduction rule, but in practice this rule generally involves tax losses arising from interest deduction. The Dutch anti-base erosion rules (Article 10a Dutch Corporate Income Tax Act) will remain in existence. Furthermore, the specific limitation on interest deduction rule (Article 10b Dutch Corporate Income Tax Act) relating to intra-group debt financing with no fixed maturity date or a maturity date exceeding 10 years, in respect of which no remuneration has been agreed upon or a remuneration which is substantially lower than an arms' length remuneration, will remain in existence.

Abolishment tax deduction remuneration additional tier-1 capital instruments

As announced in the letter presented to Dutch parliament on 29 June 2018 the legislative proposal includes the abolishment of the provision allowing tax deduction for the coupon on ‘additional tier-1 capital instruments’, often referred to as ‘coco’s’ (contingent convertibles). This measure is in line with the Dutch government’s policy to – as with the earningsstripping measure – reduce the tax incentive for debt financing for all corporate taxpayers and achieve a better balance between the tax treatment of equity and debt. In this context also a minimum capital rule for banks and insurance company’s will be introduced as of 2020. They are generally not impacted by the earningsstripping measure. The minimum capital rule will be presented in a legislative proposal in 2019.

Investment funds (FBI’s)

Abolishment of the dividend withholding tax impact investment funds (so-called ‘fiscale beleggingsinstellingen’ or ‘fbi’) in two ways. This abolishment in 2020 will automatically also result in the abolishment of the withholding tax reduction included for these type of funds in the Dutch Dividend Withholding Tax Act. Furthermore, as announced earlier, fbi’s are as of 2020 no longer allowed to directly invest in Dutch based real estate.

Corporate tax loss carry forward period reduction

The number of year that corporate tax losses can be carried forward will be reduced from nine years to six years. This will first apply to tax losses incurred in 2019. 2019 tax losses can therefore only be carried forward up to and including 2025. Tax losses incurred prior to 2019 which have not yet been offset can be carried forward for a period of nine years in accordance with the current rules. In case of long or short financial years the tax loss carry forward period will need to be reviewed on that basis and the limitation of the tax loss carry forward will in that case apply as of the financial year which starts during calendar year 2019. Transitional rules are included to mitigate temporary negative effects of the reduction of the tax loss carry forward period in combination with the mandatory order in which tax losses are compensated.

Limitation on depreciation of buildings for corporate taxpayers

The corporate tax depreciation on buildings in own use is limited. As of 2019 it is only possible for corporate taxpayers to depreciate a building if the tax book value of the building exceeds 100% of its municipal real estate value (‘WOZ value’). With this measure the same rule in respect of buildings in own use and buildings which are rented to third parties will apply to corporate taxpayers.

IMPLEMENTATION ACT FIRST EU ANTI-TAX AVOIDANCE DIRECTIVE (‘IMPLEMENTATION ACT ATAD 1’)

This Act aims to implement the first EU Anti-Tax Avoidance Directive (‘ATAD1’). This Directive (subject to some exceptions) needs to be implemented into national law before year end 2018.

Controlled foreign companies (CFCs)

CFC rules aim to prevent profit shifting to a controlled entity (CFC) in a low-tax jurisdiction or to a permanent establishment established in a low-tax jurisdiction. Based on the at arm's length principle included in the Dutch Corporate Income Tax Act 1969 profits of a controlled company are already allocated to the Netherlands if this profit is not attributable to activities (functions performed) of the controlled company, but to the activities (functions performed) by the Dutch taxpayer. The Dutch government therefore considers that strictly speaking this is already a sufficient implementation of the CFC rules included in ATAD 1 allowing to allocate profits from a CFC to the Netherlands when such profits are derived from an artificial structure aimed at obtaining a tax advantage ('model B'). Nevertheless, however, the Dutch government opts to introduce an additional CFC measure ('model A'). This additional CFC measure applies subject to the following cumulative conditions: (i) the taxpayer (together with any affiliated companies or affiliated individuals) has a direct or indirect interest of more than 50% in another company or permanent establishment, (ii) this other company or permanent establishment is located in a low-tax jurisdiction which does not levy any profit taxation or a profit taxation based on a statutory rate of less than 7% or is included on the EU list of non-cooperative jurisdictions and (iii) this company or permanent establishment does not perform any 'material economic activity'. The existence of a 'material economic activity' needs to be reflected in 'relevant substance' (among other things a 'wage cost criterion' and an 'office space criterion' need to be met). In cases of Dutch companies with genuine foreign activities this exception aims to prevent a competitive disadvantage compared to companies which are only operating in those States. Besides the 'material economic activity' exception, there are also a number of other specific exceptions. If based on the mentioned cumulative conditions a CFC is deemed to exist the positive balance of its (non-distributed) 'tainted income' (e.g. interest, royalties, dividends, etcetera), minus related costs, are included in the Dutch taxpayer's taxable profit. The amount of the 'tainted income' is determined in accordance with Dutch tax standards (including the at arms' length principle). The legislative proposal also includes rules aimed at preventing double taxation in case of taxation upon the moment of the actual distribution of the profit by the CFC, upon the sale of the shares in the CFC upon the transfer of (an independent part of) the enterprise of a permanent establishment. Furthermore, rules are proposed to credit foreign profit taxes paid in respect tainted income included in the Dutch tax base. The Dutch government however accepts that double taxation will not be prevented in all cases (e.g. in case more than one State applies the CFC rule in respect of the same CFC). In some particular cases the CFC rule may not be effectuated due to application of a tax treaty if the tax treaty provides for an exemption method as relief from double taxation for profits attributable to a foreign permanent establishment and the tax treaty does not include any 'switch-over clause' that allows the Netherlands to apply the credit method.

Earningsstripping measure

The earningsstripping measure is proposed to enter into effect on 1 January 2019 and to apply to fiscal years starting on or after this date. The earningsstripping measure limits the deductibility of the 'net' interest expense in respect of third party and intra-group loans. This is the difference between the interest expenses and the interest income with respect to loans and comparable agreements ('net' interest). The 'net' interest is limited based on a fixed percentage of 'earnings before interest, tax, depreciation and amortisation' (EBITDA). If the amount of deductible interest expenses of the taxpayer exceeds the amount of taxable interest income, the deductibility of the net interest is limited to a maximum of 30% of the EBITDA or to a maximum of EUR 1 million, if higher than 30% of the EBITDA. The amount of EBITDA for tax purposes is decisive in this respect, and hence, tax exempt income is disregarded for calculation purposes. By applying the EBITDA for tax purposes the interest deduction is therefore linked to the taxable economic activities of a taxpayer. In case of a fiscal unity for Dutch corporate income tax purposes, the earningsstripping measure is applied at fiscal unity level. Aside from a specific exception to the earningsstripping measure for existing Public-Private-Joint-Venture-projects relating to public infrastructure projects, the Dutch government is much more strict than the minimum standard following from ATAD 1 on a number of items, which is driven by the desire to establish a 'robust' earningsstripping measure and achieve more balance between the tax treatment of equity and debt. This means that no 'group escape' applies for cases in which the taxpayer's financing ratio (measured on the basis of an equity test or an EBITDA-exception) does not exceed the group's financing ratio. Also stand-alone entities - which do not have any affiliated companies or affiliated individuals - can be faced with the earningsstripping measure. The threshold for small and medium-sized companies for deductibility of net interest is only EUR 1 million (instead of EUR 3 million as mentioned in ATAD 1). Furthermore, the earningstrippingmeasure applies both to existing and new loans (no grandfathering for loans already existing before 17 June 2016). The Dutch government does opt to allow an indefinite carry forward for the balance of any non-deductible net interest. In another legislative proposal (2020 Withholding Act) anti-abuse measures have been included to prevent that an entity with a non-deductible net interest carry forward balance can be included in a fiscal unity to increase possibilities for offsetting this balance. This legislative proposal also includes further measures in this respect for situation of a deconsolidation from a fiscal unity or mergers and demergers.

General anti-abuse rule ('GAAR')

ATAD 1 imposes an obligation for EU Member States to introduce a general anti-abuse rule ('GAAR"). The 'fraus legis' doctrine in the Netherlands already operates as a general anti-abuse of law concept. The Dutch government does therefore not consider there to be any need for implementation.

Exit taxes

If a company liable to corporate tax in the Netherlands transfers assets or transfers its tax residence to another State, ATAD 1 dictates the Netherlands to impose a so-called 'exit tax', regardless of whether the built-in gains in those assets have been realized. Exception is the situation in which a taxpayer transfers assets from its Dutch head office to its foreign permanent establishment in another State and the Netherlands maintains its taxation rights. The current exit tax provisions generally comply with ATAD 1, with the main exception for the provision re collection of the exit tax claim.

Current Dutch legislation gives taxpayers the option to immediately pay the exit tax or to request for postponement of payment. If postponement of payment is granted and built-in gains on the assets are subsequently realized, current Dutch legislation offers taxpayers the option to immediately pay the exit tax or to pay the tax charge in annual installments over a 10 year period. ATAD 1 does not include such option. In case of a transfer to another EU/EEA Member State ATAD 1 does provide for a spread payment of the tax claim over a 5 year period. As ATAD 1 only relates to corporate taxpayers the current regulations are therefore split. The current postponement of payment regulations are maintained for individual taxpayers subject to Dutch personal income tax. For Dutch corporate taxpayers the rules will be amended to follow ATAD 1.

Based on the current Dutch regulations the tax collector can in principle request collateral in all cases in which postponement of payment is granted. Based on ATAD 1 a taxpayer who opts for spread payment only needs to provide collateral if there is a clear and evident risk of default in payment. Also this difference in rules is bridged in the legislative proposal.

The proposed changes will first apply with respect to tax claims for which extension of payment has been granted on or after 1 January 2019.