9 October 2020

Global Tax Alert

Dutch Government publishes details on proposed changes to loss set-off rules

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our EY Global Tax Alert Library on ey.com.

On 5 October 2020, the Dutch Government published further details on the legislative proposals that include a limitation on the annual utilization of tax loss carryforward for corporate income tax purposes and the extension of the carryforward term.

The proposed rules

The Dutch Government has proposed a limitation on the annual utilization of tax loss carryforwards to the first €1 million of taxable profit, plus 50% of the taxable profit exceeding €1 million. In addition, under the proposed rules, losses can be carried forward indefinitely.

Background of proposal

The proposed changes target the situation where companies with profitable activities in the Netherlands may not pay corporate income tax for a prolonged period, which could be the result of large tax loss carryforward positions. The proposed measure aims to achieve a more gradual set-off of losses and consequently more constant corporate income tax revenue.

Building a better working world

Carryforward and carryback

Under the current rules, the carryforward of losses is limited to six years. This limitation will be eliminated under the proposed rules (i.e., indefinite carryforward under the proposed rules). The current one year carryback election will continue to apply, whereby the annual utilization threshold is also proposed to apply.

Transitional law; new rules also apply to old losses

The proposed changes should apply to all tax losses arising as of 1 January 2022, as well as any tax loss carryforwards still available at that date.

Interaction with other tax provisions

The proposal considers the interaction with a number of specific corporate income tax provisions, such as those governing the inclusion of companies with "latent liquidation losses" in a fiscal unity, the transitional rules for foreign branch loss recapture rules, and the transitional rules regarding holding and financing company losses. The interaction with e.g., the liquidation loss rules, other elements of the fiscal unity regime, reorganization facilities, etc. is not covered at this stage. Clarification on these points may follow during the parliamentary process.

Impact on business

"Small" taxpayers may predominantly benefit from the new rules in view of the €1 million threshold combined with the indefinite carryforward period. For larger taxpayers, the annual limitation may result in a (cash-flow) timing disadvantage.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Belastingadviseurs LLP, International Tax and Transaction Services, Amsterdam

- Danny Oosterhoff danny.oosterhoff@nl.ey.com
- Dirk Stalenhoef dirk.stalenhoef@nl.ey.com

Ernst & Young Belastingadviseurs LLP, International Tax and Transaction Services, Rotterdam

- Michiel Swets michiel.swets@nl.ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, New York

- Dirk-Jan (DJ) Sloof dirkjan.sloof@ey.com
- Rik Jansen rik.jansen@ey.com
- Tim Clappers tim.clappers@ey.com
- Max 't Hart max.t.hart1@ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, Chicago

- Sebastiaan Boers sebastiaan.boers1@ey.com
- Martijn Bons martijn.bons2@ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, San Jose/San Francisco

- Job Grondhout job.grondhout@ey.com
- Laura Katsma laura.katsma2@ey.com

Ernst & Young LLP (Shanghai), Netherlands/EMEA Tax Desk, Shanghai

- Moya Wu moya.wu@cn.ey.com

Ernst & Young LLP (Hong Kong), Netherlands Tax Desk, Hong Kong

- Miranda Baas miranda.baas@hk.ey.com
- Joost Huisman joost.huisman@hk.ey.com

Ernst & Young LLP (United Kingdom), Netherlands Tax Desk, London

- Celeste Krens celeste.johanna.krens@uk.ey.com
- Noor Blauw noor.blauw@uk.ey.com

EY | Assurance | Tax | Transactions | Advisory

EYG no. 006934-20Gbl

1508-1600216 NY
ED None