



Dutch Budget Day 2022: amendments with respect to employment taxes

On Budget Day 20 September 2022, the Dutch government sent the Tax Plan 2023 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 2023.

1. The 30%-ruling

Currently, the so-called 30%-ruling offers expats a tax-free notional allowance for extraterritorial expenses incurred due to working in the Netherlands for a Dutch withholding agent/employer. The allowance is calculated on the expat's total employment remuneration taxable in the Netherlands. The Tax Plan 2023 proposes a cap on the base for the computation of the 30%-allowance. This cap will be set at EUR 216,000 (i.e. the maximum remuneration for 2022 based on the Top Income Standardisation Act, in Dutch generally referred to as the "WNT"). The maximum remuneration under the WNT is expected to be higher in 2024, as this amount is linked to the development of contractual wage costs for the government.

Incidentally, employers and employees facing this measure can also opt for untaxed reimbursement of the extraterritorial costs actually incurred. No capping applies in this case. However, a choice must be made per calendar year between a tax-free reimbursement of the actual extraterritorial costs or application of the tax-free notional 30%-allowance. In any calendar year, only one of the two types may therefore apply.

The capping measure will take effect from 1 January 2024. However, as regards employees for whom a 30%-ruling applies in respect of the last pay period of 2022, the capping measure will only take effect as of 1 January 2026.

2. The travel allowance and allowance for working at home

The maximum tax-free travel allowance is EUR 0.19 per kilometer. If an employee travels by public transport, the actual costs may be reimbursed tax-free. The Tax Plan 2023 proposes to increase the amount to EUR 0.21 per kilometer from 1 January 2023. Furthermore, the Tax Plan 2023 proposes to further increase the amount to EUR 0.22 per kilometer from 1 January 2024. The home working allowance is not discussed in the Tax Plan 2023. It is therefore expected to be increased to EUR 2.13 per day from 1 January 2023, for inflation only, as indicated by the State Secretary of Finance in response to parliamentary questions on 29 August, last.

3. The required minimum salary for the 'director-major shareholder'

The amount of the salary of a substantial interest holder performing work for his company (in Dutch generally referred to as "DGA") must be set within certain limits. This is referred to as the 'customary wage'. For example, it may not be set more than 25% below the salary that, in short, is appropriate for the DGA's employment ('efficiency margin'). However, in the Tax Plan 2023, the government proposes to abolish this efficiency margin. As a result, in many cases the customary wage will be higher.

For innovative start-ups, special rules applied with respect to the customary wage scheme. The government has completed an evaluation of the customary wage scheme for innovative start-ups. As the scheme proved to be ineffective, the Tax Plan 2023 proposes to abolish the special rules for the customary wage scheme for innovative start-ups. Transitional rules will apply if the DGA of an innovative start-up uses the special scheme before 1 January 2023. The conditions applicable before 1 January 2023 will then continue to apply to this DGA for the remaining period during which he/she was entitled to apply the special scheme.

4. The discretionary tax-free budget in the work-related costs scheme

Currently, the discretionary tax-free budget (*vrije ruimte*) per employer is 1.7% of the aggregate taxable wage bill of all employees of the relevant employer, insofar as this wage bill is less than EUR 400,000, plus 1.18% of the wage bill insofar as it exceeds EUR 400,000. Due to inflation, employers' costs for allowances and benefits in kind to employees have increased, while salaries have not increased equally. Therefore, the Tax Plan 2023 proposes to increase the rate for the first bracket of the wage bill from 1.7% by a rate of 0.22%.

5. Change of taxable moment employee stock option benefits

Under current legislation, employee stock option benefits are taxed upon exercise of the stock option rights, in other words, upon conversion of the stock option rights into shares. However, on the moment of exercise, the employee may not have (sufficient) liquid assets available to pay the tax due if the shares acquired are not tradeable. This makes it less attractive to use stock option rights as an employee incentive. In the start-up and scale-up sector in particular, where shares are often not (yet) tradeable, stock option rights are regarded as a tool to attract and retain staff.

As part of last year's Budget Day proposals, a bill was submitted to Parliament – currently still pending with the Dutch Senate – which shifts the taxable moment from the moment of exercise to the moment on which the shares acquired become tradable. After all, only from that moment on, part of the shares acquired upon exercise of the option rights can be sold to enable the employee to pay the tax due. Since, from case to case, a lack of liquidity may not be an issue, the bill offers an (optional) alternative to the employee. Subject to conditions and at the discretion of the employee, the tax will then be due upon exercise, as it still is today.

6. Reporting obligation payments to free-lancers

Companies have an obligation to report payments made to freelancers and self-employed, natural persons engaged by the company, to the Dutch Tax Authorities (DTA). Arguably, this obligation only applies upon specific request of the DTA. The digital reporting must take place in the month of January of the following year.

As of January 2023, a new set of rules will apply to the reporting obligation. This means it will be into effect with respect to payments made in the year 2022. It will apply not only to the payments for work or services performed for the Dutch wage tax withholding agent which contracted the natural person, but also for work or services performed for a company affiliated with the contracting withholding agent.

An exception applies to withholding agents for Dutch wage tax withholding agents if the freelancer or self-employed person has issued an invoice with Dutch VAT for his services and the invoice complies with the 1968 Turnover Tax Act 1968.

For some situations, it is not yet clear as to whether this exemption applies, e.g.:

- entrepreneurs who do not charge VAT because they are entitled to the VAT exemption for “small business scheme” (KOR);
- entrepreneurs who provide VAT-exempt services and therefore do not charge VAT.

If the reporting obligation applies, the following information must be submitted to the DTA before 1 February of the following year:

- the citizen service number;
- the name, address and date of birth of the payment recipient;
- the amounts paid in the calendar year, including any expense allowances.

7. Changes in avoidance of double taxation for Dutch resident board members

The board member fee paid by a foreign company to its Dutch tax resident statutory board member or supervisory board member is taxable in the Netherlands for personal income tax (PIT) purposes, based on national tax law. However, tax treaties generally allocate the right to levy tax to the country of residence of the company. For avoidance of double taxation, most tax treaties provide for a credit of the tax paid in the other country against the Dutch PIT.

Instead of a foreign tax credit, for many years the Dutch State Secretary of Finance has approved (subject to certain conditions) that board members claim an exemption for Dutch PIT purposes for their foreign board member fee. This approval will end as of 1 January 2023.

If the tax treaty provides that a tax credit applies for avoidance of double taxation for a board member fee, in the end, the board member fee will be taxable at the highest applicable tax rate of the two countries involved. For many Dutch tax resident members of the board of a foreign company this will, on balance, lead to a higher PIT on their foreign board member fee. The withdrawal of the approval will have no effect on situations where the tax treaty provides for an exemption for avoidance of double taxation.

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