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The Netherlands

by Eric van der Stoel

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YEAR IN REVIEW

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THE YEAR IN REVIEW

The Netherlands

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Although 2007 began with substantial tax changes in the Netherlands, particularly to the corporate income tax act, 2008 held only a few new developments, among them proposals to tax excessive employee remuneration, to improve the Dutch business regime, and to amend the inheritance and gift tax.

Excessive Remunerations

On September 9 the Second Chamber of parliament adopted proposals dealing with excessive remunerations. The proposals are a reaction to perceived excessive carried interest remunerations of private equity managers and severance payments and pension entitlements for managers. The proposals contain provisions regarding the personal income tax on carried interest and similar remunerations, as well as two wage tax measures with tax consequences for employers that pay severance payments or pensions to employees that receive annual salaries in excess of €500,000. The proposals are now before the First Chamber (senate). The proposals would create new, complex rules, but they are not expected to affect a substantial number of taxable persons. (For prior coverage, see *Tax Notes Int'l*, May 26, 2008, p. 673, *Doc 2008-10933*, or *2008 WTD 97-2*.)

New Business Development

On August 28 three law professors introduced proposals to counteract erosion of the Dutch tax base and improve the environment for new business investment. The professors recommended the proposals enter into force in 2010. (For prior coverage, see *Tax Notes Int'l*, Nov. 3, 2008, p. 361, *Doc 2008-22940*, or *2008 WTD 215-12*.)

The proposals, in the form of a draft bill with explanatory notes, are currently before parliament. The proposals were well received by the business and tax professional communities, raising expectations that they will also be embraced by the government. The Ministry of Finance is studying the proposals, which contain the following measures:

- The corporate income tax rate would be reduced to 20 percent.
- The dividend withholding tax would be abolished.
- Interest received from and paid to a group company would be excluded from taxable profit.
- Interest on financings of group company acquisitions (that is, subsidiaries greater than 50 percent) would not be deductible if the company's equity is insufficient, regardless of whether interest is owed to group companies or to third parties.
- All current regulations regarding limitations of interest deduction in the corporate income tax act would be abolished.
- The scope of the participation exemption would be broadened. As a result, the exception for shareholdings in low-taxed group financing companies would be abolished.

Inheritance and Gift Tax

On October 24 the government approved the underminister of finance's proposal to lower the inheritance and gift tax. The bill has not yet been published.

The tax rates will be reduced, and exemptions will increase. Also, measures will be introduced to counteract the use of tax-saving structures such as trusts and family foundations. The new rules should enter into force on January 1, 2010.

Tax Treaty Developments

In 2008 new tax treaties were signed with Bahrain, Qatar, Saudi Arabia, Azerbaijan, Ghana, and the United Kingdom. The Dutch government also began renegotiations with Barbados regarding article 10 of the tax treaty signed in 2006. Article 10 provides an exemption of dividend withholding tax. The treaty is being revised to reflect a change in Barbados tax law.

2009 Budget Proposals

On introduction of the optional interest box rules in 2007 (not yet in force), a request was filed with the European Commission to confirm that the rules were compatible with the common market. The request is still pending, and discussions with the commission are ongoing. Since the commission's approval is not expected in 2008, the government proposes to apply the funds reserved for 2008 to a one-time retroactive reduction of the 2008 corporate income tax rates: A 20 percent rate would apply to the first €275,000 of annual taxable profits, and a 25.5 percent rate would apply to any excess amount.

For 2009, the ordinary corporate income tax rate structure would apply that is, 20 percent for the first €40,000 of annual taxable profits, 23 percent for profits between €40,000 and €200,000, and 25.5 percent for any excess. ◆

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