LEGAL AND TAX ALERT

Tax Alert: TAX PLAN 2023

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Introduction

On 20 September 2022 (Budget Day), the Dutch government announced - among others - its tax plans for 2023 (and following years). In this tax alert we have summarised the most important tax measures.

Below, we will describe the most important changes in:

- the Dutch Corporate Income Tax Act;
- the Dutch Personal Income Tax Act;
- the Dutch Wage Tax Act;
- the Dutch Property Transfer Tax Act.

Furthermore, some other proposed tax measures will be discussed below:

- limitation of borrowing from self-owned company (*wet excessief lenen bij eigen vennootschap*);
- abolishment of the Dutch real estate FII (Fiscal Investment Institution, *vastgoed fbi*) regime, and;
- future amendments taxation of Box 3 income.

As a preliminary remark, please note that the effective date of the announced tax measures is not final yet as of today. I.e., the measures need to be approved by the Dutch Upper and Lower Houses (*Eerste en Tweede Kamer*) and published in the Dutch Government Gazette. However, it is to be expected that the tax measures described below will be implemented in the Dutch tax laws.

1. Dutch Corporate Income Tax Act

Increase corporate income tax (CIT) rate

As of 2023, profits up to EUR 200,000 are taxed at a 19% Dutch corporate income tax rate (2022: 15% for profits up to EUR 395,000). Profits in excess of EUR 200,000 will be taxed at a 25.8% Dutch corporate income tax rate (2022: 25.8% for profits in excess of EUR 395,000). These brackets can be summed-up as follows:

Taxable profits	**2022**	**2023**
Reduced rate	15.0%, profits ≤ EUR 395,000	19.0%, profits ≤ EUR 200,000
Regular rate	25.8%, profits > EUR 395,000	25.8%, profits > EUR 200,000

2. Dutch Personal Income Tax Act

General:

The Dutch Personal Income Tax Act divides income into three sources (“ three boxes”):

- box 1 (income from employment);

- box 2 (income from a substantial interest (shareholdings in a company of 5% or more);

- box 3 (income from savings and investments).

Each box has its own rules for determining the tax base, and its own tax rates.

Income in Box I is taxed at a progressive rate with a maximum of 49.50% (2022). Income in Box II is taxed at a flat rate of 26.90% (2022). Box III income is set at a progressive mixed notional yield in a range of 1.818% to 5.53% (2022) of the taxpayer’s average net equity (with a tax-free equity threshold of EUR 50,650 (EUR 101,300 for a couple)). Income in Box III is taxed at a flat rate of 31% (2022).

Amendment taxation of Box 1 income (employment)
The first income tax bracket will be extended from EUR 69,398 (2022) to EUR 73,031 (2023), whilst income in this bracket will be taxed at 36.93% as from 2023 (2022: 37.07%). Income in excess of EUR 73,031 will be taxed at 49.5% in 2023 (2022: 49.5% as well).

Amendment taxation of Box 2 income (substantial interest):

It is proposed to introduce two brackets in Box 2 as of 2024:

- Box 2 income up to EUR 67,000 (EUR 134,000 for couples) will be taxed at 24.5% (in 2023 the applicable rate of 26.9% remains unchanged);

- Box 2 income in excess of EUR 67,000 will be taxed at 31%.

Amendment taxation Box 3 income (savings and investments):

The income tax rate for Box 3 income will increase 1% per year as from 2023, up to 34% as per 2025. Furthermore, the tax-free allowance (*heffingsvrij vermogen*) increased from EUR 50,650 to €57,000 (EUR 114,000 for couples) as per 2023.

Abolishment of the so-called ‘tax averaging facility’ (*middelingsregeling*)

Taxpayers that earn an income that varies a lot during years, can currently (2022) make use of the tax averaging facility. This facility allows a taxpayer to average the income over three consecutive years. Such taxpayer subsequently pays income tax over the average income of those three years combined. This may be advantageous if the Dutch income tax on this average income is lower than the income tax payable on the three separate annual taxable incomes (due to the progressive Dutch income tax rates). It is proposed to abolish this facility as per 2023 (but if a taxpayer started using this facility 2022, this facility can continue to be used for the period up to 2024).

3. Dutch Wage Tax Act

Proposed amendments to the customary-salary arrangement (*gebruikelijk loon regeling*)

At present (2022), a director being a substantial (at least 5%) shareholder (*directeur-grootaandeelhouder*) in e.g. a private limited company must pay himself/herself a salary that is in line with the customary salary for a similar job (the so-called 'customary salary scheme'). The customary salary is currently set at (at least) the highest of the following amounts (2022):

- 75% of the salary of the most comparable employment relationship;

- the salary of the highest paid employee at the same or related company, or;

- a fixed sum of EUR 48,000.

In practice, it may be difficult to find (in the market) a comparable function to the function of such director, and consequently, it is difficult to compare the salary of such director with the salary of someone else in a comparable function. Therefore (and in order to avoid legal procedures) the customary salary scheme currently includes a 25% efficiency margin. This means that the customary salary of the director being a substantial shareholder may currently be adjusted by 25%, resulting in a customary salary that amounts to 75% of the salary of the most comparable employment relationship (if that is the highest of the three amounts as mentioned above).

As of 2023, the efficiency margin will be abolished. Consequently, the salary of a director being a substantial shareholder must equal at least 100% of the salary of someone else with a comparable function. This may mean that a director being a substantial shareholder may need to award himself/herself a higher customary salary.

Finally, it is also proposed to abolish the more relaxed customary salary schemes that currently (2022) apply to innovative start-ups.

Amendments to the 30% payroll tax facility (so-called '30%-ruling')

Currently (2022) employees with specific expertise and coming from abroad to temporarily work in the Netherlands may, under application of the 30%-ruling, receive up to 30% of their total salary exempt from Dutch income and wage tax, regardless the amount of the salary of such employees. Based on the tax measures as proposed on the 2022 Budget Day, the scope of the 30%-ruling may be capped to a maximum salary of EUR 216,000 (the so-called '*Balkenende Norm*'). Consequently, an employer may grant a qualifying employee a maximum of EUR 64,800 (30% of EUR 216,000) of the salary exempt from wage tax per year.

Note that this limitation of the 30%-ruling may only apply as from 2024 onwards. Furthermore, a transitional period of two years may apply, meaning that the 30%-ruling will not be capped until 1 January 2026 for qualifying employees to whom this 30%-ruling already be applied over the last wage period of 2022.

The Dutch government furthermore proposes to abolish a relief for innovative start-ups whereby taxable wages of director and major shareholders for the purposes of the customary-wage arrangement could be set at the statutory minimum wage for a maximum of three calendar years.

Proposed increase of the tax-free travel allowance (*reiskostenvergoeding*)

Currently, employers may grant their employees a maximum tax-free travel allowance of EUR 0.19 per kilometre over their travel distance on all business kilometres (including commuting kilometres). The same amount apply to self-employed professionals without staff (*zzp-ers*). Due to increased prices, as of 1 January 2023 employers may reimburse employees for such travel expenses tax-free EUR 0.21 per kilometre. This amount may be further increased to EUR 0.22 per kilometre as of 1 January 2024.

Obviously, the tax-free travel allowance does not apply to employers who offer their employees a company car or bicycle.

4. Dutch Real Estate Transfer Tax Act

Increase tax rate:

The general real estate transfer tax (*overdrachtsbelasting*) rate will be increased from 8% to 10.4%. The general rate does in principle not apply to the acquisition of a main residence (remains 2%), but will apply to the acquisition of non-residential (commercial) Dutch buildings and to the acquisition of Dutch houses by legal entities and natural persons who do not use such houses as their main residence.

5. Other proposed tax measures

Limitation of borrowing from self-owned company (*wet excessief lenen bij eigen vennootschap*)

On 13 September 2022 the Dutch House of Representatives (*Tweede Kamer*) passed a bill on excessive borrowing from a taxpayer's own company. This measure applies to directors being substantial shareholders of the company from which they borrow. The new bill, once entered into force (expected 2023), limits the maximum amount such taxpayer can tax wise borrow from its own company, to EUR 700,000 (excluding amounts borrowed to acquire the own house (*eigen woning*) of this taxpayer). Any excess borrowings will deemed to be distributed as a dividend to this taxpayer and be subject to Dutch income tax (and dividend withholding tax) in Box 2 of the Dutch Personal Income Tax Act.

In order to avoid the aforementioned deemed dividend distribution, taxpayers may until 31 December 2023 reduce their borrowings from their own company to EUR 700,000 at the maximum to meet this new requirement.

Abolishment of the Dutch real estate FII (*vastgoed fbi*) regime

The Dutch government announced – as part of their 2024 Tax Plan – to no longer allow so-called Fiscal Investment Institutions (FII's, or '*Fiscale beleggingsinstellingen*') to directly invest in real estate (in the Netherlands or abroad). Briefly put, the profits of such real estate FII's will no longer be subject to a 0% Dutch corporate income tax, but instead, become subject to the regular Dutch corporate income tax rates (19% to 25.8% (2023)).

This new legislation will not enter into force prior to 2024, which may enable real estate FII's (e.g. pension funds) to restructure their investments prior to 2024.

Future amendments taxation of Box 3 income

In December 2021, the Dutch Supreme Court ruled that under circumstances, the current Box 3 taxation is in conflict with the European Convention on Human Rights (i.e. for all taxpayers whose actual returns of savings and investments were/are lower than the deemed returns). Under circumstances, the Dutch tax authorities have to reimburse taxpayers that have filed in time an objection to their personal income tax assessment for Box 3.

Furthermore, the Dutch government announced that as of 2026, taxation of the Box 3 income may be based on actual returns on savings and investments, instead of taxation on the currently application deemed return.

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Should you have any questions on how these legislative proposals may affect your business, please do not hesitate to contact us.

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