



Investment management news update:

year-end developments and attention points

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As we're nearing the end of the year, we are pleased to offer you an overview of relevant developments and year-end attention points for the Investment Management industry (also see our **Tax Flash** and **website post**). Other domestic and international proposals, which were published separately from the 2023 Tax Plan also need to be considered. On various topics, news is still expected before year-end 2022. With respect to these developments, we will gladly further discuss the potential impact and possible next steps with you. Please feel free to reach out to your trusted Loyens & Loeff contact.

1. 2023 Dutch tax rates

1.1 Corporate income tax (CIT)

	2022	2023
15% rate	Profits up to EUR 395,000	
19% rate		Profits up to EUR 200,000
25.8% rate	Profits exceeding EUR 395,000	Profits exceeding EUR 200,000

Takeaway

In comparison to 2022, the CIT liability will increase for all taxpayers. The lower 19% rate can be applied per taxpayer, meaning that consolidated entities for CIT purposes in a so-called 'fiscal unity' (*fiscale eenheid*) can only make use of the lower rate once.

1.2 Real estate transfer tax (RETT) and related taxes

	2022	2023
Default RETT rate	8%	10.4%
Residential real estate (owner occupied)	2%	2%
Residential real estate (investment and other purposes)	8%	10.4%
First-time homebuyers ¹	Exempt	Exempt
Landlord levy	0.485%	N/A ²

Ad 1) Several criteria need to be met to benefit from the RETT exemption for first-time homebuyers. For instance, the homebuyer should be aged between 18 – 35, the value of the home cannot exceed EUR 440,000 (2023) and there is a self-occupancy obligation for the owner for a substantial period after acquisition.

Ad 2) The landlord levy will be abolished as per 1 January 2023.

Takeaway

In case of an acquisition of (non-owner occupied) real estate in 2022, the 8% rate still applies. If uncertainties, for example on financing, stand in the way of a transfer of real estate in 2022, a transfer under condition subsequent (*Groninger Akte*) may be a viable option to enable completion of the transfer in 2022 subject to the 8% RETT rate.

1.3 Personal income tax (PIT)

	2022	2023
Box 1 (ordinary / employment income)	37.07% - 49.50%	36.93% - 49.50%
Box 2 (substantial interest) ¹	26.90%	26.90%
Box 3 (savings and investments) effective rate applied to net wealth ²	31%	32%
Tax-free wealth for Box 3 (per individual)	EUR 50,650	EUR 57,000

Ad 1) It is expected that as from 2024, the Dutch government will introduce two brackets to the Box 2 rate, whereby the first EUR 67,000 of income will be taxed at a rate of 24.5% and any excess income will be taxed at a rate of 31%.

Ad 2) In the near future (currently announced for 2026), a new Box 3 regime will be introduced with the aim to tax the actual return generated by a taxpayer's net wealth (whereas currently, taxation is applied to a fictitious yield, based on a fictitious allocation of wealth between a high-earning and low-earning asset class). A transitional regime will apply for tax years 2023, 2024 and 2025, which is based on a fictitious yield, but now calculated over an actual allocation of the taxpayer's wealth between three asset classes (savings, other investments, and debt). For more information also see our [website post](#) (only available in Dutch).

Takeaway

The changes to Box 2 will increase the effective tax rate for (fund) managers holding their carried interest or equity instruments as part of a management incentive plan via a (personal) holding company. If significant income distributions in Box 2 are anticipated, it makes sense to do so before 2024. This could also be relevant when outstanding debt positions towards personal holding companies need to be eliminated (in light of the entry into force of the act on the excessive borrowing from own companies (*wet excessief lenen bij eigen vennootschap*) in 2023).

2. Dutch CIT and withholding tax – relevant topics

Development	Timing	Relevant for?	Note	Action
Anti-hybrid mismatch rules / ATAD2	1 January 2020	Fund entities	<p>In November 2022, the Dutch State Secretary for Finance published an updated policy decree in relation to the application of the Dutch anti-hybrid mismatch rules (ATAD2) in situations in which a disregarded Dutch BV (e.g., by a US shareholder) reports a cost-plus remuneration in relation to the intra-group services it provides. Previously, such a situation resulted in double taxation, which is now under circumstances remedied.</p> <p>This updated policy is applicable as from the moment the Dutch ATAD2 rules entered into effect (i.e., for tax book years starting on or after 1 January 2020). Due to this retroactive effect, the above can also positively affect Dutch tax returns that were already filed. See our website post for a more detailed explanation.</p> <p>Finally, we note that ATAD2 is an ongoing compliance attention point. For tax years starting on or after 1 January 2020, taxpayers need to avail of documentation in their administration that enables the Dutch tax authorities to assess whether the anti-hybrid mismatch provisions are correctly applied and reflected in the annual CIT return.</p>	<p>Dutch taxpayers that receive a cost-plus remuneration for intra-group services should check whether the updated policy may benefit them.</p> <p>ATAD2 documentation files should be readily available in the administration of Dutch taxpayers.</p>
Overhaul Dutch entity tax classification rules	Expected 1 January 2024, legislative proposal expected in Q2 2023	Partnerships and Dutch corporate entities held by foreign fund vehicles	<p>Currently the Dutch entity tax classification rules differ from international standards, which creates unintended hybrid mismatches in international (fund) structures (i.e., ATAD2 and withholding tax issues).</p> <p>A proposal to amend the Dutch entity tax classification rules, including the abolishment of the 'open CV' (limited partnerships would then by definition become transparent from a Dutch perspective), and the introduction of new classification rules for entities without a clear Dutch equivalent, is expected in the course of 2023 (see our website post and Tax Flash).</p>	Strongly advised to review the potential impact on existing and new fund structures.

Development	Timing	Relevant for?	Note	Action
Classification of Dutch fund for joint account (FGR)	Unclear (2023 expected)	Fund entities	Separate to the classification of (foreign) partnerships, the Dutch Ministry for Finance is considering changing the classification rules for Dutch funds for joint account (<i>FGRs</i>). Originally, the classification of <i>FGRs</i> was part of the overhaul of the classification of partnerships. However, the Dutch State Secretary for Finance announced that changes to the <i>FGR</i> tax classification rules will be reviewed and proposed separately as various concerns were raised during the initial public consultation. See our website post for more information.	Advised to review the potential impact on fund structures with a fund for joint account.
Announced abolition of Dutch REIT regime (FBI)	1 January 2024	Dutch corporate taxpayers benefitting from FBI regime	Dutch investment institutions exclusively conducting portfolio investment activities may under circumstances benefit from a 0% CIT rate (the so-called FBI or <i>fiscale beleggingsinstelling</i>). The Dutch government recently announced that it will prohibit FBIs from directly investing in real estate. Other (potentially alleviating) measures in view of this abolishment are still under consideration, e.g., a real estate transfer tax reorganization facility. See our Tax Flash for more information.	Monitor whether any alleviating measures will be proposed. An update is expected still before year-end 2022 or early 2023.
EU Shell Entity Directive (ATAD3)	1 January 2024(?) (reference period as of 1 January 2022)	Holding & portfolio companies	Rules to combat the misuse of shell entities have been announced by the EU in the form of ATAD3. A first proposal directive was published in December 2021. This proposal received a lot of input from various stakeholders. Currently, the EC is working on a second version of the directive addressing the concerns raised by stakeholders, which version is still expected in 2022. Other developments suggest a potential postponement of the directive, only taking effect as per 1 January 2025.	As ATAD3 is still a moving target, the development should be closely monitored. Newly set up investment fund structures should be made "ATAD3 proof".

Development	Timing	Relevant for?	Note	Action
Pillar Two	1 January 2024 (expectedly)	Fund structures & Holding companies	<p>On 20 December 2021, the OECD published model rules to establish a global minimum level of taxation of 15% for multinational entities (\geq EUR 750 million consolidated group revenue), allocating top-up taxing rights primarily to the ultimate parent entity (Income Inclusion Rule) and to other group entities as a backstop (Undertaxed Profits Rule). On 24 October 2022, the Netherlands launched a public consultation on the draft bill to implement Pillar Two per 31 December 2023. Part of the draft bill contains a retroactive effect due to transition rules that apply as from 30 November 2021 and should as such already be considered (also see our Tax Flash).</p> <p>Expectedly, most collective investment funds will benefit from a specific exemption. However, it remains uncertain whether a PE-fund, itself benefiting from an exemption, holding several controlling stakes in multiple enterprises (which on a stand-alone basis do not meet the EUR 750 million threshold), may result in the Pillar Two rules becoming applicable to the respective enterprises as part of one group.</p>	Monitor further developments. We can assist with analyzing and modeling the impact of Pillar Two.
Conditional withholding tax on dividends to LTJs and hybrid entities	1 January 2024	Fund & financing structures, holding companies	<p>As per 1 January 2024, the scope of the conditional withholding tax on intragroup interest and royalty payments will be expanded to also include dividends (distributions by capital companies such as the BV and NV, but also cooperatives). This conditional withholding tax is levied at corporate income tax headline rate (25.8% in 2023). Intragroup dividends (ultimately) paid to entities in low-taxed jurisdictions and/or EU-blacklisted jurisdictions (LTJs) or to certain hybrid entities will be in-scope.</p> <p>Please note that interest and royalty payments allocable to Dutch real estate investments (which in itself does not necessarily qualify as a permanent establishment, but is deemed a permanent establishment under Dutch law) can also be in scope of the conditional withholding tax as from 1 January 2022 (also see our Quoted).</p>	Check structures involving LTJs and/or hybrid entities – especially in structures involving hybrid entities to analyse impact.

Development	Timing	Relevant for?	Note	Action
Increase of the budgets for the EIA and MIA	1 January 2023	Portfolio companies	The budgets for the energy investment credit (EIA) and environmental investment credit (MIA) will be increased by EUR 50 million and EUR 100 million respectively, to further stimulate environment-friendly investments. See also our Tax Flash .	Beneficial development for anticipated qualifying investments.
Tax loss compensation rules	1 January 2022	Holding & portfolio companies	Since 2022, losses can be carried forward in time indefinitely, but loss compensation (carry back and carry forward) in a taxable year is restricted to 50% of taxable profits in excess of EUR 1 million (see also our Quoted).	Analyse intra-year loss compensation opportunities by closely matching the timing of income and costs.
Anti-mismatch rules for downward transfer pricing adjustments	1 January 2022	Holding & portfolio companies	Since 2022, legislation effectively rejecting downward profit adjustments pursuant to the arm's length principle absent a qualifying corresponding upward adjustment at counterparty level and eliminating double non-taxation in certain other situations came into effect. See also our Tax Flash for more information.	Intragroup transactions and transfers of assets should be checked.
Earnings stripping rule	1 January 2022	Holding & portfolio companies	<p>Since 1 January 2022, net interest deduction under the earnings stripping rule has been restricted to the highest of: (i) 20% of EBITDA (previously, 30%); or (ii) EUR 1 million. See our website post for more information.</p> <p>In practice, the capacity to deduct interest expenses incurred on shareholder debt is often restricted when third-party financing is in place. Further limitations (e.g.) apply with respect to loans attracted to finance the development of real estate.</p>	Consider impact in your financial modelling.

Development	Timing	Relevant for?	Note	Action
Recent case law on interest deduction in private equity structures	Going forward	Holding & portfolio companies	<p>The Dutch Supreme Court has published several rulings regarding the tax deduction of interest payments made by a Dutch group to its investors, mainly in private equity structures. See also our Tax Flash on the Hunkemöller-case.</p> <p>In September 2022, the Dutch Supreme Court asked the CJEU whether article 10a of the Dutch corporate income tax act infringes the EU treaty freedoms. The ruling of the CJEU is expected to further clarify its Lexel-judgement (see our website post).</p> <p>In practice, we see more and more discussions with the Dutch tax authorities regarding the tax deductibility of interest paid on shareholder debt in private equity structures. In this regard, TP-documentation is becoming more important to substantiate a taxpayer's position taken.</p>	<p>Review existing financing structures and envisaged new set-ups.</p> <p>In practice, some of our clients file an objection to retain their rights while case law is pending.</p>

Takeaway

A number of the abovementioned topics may have significant impact on your investment fund structure. For new fund set-ups, we strongly recommend taking the ATAD3 and interest deductibility developments into account. Interest deductibility on shareholder debt is a moving target, as more developments are expected. Impact of the conditional withholding tax, and the anti-hybrid mismatch rules should be continuously monitored with respect to existing as well as envisaged investment structures. Structures that may be impacted by the conditional withholding tax on dividends per 1 January 2024 should be revisited within the coming year to mitigate adverse consequences.

3. Other taxes and developments

Development	Timing	Relevant for?	Note	Action
Personal income tax	Upcoming tax years	Fund managers	Due to changes in the personal income tax system and rates, the actual Dutch personal income tax liability incurred on income derived from carried interest and/or management incentive plans may deviate from the initial projection. In that context, the acquisition price applied (and whether this represents the 'fair market value' for tax purposes) when (fund) managers acquire their carried interest or management equity is and remains to be an attention point for the Dutch tax authorities.	The impact of the proposed changes to carried interest and management incentive plans should be considered.
DAC 6	Ongoing / Cross-border arrangements of which the first step is implemented after 25 June 2018	Investment managers	Based on the EU Mandatory Disclosure Directive, intermediaries need to report certain cross-border arrangements to their local tax authorities (see our Quoted). If no intermediary is involved or if it is exempt from reporting, the taxpayer must file a report. Filings should be made on reportable arrangements within 30 days after the arrangement: (i) is made available for implementation; (ii) is ready for implementation; or (iii) when the first step of implementation occurs (whichever is earliest). An update of the decree that provides further guidance on the Dutch DAC6 legislation (<i>Leidraad 2.0</i>) is expected early 2023.	Investment managers should monitor and coordinate their DAC 6 obligations, especially where no or multiple intermediaries are involved (to avoid non-reporting or double reporting).
Court ruling on VAT treatment M&A costs	Going forward	Fund managers/ Holding & Portfolio companies	In October 2022, the Hague lower court issued its ruling that services provided by a US M&A adviser were exempt from Dutch VAT. The M&A adviser provided a wide range of services concerning the preparation and facilitation of the ultimate sale of shares of the target company, including reaching out to potential buyers and assisting with negotiations. In the same ruling, the court held that the target company could partially recover the VAT on costs for the disposal of its own shares, as the transfer of the shares allowed the target company to further grow its business. It remains to be seen whether an appeal will be lodged against the district court's ruling. Also see our website post for more information. When concluding engagement letters for the disposal or acquisition of (portfolio) companies in a share transaction, it should be assessed whether the services procured are VAT taxed or VAT exempt.	It is advised to assess the engagement letter, as it is an important element to properly reflect the scope of services, and who should be the contracting party.

Development	Timing	Relevant for?	Note	Action
Employee stock options	1 January 2023 (expected)	Companies looking to reward and/or have employees rewarded with stock options	Under the current tax regime for employee stock options, the moment of exercise of an employee stock option is the moment on which (wage) tax and, if applicable, social security contributions are due (over the fair market value of the shares minus the exercise price). As per 2023 (expectedly), a new bill will enter into effect which will shift the taxable moment from the moment of exercise to the moment on which the shares acquired become tradeable. As an (optional) alternative to the new taxable moment, the moment of exercise will remain available as taxable moment.	(Re)assessment of employee stock option plans to analyse potential impact and/or possibilities.
Amendment expatriate regime (30% allowance)	1 January 2024	Employers and expats	The basis for the calculation of the 30% allowance will be capped per 1 January 2024 to a maximum amount of EUR 216,000. A transitional regime (as alleviating measure) applies for employees for whom the 30% ruling has already been applied in the payroll in the last salary payment period of 2022 (in most cases, December 2022). This condition must also be met in case the 30%-ruling request is still to be submitted or is still pending in this last payment period (hence, limited time remains to benefit from this transitional regime). Qualifying employees will be affected by this new rule only as of 1 January 2026. Also see our Tax Flash .	Employers and employees facing this measure can also opt for untaxed reimbursement of the extraterritorial costs actually incurred, if more beneficial.

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