

Dutch Budget Day 2023: amendments with respect to employment taxes

20 September 2023



On Budget Day 19 September 2023, the Dutch government sent the Tax Plan 2024 and several other bills to the Parliament. Below, we set out the government's proposals regarding employment taxes. We also mention some other amendments with respect to employment taxes that will come into effect from 1 January 2024.

1. The 30% rule

The 30% ruling provides a tax-free allowance for extraterritorial expenses incurred in connection with working in the Netherlands for a Dutch withholding agent/employer. Currently, the 30% allowance is calculated on the expat's total employment remuneration taxable in the Netherlands. From 1 January 2024, a maximum will be used in the calculation. This maximum will be equal to the amount to be found in the Top Income Standardisation Act (**WNT**), i.e. EUR 233,000 in 2024. The maximum amount is adjusted annually.

The entry into force of this capping measure may make it of importance for employers and employees to offer tax-free reimbursement of the extraterritorial costs actually incurred instead of applying the 30% rule. This is because no capping applies to reimbursement of actual extraterritorial costs. Note: a choice must be made per calendar year between tax-free reimbursement of actual extraterritorial expenses and application of the 30% rule. Therefore, only one of the two forms of reimbursement can apply in one calendar year.

This cap on the 30% rule will take effect from 1 January 2024. However, as regards employees for whom the 30% rule applies in respect of the last pay period of 2022, the capping measure will only take effect as of 1 January 2026.

The cap on the tax-free allowance for the 30% rule refers to an annual allowance, while wage tax is generally withheld and remitted on a monthly basis. This can create several problems in practice based on how the allowance is processed in the payroll.

In cases where one of your employees earns more than the WNT standard, the exemption from the 30% rule can be processed in the payroll in different ways. On the one hand, a time-proportional approach could be used; on the other hand, the exemption could be applied on the basis of a VCR-like method (i.e. on the basis of a continuing cumulative calculation). Both methods can lead to various problems in practice, including not making full use of the exempt allowance.

2. Travel allowance

The maximum tax-free travel allowance is currently EUR 0.21 per kilometer. This flat-rate travel allowance will be increased to EUR 0.23 per kilometer as of 1 January 2024. If commuting takes place by public transport, the actual costs may still be reimbursed tax-free. Please also see hereafter.

3. Simplify exemption public transport

Based on current legislation, if an employer reimburses, provides or makes available a public transport subscription to its employees, part of the benefit of the private use of the public transportation subscription may be taxable.

In view of the increased administrative burden due to hybrid working, it is proposed to specifically exempt the private use of a public transport card that is reimbursed, provided, or made available. As a result, regardless of how an employer offers a public transport card to its employee, no tax will be due, provided the employee also uses the public transport card (to whatever extent) for business travel (including commuting). Moreover, extending the exemption may encourage the use of public transport for both business and private travel.

4. Adjustment of percentage first bracket of the tax-free discretionary budget

Currently, the tax-free discretionary budget per employer is 3% of the total taxable wage bill (of all employees combined) up to EUR 400,000, plus 1.18% of the wage bill above EUR 400,000. When the increase to 3% was introduced on 1 January 2023, it was already known that this increase would be temporary. From 1 January 2024, the percentage of the tax-free discretionary budget up to EUR 400,000 will be reduced to 1.92%, representing a maximum of EUR 7,680 plus 1.18% of the wage bill above EUR 400,000.

5. Taxation of lucrative interests/repair measure following a Supreme Court case

The Income Tax Act 2001 contains a special regime for management participations that qualify as so-called lucrative interest. Most commonly, a lucrative interest consists of shares that can generate a high return on investment as a result of a high leverage. As a main rule, a class of shares qualifies as a lucrative interest if these shares constitute less than 10% of the total nominal issued share capital and are subordinated to the other class(es) of shares (typically fixed yield preference shares). Also, a shareholding that is “economically comparable” to such shareholding qualifies as a lucrative interest.

On 14 April 2023, the Dutch Supreme Court issued an important ruling on the interpretation of “economically comparable”. The Supreme Court ruled that shares that represent more than 10% of the total nominal share capital can qualify as a lucrative interest if they represent less than 10% of the total equity contribution, for instance as a result of contribution of share premium on the other classes of shares. However, the Supreme Court also ruled that in general leverage in the form of shareholder loans cannot by itself create a lucrative interest. Following that ruling, the State Secretary of Finance indicated in a letter dated 26 June 2023 that in his view also shareholder loans should be taken into account when assessing whether there is a lucrative interest. The now proposed measure incorporates this view in law with retroactive effect to the date of letter, 26 June 2023.

Contacts

For more information, please see the slider below for all the additional contacts.

Disclaimer

Although this publication has been compiled with great care, Loyens & Loeff N.V. and all other entities, partnerships, persons and practices trading under the name 'Loyens & Loeff', cannot accept any liability for the consequences of making use of the information contained herein. The information provided is intended as general information and cannot be regarded as advice. Please contact us if you wish to receive advice on this specific topic that is tailored to your situation.

loyensloeff.com