DENTONS

Tax compliance alert

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2024

Touching upon the issue of tax compliance, it is crucial for businesses to be aware of the importance of adhering to tax laws and regulations. Tax is an essential part of your organization's compliance and a vital part of its business. In the following, we highlight the significance of timely and accurate tax reporting. Our tax team stands ready to assist in navigating reporting positions and exposures to ensure a seamless compliance process.

Deadlines

Although taxpayers have the option to deviate, in principle a fiscal year equals the calendar year in the Netherlands. Taxpayers that are liable to Dutch Corporate Income Tax ("**CIT**") must annually file their tax return. From the end of the (fiscal) year, taxpayers have a period of 5 months to prepare their CIT return. In principle, this results in a filing deadline of 1 June.

An extension of five more months can be requested with the Dutch Tax Authorities ("**DTA**"). This extends the filing deadline from 1 June to 1 November. Such requests are generally granted within three weeks. A further extension up to eleven months after the initial deadline can be requested by an intermediary (e.g. registered tax advisor), bringing the total extension up to 16 months.

A provisional tax assessment may be issued by the DTA in the beginning of the fiscal year in order to inform the taxpayer on its potential tax assessment. The provisional tax assessment will generally be issued upon the DTA's initiative but can also be issued upon the taxpayer's request. The provisional assessment is based on the prior years' results or the information provided by the taxpayer. The DTA must issue the final tax assessment within 3 years after the fiscal year in question. After a final assessment has been issued, the taxpayer can file an objection within 6 weeks.

Timeline

Collection and Interest

Remaining compliant by ensuring tax returns are filed and taxes are paid in a timely manner is essential in avoiding any additional costs. The DTA can impose both tax interest (*belastingrente*) and interest on late payments (*invorderingsrente*).

Tax interest

If a taxpayer is late filing its tax return or has not sufficiently provided the DTA with information in time, tax interest will be added to the tax assessment. Such a decision to impose tax interest is open to objection, but these proceedings are generally not successful. From 1 January 2024 the tax interest will be 10%. Tax interest is due from 6 months after the end of the fiscal year up until the issuance of the tax assessment. Taxpayers can avoid having to pay tax interest by requesting a provisional tax assessment before 1 May after the end of the fiscal year and the request is adopted by the DTA. Also, tax interest can be avoided if the tax return is filed before 1 June and the tax assessment is issued in accordance with the tax return.

Interest on late payments

If a taxpayer is late paying its tax assessment, interest on late payments will also be added to the issued tax assessment. This can rapidly culminate as the interest will accrue from six weeks after the date of issue of the final tax assessment until the DTA have received the amount payable. From 1 January 2024 the interest on late payments will be 4%. Interest on late payments can be avoided by meeting the payment deadline of six weeks after the date of the tax assessment.

Penalties

Additional costs to your tax return in the form of penalties are unpleasant and can simply be avoided. Penalties have a negative impact on your financial result, are non-deductible for CIT purposes and could negatively impact your business through bad publicity. In the Netherlands, there are two forms of penalties that can be imposed on your tax return: default penalties and punitive penalties.

Default penalty

Default penalties can be imposed when a taxpayer:

i. does not request to be invited to file a tax return within 6 months after the end of the fiscal year (EUR 2.757);

ii. does not file its tax return in time (EUR 2.757 – 5.514); or

iii. does not pay its tax assessment in time (EUR 5.514).

Punitive penalty

Punitive penalties can be imposed when a taxpayer intentionally files a false tax return. They can rapidly accumulate depending on the level of intent. Intention to filing a false tax return will lead to a punitive penalty of 50%, while gross negligence will lead to a penalty of 25% and in case of fraud or when a punitive penalty has previously been imposed, a 100% penalty can be imposed.

Annual Assessments

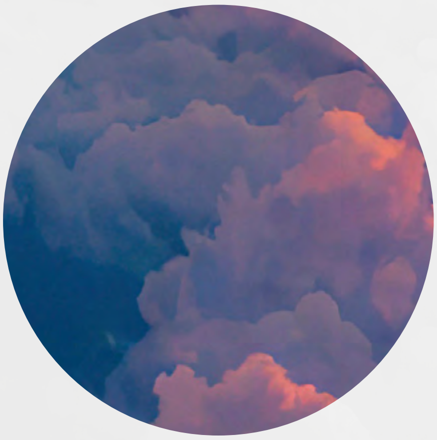
In the context of corporate income tax compliance in the Netherlands, taxpayers are advised to conduct thorough annual assessments to ensure adherence to critical aspects of the Dutch corporate income tax. Some regulations under Dutch tax law require taxpayers to keep underlying documentation in their records to be provided to the DTA upon their request. Below we outline important supporting documentation for corporate income tax in the Netherlands that should be taken into consideration:

Participation Exemption

The Dutch participation exemption ("PEX") exempts Dutch companies from tax on dividends and capital gains from their subsidiaries, provided that the shareholding is at least 5% and meets certain criteria outlined in Dutch tax law. However, losses incurred from qualifying shareholding are non-deductible for CIT purposes. An annual assessment must be made and administered for each shareholding to determine if the PEX (still) applies.

Withholding Tax on Dividends, Interest and Royalties

The Netherlands levies a withholding tax on (i) dividend, (ii) interest, and (iii) royalty payments to affiliated companies in low tax and non-cooperative jurisdictions. Each of these income streams should therefore be reviewed meticulously in order to avoid extensive anti-abuse provisions. In this regard, any changes in the group structure can be relevant. A withholding tax return must be filed within a month after a relevant payment.



Fiscal Unity Regime

The Dutch fiscal unity regime allows multiple Dutch companies within the same group to be treated as a single taxpayer for corporate income tax purposes. This allows fiscal unity group entities to horizontally offset their profits and losses (i.e., within a tax year) and disregard transactions between them. Companies applying the fiscal unity regime must be extra careful when altering their group or finance structure in order to avoid anti-abuse provisions.

Anti Hybrid Mismatch Legislation

The Anti-Tax Avoidance Directive II ("ATAD II") was implemented in Dutch tax law in 2020 with the aim of preventing tax avoidance through hybrid mismatches, which occur when differences in tax treatment between countries are exploited to minimize tax liability. These differences can occur through different qualifications of (i) financial instruments, or (ii) legal entities. ATAD II requires taxpayers that are part of an international group to report on intra-group (deemed) fees, (deemed) payments or other payments to related parties[1]. Records on whether any transactions are impacted by the ATAD II legislation must be kept and made available to the DTA upon request. Non-compliance with the ATAD II documentation requirements will lead to the imposition of penalties or non-deductibility of intra-group payments.

Transfer Pricing documentation

International concerns should also take into consideration transfer pricing documentation requirements, such as the Master File and Local File and/or Country-by-Country reporting. This documentation must be kept and made available to the DTA upon request. Taxpayers part of a multinational group with a consolidated revenue of €750 million or more in the year preceding the current financial year must file a country-by-country report. The consolidated group revenue threshold for the filing obligation of the Master File and Local File is set at €50 million in the fiscal year immediately preceding the year for which a tax return is filed.

1. Parties qualify as 'related' when a shareholding of at least 25% exists (i) directly, or (ii) via a common parent entity.

Taking Positions

In the Netherlands, having a defensible position in your corporate income tax return is essential in order to avoid punitive penalties on your tax assessment. The filing of your tax return is not an exact science to the extent that discussions with the DTA can always arise (e.g., arm's length or valuation issues). Therefore, a taxpayer must ensure each position that is taken in a tax return is defensible. A defensible position in a tax return that can arguably be derived from Dutch tax and case law to the extent that the taxpayer at the time could reasonably assume that the interpretation and therefore the tax return was correct. A defensible position precludes the possibility for the DTA to impose a punitive penalty on your tax return. However, valid arguments are essential in the establishment of such position.

Should you require any further clarification or assistance in the substantiation of your corporate tax return, the Dentons tax team stands ready to provide expert guidance and support.

Required information to prepare a CIT return

- Annual accounts of the relevant year
- A full structure chart
    - Information on any shareholdings, more or less than 5%
- An overview of any expansions or restructurings that have taken place within the tax year
- Information on transactions with related parties

If available:

- Any preliminary tax assessments
- Fiscal unity decision
- Any tax rulings (advanced pricing agreements and advanced tax rulings)

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