



Dutch government publishes 2023 Budget: Main take-aways for the Dutch real estate market

On 20 September 2022, the Dutch government published the 2023 Budget, as well as a number of (announced) changes to tax legislation. In this update, we will summarize the latest proposals and legislative changes that will come into effect in the near future and which are relevant for the Dutch real estate market.

Important announcement regarding REIT regime

In the accompanying letter to the Budget Plan 2023, the Dutch government announced that as per 1 January 2024, REITs (FBI's - *fiscale beleggingsinstellingen*) will no longer be allowed to invest directly in real estate. The consequence hereof is that profits derived by REITs from Dutch real estate investments will regularly become subject to Dutch corporate income tax as per 1 January 2024.

Under the current rules, a REIT is not subject to corporate income tax, but the mandatory annual distribution is subject to 15% Dutch dividend withholding tax. As not in all situations Dutch taxation can effectively be levied, the Dutch government now announced to introduce the rule that the REIT regime can no longer be applied by entities that invest directly in real estate, per 1 January 2024. No distinction will be made between Dutch real estate and non-Dutch real estate.

The Dutch government acknowledges that, in anticipation of these new rules, (non-listed) REITs may want to restructure their investments. The Dutch government mentions that REIT is in such case an important attention point and that it will be analyzed whether additional measures are needed in 2023 in this respect.

Further to the above, the REIT regime as such will continue to exist, but it will effectively be abolished for direct real estate investments. The changes to the REIT regime will be included in the Budget Plan of next year.

Budget Day Proposals

1. Change in RETT rate

The RETT rate will change as per 1 January 2023. The default RETT rate will increase from 8% to 10.4%. The lower RETT rate of 2% will continue to apply to natural persons who acquire residential real estate and use the house or apartment as a main residence to live there themselves. However, investors acquiring residential real estate fall in the higher default RETT rate.

In case of a transfer of 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 a condition subsequent (*Groninger akte*) may be an alternative to enable a completion of the transfer in 2022 subject to the 8% rate.

2. Change in the lower corporate income tax rate and bracket

The top CIT rate will remain at 25.8%, but the lower rate for the first bracket will be increased from the current 15% rate to 19% per 1 January 2023. Furthermore, this lower CIT rate will no longer apply to the first EUR 395,000 of profits (as applicable in 2022), but to the first EUR 200,000 of annual profits per taxpayer as per 1 January 2023.

3. Abolition landlord levy

The landlord levy will be abolished as per 1 January 2023. The abolition was already agreed in the coalition agreement of the government coalition parties and is intended to allow landlords to invest in the building, renovation and making sustainable of residential housing.

The amendment is not part of the Tax Plan 2023 but is arranged in a separate bill.

4. Transitional regime for passive real estate investments held by individuals (box 3)

The Dutch Supreme Court ruled in December 2021 that the current regime for taxation on savings and passive investments (e.g. real estate), which is based on a deemed composition of the investments and fictional rate of income, is not allowed. The Dutch government therefore intends to tax based on actual income, as per 1 January 2026.

In anticipation of these changes, the Dutch government now introduces a transitional regime for 2023, 2024 and 2025. Based on these transitional rules, there will be three relevant asset categories: bank balances, other investments and debts. Each category will have its own fictional rate of income. For bank balances and debts the fictional rate will be as close as possible to actual rates. For other investments, (e.g. real estate investments), it is proposed to continue with the way the fictional rate is currently determined (which resulted in a fictional rate of 5.53% for 2022). This rate will be determined on an annual basis.

5. VAT zero rate for solar panels on residential property

As of 1 January 2023, a zero VAT rate will apply to the purchase and installation of solar panels on a residential property. In most cases, this allows solar panels to be installed on homes without any VAT liabilities and related obligations. The zero rate only applies if the solar panels are installed on dwellings and outbuildings belonging to dwellings.

6. Amendments to the energy tax and the environmental tax

For information on the energy related tax measures that were published on Budget Day (Prinsjesdag) please see our article "[Dutch Budget Day - Proposals related to energy and environment](#)"

Status of the proposals

The proposals still need to be adopted by Dutch Parliament and thus may be subject to changes.

Legislation to come into effect as per 2023

In addition to the proposals noted above, a number of legislative proposals were already fully adopted and will come into effect automatically as per 2023. These are more related to personal dwellings.

1. Reduction of tax free gift for the purchase of an owner-occupied residence

Currently, it is possible to provide a gift of EUR 106,671 without gift or inheritance tax as long as the money is used for the purchase of an owner-occupied residence (freehold or leasehold), the buy-off of a leasehold or the settlement of a mortgage debt. This amount will be reduced to EUR 28,947 as per 2023 and will be fully abolished as per 2024.

2. Deduction of mortgage expenses related to a person's own residence further reduced

Furthermore, the deduction possibilities of mortgage expenses related to a person's own residence will be further reduced. The rate against which such expenses can be deducted is reduced in steps and as per 2023 the rate will be 37.05%.

Other changes announced as per 2024

1. Residential real estate

In April 2022, the Minister of Housing announced that the commencement rents in the mid-market sector (i.e. between approx. EUR 763 and EUR 1,000-1,250) will be regulated as per 1 January 2024. The Minister indicated that the respective draft legislation will be published in the fall of 2022. On Budget Day, no further details about the draft legislation were published. Instead, the Minister reiterated that it will update the Parliament on this subject in the fall of 2022.

This means that residential investors and developers are still awaiting answers to their questions on this upcoming regulation. Such as: (i) what will legally constitute the mid-market segment (from EUR 763 up to EUR 1,000 or up to EUR 1,250 or somewhere in between?); (ii) which method of regulation will be used (presumably by the housing valuation system (*woningwaarderingstelsel*), also known as the point system, with a surcharge on the applicable rents); (iii) will the points for the WOZ value of a mid-market residential unit also be capped; (iv) will there be any other changes to the point system; and (v) will the regulation also affect existing lease contracts (or only leases entered into as of 2024)? Furthermore, the maximum permitted annual indexation rate for residential rents in 2023 remains to be published.

2. Changes to substantial shareholding regime (box 2)

It has been announced that the tax rate for the substantial shareholding regime will be amended, i.e. will be divided in two brackets. A rate of 24.5% will apply to the first EUR 67,000 of income and 31% for the exceeding amount, per 1 January 2024. Currently, a flat rate of 26.9% applies. This is relevant for all individuals that derive income from entities (e.g. real estate entities) in which they hold a substantial interest (in principle more than 5%).

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