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BUDGET DAY 2024

On Tuesday September 17, 2024, Budget Day, the Dutch Minister of Finance has published the Tax Plan 2025. In this publication, we outline the most important measures from an international perspective. Please note that the Tax Plan 2025 is subject to discussion and approval by the Dutch Parliament.

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Tax plan 2025

The legislative proposals included in the Tax Plan 2025 have yet to be debated and approved by the Senate and House of Representatives and may thus be subject to change.

If you have any questions regarding one or more measures discussed in this document, or if you would like to receive more detailed information regarding the Tax Plan 2025, please reach out to your regular contact person at Dirkzwager. If you do not have a regular point of contact, please be referred to the contact details of our senior tax specialists on the final pages of this document.

We have divided the proposed measures into the following topics:

1. Corporate income tax (1/6)

Corporate income tax rate

The CIT rates and brackets will remain unchanged in 2025. The applicable rates for 2025 are listed below. An effective tax rate of 9% continues to apply for innovation box income.

Taxable profit	Tax rate
€ 0 - € 200,000	19.0%
€ 200,001 >	25.8%

Donations made by corporate income taxpayers

Donations are in principle (partially) deductible for CIT purposes and are not considered as a distribution to its shareholder(s). As of January 1, 2025, the donation deduction will be abolished and donations made by taxpayers will be considered as a distribution to its shareholder(s). Such deemed distribution shall be subject to dividend withholding tax and will be taxable with income tax in box 2. Under certain conditions, the donation can still be deducted from the shareholder's income tax base.

We would like to point out that supporting charities through sponsorship or advertising is not considered a donation and costs in relation thereto are in principle deductible for CIT purposes. The same applies for costs related to Corporate Social Responsibility (CSR).

Adjustment of debt relief profit exemption

Profit that arises from the cancellation of a non-recoverable debt (debt relief profit) is exempt for Dutch CIT purposes to the extent that this profit exceeds losses from the year in question and deductible losses from the past (tax loss carry forwards). Since January 1 2022, loss relief has been limited to the extent that losses exceed € 1 million in a year. As a result, if taxable profits in the year of cancellation of the debt exceed € 1 million, CIT would still be due despite the availability of tax loss carry forwards. Based on the proposed measure, if tax loss carry forwards exceed €1 million, the debt relief profit will be fully exempt to the extent that it exceeds the otherwise incurred losses from the year in question. In that case, the tax loss carry forwards will be reduced by the amount of the debt relief profit in the order in which the losses arose.

1. Corporate income tax (2/6)

Earnings stripping rule

The earnings stripping rule is an interest deduction limitation and restricts the deduction of the net balance of interest expenses and interest income to the higher of the following amounts:

(i) 20% of fiscal EBITDA; or

(ii) €1 million.

The earnings stripping rule applies per taxpayer. In the case of a fiscal unity, this rule is assessed at the level of the parent company (the taxpayer) of the fiscal unity.

Two changes in this regulation are proposed :

1. The limit mentioned in (i) will be increased from 20% to 25% starting January 1, 2025.
2. The limit mentioned in (ii) will be reduced from €1 million to zero for real estate companies.

Definition of a real estate company

A real estate company is defined as an entity whose corrected assets consist of at least 70% real estate that is made available to third parties (non-affiliated entities or individuals) for at least half of the year.

The definition of a real estate company is assessed per taxpayer. In the case of a fiscal unity for corporate income tax, the definition of a real estate company is assessed at the level of the fiscal unity.

Corrected assets

The term corrected assets refers to the assets based on the taxpayer’s tax balance sheet, excluding:

- participations on which the participation exemption applies;
- receivables on affiliated entities or individuals; and
- assets on which the object exemption applies (foreign business profits).

1. Corporate income tax (3/6)

Provision of Real Estate

The term real estate includes apartment rights, rights of superficies or leasehold, usufruct of real estate and the so-called beneficial ownership of such properties or rights. The term beneficial ownership aligns with the definition used for real estate transfer tax purposes. The term ‘provision of real estate’ refers to the renting out, loaning, leasing and exchange of real estate.

Normal business operations in the services sector, where there is no relationship between the owner or operator and the user (apart from the relationship in terms of the usage), do however not qualify as provision of real estate. This includes businesses like hotels, restaurants, tennis halls, bowling alleys, and similar establishments. According to the explanation, this could be different when the arrangement is not short-term, as in the case of long-term leasing of hotel rooms or vacation homes in a holiday park.

The (re)development of real estate currently does not seem to fall under the term ‘provision of real estate’.

Amending Fiscal investment institution regime Act

For CIT purposes, entities are under certain conditions subject to the fiscal investment institution (FBI) regime. A rate of 0% applies to the FBI regime. Based on a previously adopted bill FBIs are as of January 1, 2025, no longer allowed to directly invest in Dutch real estate. In an announced Memorandum of Amendment to the Tax Plan 2025, an identified opportunity to avoid such measures will be repaired and the concept of real estate will be aligned with the concept elsewhere in the CIT act.

1. Corporate income tax (4/6)

Adjustment to the liquidation loss scheme

According to the main rule of the participation exemption, results on participations (both positive and negative) are exempt for CIT purposes. An exception to this main rule is the liquidation loss scheme, which allows taxpayers to deduct a tax loss regarding the liquidation of a participation for taxable profit for CIT purposes under (strict) conditions.

Sacrificed amount

The amount of the liquidation loss depends on the sacrificed amount for the participation. The proposal provides that a write-down of a receivable on the participation that is reversed and whereby the reversed amount is included in the taxable profit, may now increase the sacrificed amount for the participation.

Intermediate holding provision

The so-called intermediate holding provision of the liquidation loss scheme prevents that a non-deductible loss on the sale of a participation is converted into a deductible liquidation loss on a so-called intermediate holding company. The current intermediate holding provision contains a flaw, which means that the intended purpose is not (always) achieved. For this reason, the intermediate holding provision will be adjusted.

Aftercare Dutch Tax Qualification Policy for Legal Forms Act

As of January 1, 2025, the measures contained in the Dutch Tax Qualification Policy for Legal Forms Act (*Wet fiscaal kwalificatiebeleid rechtsvormen*) will take effect. These measures were proposed simultaneously with the Tax Plan 2024. For further information, please refer to our previous publications on this subject.

As a result of the previously adopted measures, the Dutch ‘open’ limited partnership is no longer liable to CIT (but will be qualified as tax transparent) and the qualification of certain (foreign) legal forms may change from 'non-transparent' to 'transparent’ for Dutch CIT purposes. The measures in the Tax Plan 2025 correct a number of inaccuracies and redundancies related to the act. Amongst others, it is proposed that the aforementioned legal forms will continue to qualify as ‘affiliated entities’ (*verbonden lichamen*) for purposes of applying the interest deduction limitation in section 10a of the CIT act.

1. Corporate income tax (5/6)

General anti-abuse rule

Based on the first Anti-Tax Avoidance Directive (ATAD1), all EU member states were required to implement a general anti-abuse rule by 1 January 2019. The Dutch legislator deemed this unnecessary due to the existing 'fraus legis' principle in Dutch tax law. This principle, established by the Dutch Supreme Court, holds that if actions violate the purpose and purport of the law, the intended tax benefit is reversed.

Following encouragement by the European Commission, the codification of the general anti-abuse rule is included in the Tax Plan 2025. The legislator however does not intend to make any material changes to the 'fraus legis' doctrine.

Amendment object exemption

With the implementation of the second Anti-Tax Avoidance Directive (ATAD2), it was stipulated that the object exemption (i.e. the exemption for profits achieved by a permanent establishment) does not apply to disregarded permanent establishments. However, the broad wording used in the Dutch CIT act may lead to double taxation. The proposed amendment aims for the object exemption to apply to the extent that the profits are subject to taxation in the other state , even if the permanent establishment is disregarded.

1. Corporate income tax (6/6)

Adjustment of tax liability test

As of 1 January 2024, the Minimum Tax Law 2024 has entered into force. These rules, implemented in line with Directive (EU) 2022/523 and based on the OECD's Pillar Two model rules, are designed to ensure that groups with a turnover of €750 million or more pay an effective tax rate on their profits of at least 15%.

For various provisions in the Dutch CIT act, it is relevant whether a company is subject to a profit tax that is considered reasonable by Dutch standards. The proposed measures provide that in certain cases, the tax due under the Pillar Two model rules will be taken into account for assessing whether a reasonable profit tax is due. This applies amongst others to the interest deduction limitation of article 10a, the participation exemption, and the object exemption. However, this measure does not apply to the hybrid mismatch rules or the CFC rules.

Amendment to the Minimum Tax Law 2024

The Minimum Tax Law 2024 is an implementation of Directive (EU) 2022/523, based on the OECD's Pillar Two model rules. Since the introduction of the Minimum Tax Law 2024, the OECD has published several administrative guidelines. With this amendment, the legislator aims to align the Minimum Tax Law 2024 with the administrative guidelines of the OECD.

2. Withholding taxes

Adjustment withholding exemption

Currently, the application of the dividend withholding tax exemption on distributions within a fiscal unity or in situations in which the participation exemption applies, is optional. Going forward, the withholding agent will be obliged to apply the withholding exemption if the conditions are met.

Shares repurchased by listed companies

The repurchase of shares is generally subject to dividend withholding tax. However, an exemption applies for the repurchase of publicly listed shares provided that certain conditions are met. Although it was envisaged to abolish this exemption as of 1 January 2025, this decision has been reversed and the exemption will remain in effect unaltered.

Conditional withholding tax – Qualifying unity

Under the Withholding Tax Act 2021, The Netherlands levies withholding tax, subject to certain conditions, on interest, royalty and dividend payments made by Dutch entities to affiliated entities located in low-tax jurisdictions or in certain (deemed) abusive situations.

Under this regulation, entities are also considered affiliated if there is a collaborating group. The term 'collaborating group' is currently undefined and has caused considerable uncertainty. The term collaborating group will therefore be replaced by the term 'qualifying unity'.

There is a qualifying unity if:

i. entities act jointly; and,
ii. the main purpose or one of the main purposes of the joint actions is avoiding withholding tax for one (or more) of the entities.

The burden of proof to demonstrate the existence of a qualifying unity lies with the tax inspector.

3. Personal income tax (1/2)

Box 1

Tax rates

As of January 1, 2025, a third tax bracket will be introduced in box 1. The applicable income tax rates and tax brackets in box 1 are listed below.

Income (box 1)	Tax rate
€0 - €38,441	35.82%*
€38,442 - € 76,817	37.48%
€76,818 >	49.50%

* Combined rate of income tax and social security contributions. Separate tables apply to individuals eligible for the state pension (AOW).

Uniform procedures for EIA, MIA and VAMIL

To make use of Energy Investment Allowance (EIA), Environmental Investment Allowance (MIA) and Arbitrary Depreciation of Environmental Investments (VAMIL), the relevant investments must be notified. Within the framework of the EIA, the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*, RVO) issues a statement upon a positive assessment of the notification, which statement is required to apply the EIA in the tax return. This statement can be objected to at the RVO. On the contrary, for application of the MIA and VAMIL, the RVO to date only issues an advice to the tax inspector, which advice the tax inspector may or may not follow upon imposing a tax assessment. Objecting is therefore only possible against the tax assessment and after that assessment has been imposed.

As of January 1, 2025, the procedures for the MIA and VAMIL will be aligned with the procedure for the EIA. RVO will thus also for purposes of MIA and VAMIL issue a statement, against which the taxpayer can directly object at the RVO. Any appeal proceeding is – in conformity with the EIA procedure – brought before the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*) with a limited possibility of appeal to the Supreme Court.

Notifications for MIA and VAMIL that have been made based on the Environmental List 2024 will be handled according to the current system and notifications based on the Environmental List 2025 will be handled according to the newly proposed system.

3. Personal income tax (2/2)

Box 2

Tax rates

As of January 1, 2025, the higher income tax rate in box 2 will be reduced to 31%. The applicable income tax rates and tax brackets in box 2 are listed below.

Income (box 2)	Tax rate
€ 0 - € 67.000	24.50%*
€ 67.001 >	31.00%

* For tax partners, the threshold will amount to €134,000.

Simplified direct sister merger

As of January 1, 2025, Dutch tax law provides that the roll over facility in the substantial interest scheme applies to a merger between two companies in which the taxpayer directly holds all shares and upon which merger no shares are issued (the so-called simplified direct sister merger). As a result, this merger does not lead to substantial interest taxation at the level of the substantial interest holder. Currently, application of the roll over facility in such cases is approved in a decree issued by the State Secretary of Finance.

Box 3

Tax rates

The tax rate on (notional) income from savings and investments (box 3) will remain at 36%. The tax-free threshold will be slightly increased in 2025 to €57,684 (€115,368 for fiscal partners collectively).

Supreme Court judgement dated June 6, 2024

On June 6, 2024, the Supreme Court ruled that the net wealth income tax system in box 3, based on a notional yield on the actual allocation of the assets, fails to adequately provide for judicial remedy. If the yield actually achieved is lower than the notional yield, additional remedy must be provided. Taxpayers will have the opportunity to substantiate the lower actual yield, if the income tax assessment for the concerning year is not yet final (note that in some cases an ex officio reduction is possible after a final assessment has been issued). The Dutch Supreme Court has provided for guidance on determining the actual yield.

4. Wage tax

Adjustment of the 30% Ruling to a 27% Ruling by 2027

The expatriate tax regime, currently known as the 30% ruling, will be revised effective January 1, 2027. From that date, the expatriate regime will consist of a (maximum) fixed allowance of 27% of the taxable salary as a tax-free reimbursement.

The salary threshold will increase from €46,107 to €50,436 (2024 amounts) for regular employees and from €35,048 to €38,338 for employees under 30 years old with a master's degree. The salary thresholds will be indexed annually based on the table correction factor, meaning that the thresholds applicable from 2027 will be higher than the amounts mentioned above. The salary threshold is the minimum taxable amount after deduction of the 30/27% tax free amount.

For employees applying the expatriate regime in 2024, transitional provisions will apply. For these employees, the maximum tax-free reimbursement will remain 30% of the salary for five years, provided it does not exceed the Top Income Standardization Act standard (WNT 2024: € 233,000), and the previous salary thresholds will continue to apply. For employees who apply the expatriate regime for the first time in 2025 or 2026, the higher salary thresholds will apply, but the maximum reimbursement will remain at 30%.

Conditions for International Pension Transfers

When an employee enters into employment with an employer based in the EU/EEA/Switzerland and wishes to transfer accrued pension rights in the Netherlands to a foreign pension insurer, the Netherlands has set certain conditions to allow the transfer to take place without tax consequences. As result of a judgment of the EU Court of Justice, of November 16, 2023, these conditions, which the Netherlands may impose on a tax-neutral transfer, have been restricted due to conflicts with the (European) free movement of workers. These changes will be legally implemented as of January 1, 2025, with retroactive effect to November 16, 2023.

5. Real estate transfer tax (RETT)

Adjustments RETT on acquisition of residential property

Obtaining access to a home or permission to carry out work prior to the legal acquisition of such home will no longer be regarded as an acquisition of beneficial ownership for RETT purposes as of January 1, 2025, if certain conditions are met.

The 2% rate or the starter exemption will also apply to the acquisition of beneficial ownership of a residential property, provided that the other conditions are met.

The exemption for the reacquisition of residential property previously disposed of by the acquirer under a regulatory sale clause (VoV exemption) will now also be applicable to the reacquisition of beneficial ownership. The VoV exemption is going forward also applicable on attachments.

Reduction of general RETT rate for residential properties to 8%

From January 1, 2026, the general rate for the acquisition of residential property will be reduced from 10.4% to 8%. The new 8% rate will apply to the acquisition of residential properties that are not taxed at the reduced 2% rate (self-occupation) and that are not exempt (starter exemption).

Adjustment of exemption for overlap in RETT and VAT

The Tax Plan 2024 included an amendment to the RETT concurrence exemption (overlap in RETT and VAT). The amendment aims to align the tax burden for the transfer of new real estate by means of a share transfer in a Real Estate Entity (share deal, not taxed with VAT) with the tax burden in situations where new real estate is transferred by means of an asset transfer (taxed with VAT).

As a result of a previously adopted bill, RETT of 4% on the value of new real estate is due as of January 1, 2025, if such new real estate is transferred by means of share transfer, provided that the new real estate is not for at least 90% used for VAT taxed activities during at least 2 years after the acquisition of the shares.

6. VAT (1/2)

VAT revision on services to immovable property

Investment goods are currently subject to a revision scheme based on which the deduction of VAT on costs for an investment good is followed for several years after the year of the first use, so that the VAT deduction can be adjusted in case of a change of use of such goods. For immovable investment goods, the revision period effectively amounts to 10 years. For investment services on immovable property, the current revision period is effectively 1 year.

As of January 1, 2026, the revision period for investment services will be extended to 5 years from the first use of the service.

To determine whether the revision period of effectively 5 years is applicable each service must be assessed to determine whether it qualifies as an investment service. This is the case if:

1. the service is related to one or more immovable properties and serves the immovable properties for multiple years (qualitative test); and
2. the remuneration is at least € 30.000 excluding VAT (quantitative test).

Abolition of reduced VAT rate cultural goods and services, accommodation and sports

The reduced VAT rate of 9% will be abolished as of January 1, 2026, for art, (supply or lending of) books, sports and bathing, provision of accommodation (hotel, holiday accommodation, guest houses, etc.), museums, performing arts and sports competitions. As a result, the VAT rate will increase from 9% to 21%. The reduced VAT rate of 9% however remains applicable on access fees for cinemas, circuses, day recreation and camping.

Adjustment small businesses scheme (KOR)

As of January 1, 2025, several aspects of the KOR (small businesses scheme) will be adjusted, including the minimum participation period, the exclusion period, the revision threshold and the registration threshold. In addition, the application of the KOR will no longer be limited to entrepreneurs established in the Netherlands, provided the entrepreneur's EU turnover does not exceed €100,000.

6. VAT (2/2)

Reduction of tax interest on additional VAT assessment

It occurs that upon the supply of immovable property, RETT is paid by the acquirer while the supplier should have paid VAT. In that case, an additional VAT assessment is imposed whereby the supplier is charged tax interest on the entire VAT amount. The acquirer who has paid the RETT (that was not due) will not receive tax interest on the RETT refund.

Although the taxes are imposed on different taxable persons, they relate to the same transaction. Therefore, the supplier on whom the VAT assessment is imposed can request a reduction of the tax interest to the extend RETT already has been paid on the transaction.

Place of supply rules virtual entertainment services and events

Currently, virtual entertainment services are taxed in the Member State where they are physically performed. From January 1, 2025, virtual entertainment services will be taxed in the Member State where the recipient of the virtual service is established or resides.

7. Other developments

Energy tax amendments

A number of amendments are being made to the Environmental Taxes Act (*Wet belastingen op milieugrondslag*) regarding the levy of energy tax:

- The energy tax on natural gas up to a consumption of 170,000 m3 will be reduced by 2.8 cents per m3 in 2025, which reduction shall be increased to 4.8 cents per m3 in 2030 (price level 2024).
- The energy tax rebate (a fixed rebate on energy taxes for households) will be increased by 3 cents (excluding VAT) with retroactive effect to January 1, 2024. This reduction in tax burden for households replaces a rate reduction in the first tax bracket for use of electricity. This provides for less complexity and lower implementation costs.
- On the use of hydrogen in energetic processes a separate energy tax rate will apply with effect from January 1, 2026.

Tax and recovery interest

Determination of tax interest to be charged and reimbursed

The proposed amendment provides that the applicable rates for interest on underpaid tax and interest on overpaid tax may differ and that the procedure for determining such interest rates will become more flexible (whereby no legislative amendment is required).

Determination of recovery interest

It is stipulated that interest on overdue tax will be charged as soon as a tax assessment for which the payment deadline has passed, is offset against a tax refund following loss compensation. As a result, the regulations are in conformity with legislation applicable prior to January 1, 2013. Interest on overdue tax will not be charged when the tax due on the basis of a tax assessment is offset against tax receivable on the basis of a tax assessment related to the same tax and period. This amendment will come into effect on a date determined by Royal Decree.

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