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BUDGET DAY 2023
TAX PLAN 2024

September 19, 2023

Tax Plan 2024

On Tuesday September 19, 2023, Budget Day, the Dutch Minister of Finance has published the Tax Plan 2024. In this publication, we outline the most important measures from an international perspective. Please note that the Tax Plan 2024 is subject to discussion and approval by the Dutch Parliament.

We have divided the proposed measures into the following topics:

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 2024, 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.

1. Corporate Income Tax (1/6)

Corporate income tax rate

For the first time in quite a while, this year's tax plan does not provide for an adjustment to the corporate income tax rates and brackets. Therefore, the rates and brackets remain unchanged as of January 1, 2024.

Taxable profit		Tax rate
Up to	€ 200,000	19.0%
Excess of	€ 200,000	25.8%

An effective tax rate of 9% continues to apply for innovation box income.

Donations made by corporate income taxpayers

As of January 1, 2024, donations made by an entity which is subject to corporate income tax to a Public Benefit Organization (*algemeen nut beogende instelling - ANBI*) that do not qualify as business sponsorship or advertising expenses are no longer deductible for corporate income tax purposes. At the same time, the amount of the donation will no longer be considered as a benefit for dividend withholding tax purposes or as income from a substantial interest provided that the donation is directly paid by the entity to the ANBI.

Energy Investment Allowance (EIA), Environmental Investment Allowance (MIA), and Random Depreciation of Environmental Investments Scheme (VAMIL)

The EIA, MIA, and VAMIL are tax incentive schemes in the Netherlands with a predefined timeframe, initially scheduled to expire on January 1, 2024. However, evaluations have shown that these schemes are generally effective and efficient, leading to their extension until December 31, 2028.

Effective from January 1, 2024, the deduction rate for EIA will decrease from 45.5% to 40%. The maximum eligible investment amount for EIA purposes will remain unchanged at € 136,000.

Dutch tax qualification legal entities

A separate legislative proposal for the Dutch tax qualification legal entities provides for the codification of Dutch qualification policies for foreign legal entities and the abolishment of the corporate income tax liability for “open” limited partnerships. These changes will come into effect on January 1, 2025. As a result, the tax qualification of several taxpayers will change, especially affecting certain foreign entities as well as Dutch open limited partnerships.

1. Corporate Income Tax (2/6)

Foreign entities

Regarding the tax classification of entities established under foreign law, the similarity method remains the starting point. Based on this method, it needs to be determined whether the legal form of the foreign entity is comparable to a Dutch entity in which case the entity will receive the same tax classification as the comparable Dutch entity.

If the foreign entity is not comparable to any Dutch entity, the following applies:

i. a foreign entity residing in the Netherlands for tax purposes is always considered non-transparent (subject to corporate income tax);

ii. for a foreign entity not residing in the Netherlands for tax purposes, the tax classification of the jurisdiction of tax residency is taken into account. Therefore, it is important to determine whether the entity is considered subject to corporate income tax in that jurisdiction.

Dutch limited partnerships (CVs)

Under the current rules, only limited partnerships in which the admission or replacement of limited partners is possible with the unanimous consent of all partners are considered transparent for corporate income tax purposes. Other CVs, known as "open CVs“, are subject to corporate income tax on an independent basis. With the introduction of the draft bill, open CVs will also be classified as transparent, thereby ending their corporate income tax liability. This qualification also applies for income tax, dividend tax, and withholding tax purposes.

Under the proposed transitional provisions, the change in tax status is treated as a deemed disposal of the assets of the open CV to the partners. At the same time, the partners are deemed to have disposed their interest in and receivables on the CV, as well as any assets they have made available to the CV. All these deemed disposals are considered to take place at fair market value. Without further relief, this could result in an immediate tax liability for both corporate and personal income tax.

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The draft bill provides for four facilities to defer the aforementioned tax liabilities. These facilities can be applied as of January 1, 2024, but only if the Dutch tax claim is retained.

i. Rollover facility: If all limited partners are subject to corporate income tax (without being subjectively exempt), the tax claim on the hidden reserves, tax reserves and goodwill relating to the business of the open CV is deferred by transferring the tax claim to the limited partners.
ii. Share merger facility: Each limited partner can defer the tax claim relating to their interest in the open CV by contributing their interest in the open CV to a (new or existing) holding company.
iii. Rollover facility for assets made available to the CV: Limited partners can rollover the tax claim on assets made available to the open CV if the asset remains used in a similar way by the business from which the limited partner will derive income.
iv. Deferred Payment over a maximum of ten years: If the open CV cannot utilize the rollover facility, there is an option to spread the tax payment on the deemed disposal of assets over a period of up to ten years free of interest.

There are complementary measures included that, under certain conditions, can prevent that real estate transfer tax is due in relation to the aforementioned restructuring. These measures apply exclusively to legal forms existing on September 19, 2023, at 3:15 PM.

The draft bill can have significant consequences for structures involving foreign entities or Dutch limited partnerships, whose Dutch tax classification changes. Parties involved will need to assess their tax position well before January 1, 2025, and, if necessary, take appropriate action.

Legislative proposal amending funds for joint account (FGR) and tax-exempt investment institution (VBI)

Funds for joint account (FGR)

According the draft bill, starting from January 1, 2025, the definition of an FGR will be amended. Currently, an FGR is subject to corporate income tax, if (in short) the certificates of participation in the FGR are freely tradable. In the newly proposed rules this changes, and the corporate income tax

1. Corporate Income Tax (4/6)

liability is limited to FGRs that qualify as investment funds or collective investment schemes under the Dutch Financial Supervision Act (*Wet Financieel Toezicht*).

As a result, several currently taxable FGRs will no longer be subject to corporate income tax as of January 1, 2025. The transitional provisions proposed in this context resemble those suggested for open limited partnerships, whose tax liability will end on January 1, 2025 (see before under Legislative proposal for the Dutch tax qualification legal entities). By fiction, a FGR is deemed to have disposed of all its assets to its participants, and the participants are presumed to have disposed of their participation.

To prevent immediate taxation, as of January 1, 2024, three possible facilities are provided subject to certain conditions:

i. a rollover facility for the tax claim on the hidden reserves, tax reserves, and goodwill present in the FGR;
ii. a share merger facility for participants who transfer their participation in the FGR to a holding company; and
iii. if the FGR cannot make use the rollover facility, there is an option to spread the tax due on the fictional disposal of assets over a period of up to ten years free of interest.

Complementary measures have been introduced to prevent that real estate transfer tax is due in relation to the aforementioned restructurings. These measures apply exclusively to FGRs existing on September 19, 2023, at 3:15 PM.

Institutional investors will often still be able to continue their use of a taxable FGR. However, the draft bill can have a significant impact for high net-worth individuals and families. They will need to assess their tax position in 2024 and, if necessary, adjust their structure to accommodate the forthcoming changes.

Tax exempt investment institution (VBI)

Under the current rules, a VBI is subjectively exempt from corporate income tax and is not a withholding agent for dividend tax withholding tax purposes. The draft bill restricts access to this regime to only investment institutions and institutions for collective investment in securities (ICBEs) as defined by the Dutch Financial Supervision Act (Wet Financieel Toezicht).

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This means that as of January 1, 2025, it will no longer be possible to utilize the VBI regime for investing in private assets. Stakeholders should take this into consideration and may want to proactively respond.

For instance, it could be wise to assess whether the VBI status should be terminated earlier, depending on the expected results for 2023 and 2024. If there is a tax loss in one or both of those years, the loss may become eligible for offsetting due to the expiration of the VBI status and can then be used in future taxable years.

Legislative proposal amending Fiscal investment institution regime Act

A Fiscal Investment Institution (FBI) is currently subject to corporate income tax at a rate of 0%. Starting from January 1, 2025, it will no longer be allowed for an FBI to directly invest in real estate located in the Netherlands. If an FBI does not meet the proposed requirements, it will become subject to the regular corporate income tax rates. Nevertheless, an FBI may continue to invest in shares of a subsidiary which is regularly subject to corporate income tax and holds real estate in the Netherlands (indirect investment in Dutch real estate). Additionally, an FBI is allowed to directly invest in real estate located outside the Netherlands.

Due to this legislative change, it may be important for an FBI to restructure its Dutch real estate holdings in 2024 to avoid losing its FBI status as of January 1, 2025. For the period from January 1, 2024 to December 31, 2024, there are complementary measures in place (subject to certain conditions) to prevent that real estate transfer tax is due in relation to any restructuring.

Other developments

Legislative proposal Minimum Tax Rate Act 2024

On May 31, 2023, the legislative proposal for the Minimum Tax Rate Act 2024 was submitted to the Dutch House of Representatives. With this legislation, the Dutch government aims to implement Directive (EU) 2022/523 of December 14, 2022 into national law, which is based on the OECD Pillar Two model rules.

These rules are intended to ensure that multinational companies with an annual turnover exceeding € 750 million pay an effective tax rate of 15% in every jurisdiction where they are active. As a result, it is expected that companies will be less inclined to shift their profits to low-tax

1. Corporate Income Tax (6/6)

jurisdictions, and competition in the field of taxation will be reduced. In practice, implementing these rules imposes significant challenges. This system will coexist with the regular corporate income tax regime. The intended start date is January 1, 2024.

Tightening of limitation on deduction of interest for financing of leased out real estate

Under the earnings stripping rules, interest deduction is limited when the net balance of interest expenses and interest income from loans exceeds the highest of 20% of fiscal EBITDA or € 1 million. The government previously announced its intention to lower or completely eliminate the € 1 million threshold for real estate companies that lease out real estate to third parties in the Tax Plan 2025. There is still limited information available regarding the specific details of this measure. The intended effective date is January 1, 2025.

2. Dividend Withholding Tax

Dividendstripping

As of January 1, 2024, new measures will be introduced to combat dividend stripping. Dividend stripping concerns splitting the beneficial and legal entitlement to proceeds from shares in order to obtain a tax advantage—for example a dividend tax refund, reduction or credit for which the beneficial owner itself is not eligible. Among other things, as of 2024 the beneficiary to the income has to prove it is the beneficial owner of the income if it wants to make use of an exemption, refund or reduction of dividend withholding tax.

Conditional withholding tax on dividends

As of January 1, 2024, a conditional withholding tax (at a rate of 25.8%) is due on (deemed) dividends (in)directly paid to recipients located in low taxed or non-cooperative jurisdictions, or in certain hybrid or abuse situations. If the payment is equally subject to regular dividend withholding tax, such tax can be credited against the conditional tax due.

Conditional exit taxation Dutch dividend withholding tax

Although not part of the Tax Plan 2024, it can for completeness sake be added here that on July 10, 2020 one of the opposition parties (Groenlinks) submitted a draft bill to introduce a new conditional exit tax in the Dutch Dividend Withholding Tax Act (DWT). The proposal aims to tax all available profit reserves in case of cross-border reorganizations (such as change of the place of effective management (POEM), cross-border conversions, mergers or demergers).

After various rounds of serious criticism from the Council of State, the proposal has been amended four times. In a recent letter, the Government has advised negatively against adopting the proposed tax measures. The proposal has however so far not been formally withdrawn.

3. Personal Income Tax & Wage Tax (1/2)

Personal Income Tax

Box 1

Starting from January 1, 2024, the following tax rates and tax brackets apply to taxable income from employment and personal dwelling (box 1):

Income (box 1)		Rate
Up to	€ 75,624	36.97% *
Excess of	€ 75,624	49.50%

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

Box 2

Starting from January 1, 2024, a progressive rate will be applicable in box 2. The following rates and tax brackets will apply:

Income (box 2)		Rate
Up to	€ 67,000	24.5% *
Excess of	€ 67,000	31.0%

* For fiscal partners, the threshold will be €134,000.

Box 3 – rates and threshold

The tax rate on (notional) income from savings and investments (box 3) is to increase by 2% to 34% (2024). The tax-free threshold will not be increased in 2024 and will remain at €57,000 (€114,000 for fiscal partners collectively).

Box 3 – developments in taxation based on actual returns

The Dutch government intends to replace the notional system for taxation in Box 3 with taxation based on the actual returns from wealth (such as interest, dividends, rental income, and asset appreciation). The government has recently published a consultation proposal with the following principles:

- Taxation on direct returns (rent, dividends, and interest).
- Taxation on realized capital gains, including real estate and non-marketable share packages smaller than 5%.
- Taxation on annual increases in wealth, including assets like publicly traded securities and other investments.

The government does not anticipate implementing this new system before January 1, 2027.

3. Personal Income Tax & Wage Tax (2/2)

Adjustment of lucrative interest regime

The Dutch Supreme Court ruled in April 2023 that loans are only taken into account for assessing whether assets qualify as a progressively taxed so-called lucrative interest, insofar as these qualify as informal capital for tax purposes. As a result, the lucrative interest scheme has a narrower scope of application than intended by the legislator. With the proposed amendment to the scheme, also loans that do not qualify as informal capital can be taken into account for assessing whether assets qualify as a lucrative interest.

In specific situations, it will have to be re-assessed whether assets result in a lucrative interest. Existing agreements with the Dutch tax authorities can be continued insofar as they are in line with the envisaged legislative amendment.

Energy Investment Allowance (EIA), Environmental Investment Allowance (MIA), and Random Depreciation of Environmental Investments Scheme (VAMIL)

The changes to the EIA, MIA and VAMIL can also affect personal income tax entrepreneurs. See the section 'Corporate Income Tax' (1) for a description.

Wage Tax

Limitation on 30%-ruling

Under certain conditions, employees recruited from abroad can receive up to 30 percent of their salary tax-free as compensation for expenses incurred due to international employment. Until December 31, 2024, there is no maximum amount to which the 30%-ruling can be applied.

Starting January 1, 2024, the 30%-ruling will be limited to the amount corresponding to the remuneration maximum in the *Standardization of Top Incomes Act* (in 2023: € 223,000). If the 30%-ruling ends or begins during the year, the capping will apply proportionally to the duration. Transitional law stipulates that in respect of incoming employees for whom the 30%-ruling was applied over the last tax period of 2022, the cap on the 30%-ruling will only take effect from January 1, 2026.

The possibility of tax-free reimbursement of school fees for international schools alongside the 30%-ruling remains unchanged.

4. Real estate transfer tax (RETT)

Amendment exemption for overlap in VAT and RETT

For real property share transactions, the value of new real property is currently exempt from VAT and RETT. The Tax Plan 2024 includes an amendment to the RETT exemption. The objective is to increase the effective tax burden for real property share transactions as such, to make it comparable to situations where new real property is directly supplied with VAT. It is the intention of the amendment that the value of new real property is taxed with 4% RETT as of January 1, 2025, if the real property is not used for activities that entitle to at least a 90% deduction of input VAT on costs during at least 2 years after the acquisition of the shares.

Based on transitional measures, the amendment is under certain conditions not applicable up to and including December 31, 2029 for real property share transactions which the parties have agreed (in writing) before September 19, 2023 at 15:15 CET.

The introduction of the 4% rate has also resulted in an amendment to the facility for successive acquisitions within 6 months.

We notice that the text of the amendment cannot be right and in any case does not correspond with the objective. Further, we expect that the amendment will result in various discussions with the Dutch tax authorities about for example the scope of the 90%-criterion, the valuation of new real property and the scope of the facility for successive acquisitions within 6 months.

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