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# Shipping Update

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## Shipping Update

Our annual shipping update summarizes the most relevant Dutch and international tax developments for the shipping & offshore service industry during the past year.

This edition of the update provides you with a brief overview of relevant corporate tax, value added tax and wage tax/social security developments for the shipping & offshore sector in the Netherlands for the year 2024. It moreover highlights some relevant EU and international developments for the shipping & offshore sector.

# 1. Corporate income tax

## 1.1 Corporate income tax rates

The Dutch corporate income tax (“**CIT**”) rates for 2024 are as follows:

Taxable amount	CIT rate 2024
< € 200.000	19%
> € 200.000	25.8%

## 1.2 No national exemption to the EU/EEA flag requirement in 2024

One of the conditions for applying the Dutch tonnage tax regime to a vessel that is owned, co-owned or held in bareboat charter and for which the taxpayer performs the management to a substantial degree in the Netherlands, is that the vessel flies an EU/EEA flag. The national exemption to this flag requirement applies if it has been determined by ministerial regulation that the percentage of net tonnage of vessels qualifying for the tonnage tax regime and that fly an EU/EEA flag with respect to the total net tonnage of vessels qualifying for the tonnage tax regime in a certain period (at national level) has not decreased using a three year average compared to the previous period.

Since this average appears to have gone down, the national exemption of the EU/EEA flag requirement will not be applicable in 2024. The last time the national exemption of the EU/EEA flag requirement applied was in 2021.

As a result of the above, vessels added to the fleet during this calendar year are required to fly an EU/EEA flag, unless the taxpayer can invoke one of the other two exemptions to the EU/EEA flag requirement (i.e. the ‘non-decrease’ test or the ‘60% test’).

As per the introduction of the flag requirement in 2006, the national exemption to the flag requirement applied for the years 2006, 2007, 2008, 2012, 2014, 2015 and 2021.

## 2. Knowledge group positions regarding shipping

The Dutch tax authorities (“**DTA**”) recently published helpful knowledge group positions (*kennisgroepstandpunten*; “**KG Positions**”) on the application of the Dutch tonnage tax regime, as summarized below. These KG Positions have been published as part of the DTA’s recent policy to make the views of its internal knowledge groups publicly available. The KG Positions contain the DTA’s position on the tax aspects of specific issues that were presented to the knowledge groups.

KG Position	Summary
<u><a href="#">KG:011:2023:6</a></u> <b>Tonnage tax regime - definition “sea”</b>	Waters, such as bays, inlets and coastal waters, located beyond the low-water mark of the coast, that qualify as inland waters for purposes of UNCLOS, qualify as “sea” within the meaning of the Dutch tonnage tax regime.
<u><a href="#">KG:011:2023:2</a></u> <b>Tonnage tax regime – definition “vessel”</b>	Being granted a sea certificate (zeebrief) is not required to qualify as a “vessel” within the meaning of the Dutch tonnage tax regime.
<u><a href="#">KG:011:2023:3</a></u> <b>Tonnage tax regime - concept of “transport by sea” - short time at sea</b>	Transport from a Dutch port to a foreign port, whereby only a limited part of the route is sailed by sea, is regarded as “transport by sea” for the entire route.
<u><a href="#">KG:011:2022:11</a></u> <b>Application of the Dutch fiscal unity and tonnage tax regime</b>	The grammatical interpretation of the legal texts regarding the fiscal unity and tonnage tax regime prevail over the 10-year waiting period in the tonnage tax regime. As such, it is possible for a newly established fiscal unity to request for the application of the tonnage tax regime, even if the 10-year waiting period of (one of) the recently included subsidiaries of the fiscal unity has already started.

## 3. Globe rules

### 3.1 Dutch Implementation Act

On 20 December 2023 the Dutch act to implement EU Directive 2022/2523 (**EU Pillar 2 Directive**)<sup>1</sup> in view of the OECD's Global Anti-Base Erosion Rules (**GloBE Rules**) was enacted by the Dutch Parliament. The Dutch Minimum Tax Act 2024 follows quite closely the GloBE Rules and the EU Directive. The GloBE Rules aim to ensure a minimum 15% effective tax rate in each of the jurisdiction where an in-scope multinational group operates. The GloBE Rules, EU Pillar 2 Directive and the Dutch Minimum Tax Act 2024 - amongst others - include a carve out for qualifying shipping activities meeting all conditions.

This shipping carve-out however, comes with some unclarities when comparing existing EU and non-EU shipping tax regimes with the shipping carve-out. Examples hereof are the definition of 'international traffic', the various types of offshore services vessels qualifying for the shipping carve-out and the substance requirement that needs to be met. During the Dutch parliamentary process, those unclarities are not clarified by the legislator. It, therefore, remains to be seen to what extent the DTA will want to clarify those unclarities by a public decree or on a case by case basis.

### 3.2 EU court case (T-143/23)

On 15 December 2023, the EU General court declared Fugro N.V. inadmissible to the court in its action for (partly) annulment of the EU Pillar 2 Directive regarding some elements of the shipping carve-out. Focusing solely on the admissibility of the case, the general court unfortunately did not address any of the material grounds of the case. On the admissibility issue, the general court takes a very conservative approach, thereby neglecting openings by the EU Court of Justice in recent court cases to take a broader approach on the admissibility. For that reason, it seems likely that this decision will be appealed with the EU Court of Justice.

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<sup>1</sup> Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

## 4. Value added tax

### New VAT policy decree on 0% Dutch VAT rate

The Dutch Ministry of Finance published an update of its VAT policy decree regarding the 0% Dutch VAT rate. The new VAT policy decree includes, inter alia, updated guidelines on the 0% VAT rate for supplies of goods and services related to sea going vessels and will enter into force as of 1 April 2024. The updates do not seem to materially change the scope of the 0% VAT rate for sea going vessel transactions compared to the previous version of the VAT policy decree.

The updated VAT policy guidelines also mention examples of services that are subject to the 0% VAT rate for services related to sea going vessels. The VAT policy decree further clarifies when the 0% VAT rate applies to exports of pleasure crafts and provides updated standard declarations for customers that export pleasure crafts themselves 'on their own keel'.

## 5. EU and international developments

### 5.1 Expansion of the EU Emissions Trading System to maritime transport as of 2024

In April 2023, the European Parliament formally adopted a legislative proposal to reform and extend the EU Emissions Trading System (“**EU ETS**”) to maritime transport as from 2024. This proposal is part of the Fit for 55 package (“**FF55**”) presented by the European Commission in July 2021, aiming to achieve the EU’s climate ambitions. These ambitions include a reduction of net greenhouse gas (“**GHG**”) emissions of at least 55% by 2030 compared to 1990 levels and becoming climate neutral by 2050.

The EU ETS is the EU’s key instrument to mitigate carbon emissions and is based on the “polluter pays” principle. It functions as a so-called “cap-and-trade” mechanism, where “cap” refers to the total number of emission allowances in circulation and “trade” refers to the market as the place where allowances are exchanged. Emission allowances are either allocated free of charge, bought directly from other installations or via auctions and allow their owner to emit certain amounts of GHG. The FF55 reform tightens the current EU ETS and introduces a separate system in relation to fuel distribution for commercial road transport and buildings. Moreover, the scope of the EU ETS will be gradually extended to maritime transport from 2024 to 2026.

#### **Relevant emissions**

As of 1 January 2024, shipping companies are required to compensate (part of) their emissions with emission rights under the EU ETS. For the year 2024 this will apply to 40% of CO<sub>2</sub> emissions, after which this percentage will increase to 70% in 2025. Methane and nitrous oxide emissions will be added in 2026. As from 2026, the EU ETS will apply to 100% of CO<sub>2</sub>, methane and nitrous oxide emissions by shipping companies.

#### **Scope**

Emissions from ships sailing between EU ports, or between ports within an EU member state, are fully covered by the EU ETS. Ships sailing from an EU port to a port located outside the EU fall into the EU ETS for 50%. EU member states with a relatively high number of maritime companies registered, including the Netherlands, may be allocated additional allowances that can be put up for auction. Compensation of allowances through carbon dioxide removal technologies and methods, such as planting a forest, is not (yet) possible.

The EU ETS applies to most large vessels, regardless of the flag they fly. Starting in 2024, the EU ETS affects cargo and passenger ships of or above 5000 gross tonnage. From 2025, offshore vessels bigger than 5000 gross tonnage will be included in the EU regulation for monitoring, reporting and verification (“**MRV**”) of CO<sub>2</sub> emissions from maritime transport, while being introduced in the EU ETS as of 2027. In addition, general cargo vessels and offshore vessels between 400 and 5000 gross tonnage will also be included in the MRV regulation as of 2025. However, in 2026 it will be reviewed whether these vessels will also be included in the EU ETS.

### Formal obligations

Maritime companies will have to apply to the Dutch Emissions Authority (“**Nea**”) in relation to the new EU ETS obligations. These obligations include:

- emissions permit;
- annual monitoring plan;
- account in the EU ETS registry;
- emissions report (to be filed no later than 31 March 2025 for the year 2024);
- activity report (to be filed no later than 31 March 2025 for the year 2024, provided the maritime company qualifies for free allowances);
- emission allowances (to be surrendered no later than 31 April 2025 for the year 2024, but based on the preliminary EU agreement this may become 30 September 2025).

## 5.2 OECD Consultation on new offshore clause in OECD Model Tax Convention

Many tax treaties contain special PE-provisions (so-called “30 days”-rule) for activities in connection with the exploration and exploitation of extractible natural resources (offshore activities). Up till now a model for such provisions was not reflected in the OECD Model Tax Convention. On 16 November 2023 the OECD issued a public consultation for such model provision (as an optional provision). The model provision follows the line of special PE-provisions already concluded in many tax treaties. It seems, therefore, likely that the proposed model provision with some amendments will be introduced in the next update of the OECD Model Tax Convention. The impact on the Dutch tax treaty policy seems rather limited, due to the fact that such model provision is already part of the Dutch tax treaty policy since many years and its scope in recent Dutch tax treaties is even broader than the model provision proposed by the OECD in the consultation document.



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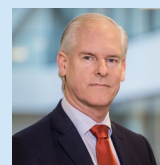
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