



Dutch liquidation loss facility in light of the corona crisis and (intended) stricter conditions as per 2021

The Netherlands is one of the few countries where a liquidation loss on participations with a shareholding of 5% or more can be taken into account, regardless of the participation's country of residence. However, an initiative legislative proposal has been submitted in October 2019 that aims to tighten the conditions of the liquidation loss facility as per January 2021. Especially, in this current corona crisis where foreign participations might be loss making, it could be worthwhile considering to liquidate a participation in 2020 in order to make full use of the Dutch liquidation loss facility.

The current liquidation loss facility

Income and losses from participations on which the Dutch participation exemption applies are exempt from Dutch corporate income tax. However, Dutch tax legislation contains an exception in case of liquidation losses of such participations. The liquidation loss for Dutch corporate income tax purposes is calculated by taking into account the difference between the sacrificed amount of the participation and the received liquidation proceeds as a result of the liquidation. At the moment no conditions apply to the participation's country of residence.

What has been proposed

The legislative proposal entails the following changes to the liquidation loss facility as per January 2021:

- *A quantitative limitation:* This implies that a liquidation loss can only be taken into account in case the Dutch BV holds an interest of more than 50% in the participation OR if the interest gives the Dutch BV more than 50% of the voting rights (i.e. a qualifying interest);
- *A territorial limitation:* The liquidation loss facility will only apply to participations located in an EU/EEA state.
- *The temporal limitation:* A Dutch entity can take into account a liquidation loss within three years from the date of ceasing the activities of the participation, unless the Dutch entity substantiates that there are sound business reasons for later liquidation of its participation.

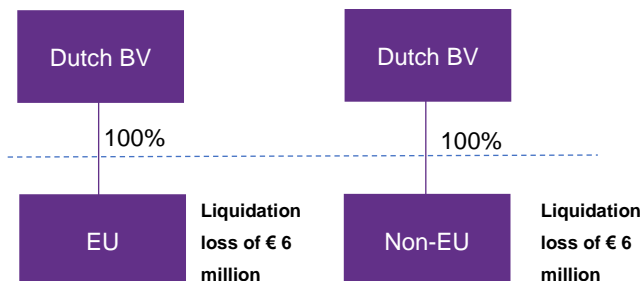
Transitional law applies for the temporal limitation until December 31, 2023.

Comparable restrictions also apply to cessation losses of permanent establishments.

Threshold

The legislative proposal contains a threshold of **€ 5 million** for the quantitative and territorial limitation. As such a liquidation loss up to EUR 5 million can still be taken into account in case of a non-qualifying and/or non-EU participation.

Example



If for example the Dutch BV intends to liquidate a 100% EU participation the territorial and quantitative limitation of the legislative proposal would be met and as a result the full liquidation loss of € 6 million can be taken into account at the level of the Dutch BV.

In the situation that the Dutch BV would liquidate a 100% non-EU participation the territorial limitation would not be met. As a result in principle no liquidation loss can be taken into account at the level of the Dutch BV. However, due to the threshold of € 5 million, an amount of € 5 million liquidation loss can still be taken into account and the remaining € 1 million will be non-deductible. Whereas in the current situation the full amount of EUR 6 million liquidation loss could have been deducted from the taxable result of the Dutch BV.

When will the new rules be enforced?

The efforts of the consultation paper by the opposition parties have been welcomed by the Dutch Government and resulted in the above preliminary legislative proposition in light of the consultation paper. Currently the above proposal is turned into a final proposal after the council of state has commented on the proposal. The final legislative proposal is expected this July, 2020. The aim is to let the new legislative changes take effect as per January 1st 2021.

Transitional law

The legislative proposal does not contain transitional law for non-qualifying interests of which the activities have been ceased in 2020 and the formal legal procedures are finalized in 2021. As such, as it currently stands, it is recommended to also finalize the legal/formal procedures in 2020 in order to fall under the current (less stricter) liquidation loss facility.

Brexit

No transitional law is included for a potential no deal Brexit. As a result, under the legislative proposal, no liquidation loss (above the threshold of € 5 million) can be taken into account on a UK participation if the UK leaves the EU without a deal.

Way forward

In case you have a financially troubled UK participation or a non-EU participation with a significant sacrificed amount and you are considering to liquidate this company, it might be beneficial to liquidate this company in 2020 in order to make full use of the Dutch liquidation loss facility.

In case you have any questions or would like to discuss how the proposed legislation would affect your company please do not hesitate to contact us.

Contact

Do you have questions or do you need more detailed information? Please do not hesitate to contact us.



Monique Pisters
Partner international tax
T +31 (0)88 676 92 98
E monique.pisters@nl.gt.com



Faisal Janjua
Junior manager international tax
T +31 (0)88 676 90 62
E faisal.janjua@nl.gt.com