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Dutch Budget Day 2022: what are the relevant tax measures for corporates?

On 20 September 2022 (Budget Day 2022), the Dutch Ministry of Finance submitted the 2023 Dutch Budget to parliament containing the tax plans for 2023 and future years (Tax Plans 2023).

The most relevant proposals for corporate taxpayers include a substantially increased budget for environmental investment deductions and a decreased threshold of the lower bracket of the corporate income tax combined with an increase of the applicable rate for this bracket.

Below these and some other measures are described in more detail. All measures will, if adopted by parliament, enter into force per 1 January 2023, unless indicated otherwise below.

Tax Plans 2023

Corporate income taxation

Reducing threshold and increase of the rate of the first corporate income tax bracket
The lower bracket will be reduced from EUR 395,000 to EUR 200,000. The tax rate for this lower bracket will be raised from 15% to 19%. Profits exceeding EUR 200,000 will be taxed at the general corporate income tax rate that will remain 25.8% (for 2023).

Announced abolishment of direct real estate as qualified investment for fiscal investment institutions
Under certain conditions, a company qualifies for the fiscal investment institution regime (*FBI-regime*) resulting in a 0% corporate income tax rate and a mandatory annual distribution subject to 15% Dutch dividend withholding tax. As of 1 January 2024, *direct* investments in real estate will no longer be an allowed investment, which would result in losing the fiscal investment institution status. A fiscal investment institution can hold an *indirect* investment in real estate owned by a regular taxpayer. Other measures in view of this abolishment are still under consideration, e.g. a real estate transfer tax (RETT) reorganisation facility.

Energy related tax measures

Temporary increase of certain mining levies

The government will soon publish a proposal to increase a specific mining levy for extraction companies in the oil and gas sector for the years 2023 and 2024. This temporary levy aims to tax revenue realised with the sale of natural gas at a price exceeding EUR 0.50 per m3.

Budget for energy and environmental investment deductions substantially increased

The annual budget for the energy investment deduction will be increased with EUR 100 million and the annual budget for the environmental investment deduction will be increased with EUR 50 million. An evaluation of both deductions will be published early 2023 and may lead to a reconsideration of these budgets as of 2024.

For further information on the energy related tax measures as part of the Tax Plans 2023, we refer to our website post of 20 September 2022: Dutch Budget Day – proposals related to energy and environment

Real estate transfer tax / landlord levy

Increase real estate transfer tax rate

The default RETT rate will be increased from 8% to 10.4% as of 2023. The RETT rate for residential real estate that will serve as the main residence will remain 2%. Under certain conditions a 0% rate may apply if an individual acquires a first dwelling.

Abolishment landlord levy

The landlord levy will be abolished as of 1 January 2023.

Wage taxation

Amendments expatriate regime

The basis for the calculation of the 30%-allowance will be reduced per 1 January 2024 to a maximum amount of EUR 216,000. A transitional regime applies for employees who already applied the 30%-ruling in 2022. These employees will be affected by this new rule only as of 1 January 2026.

Increase of travel allowance

The maximum of the tax-free travel allowance currently amounts to EUR 0.19 per kilometer. It is proposed to increase this maximum to EUR 0.21 per 1 January 2023 and further to EUR 0.22 per 1 January 2024.

Other tax proposals entering into force per 1 January 2023

Tailor-made solutions for tax interest calculation in certain situations

The current tax interest regime can in certain situations result in an unfair outcome. A measure is proposed that will allow for tailor-made solutions of this tax interest calculation. This proposal is currently pending at the Second Chamber of Parliament.

Abolishment early payment discount preliminary corporate income tax assessments

The early payment discount for preliminary corporate income tax assessments will be abolished. This abolishment was already announced in 2019 but could not be implemented earlier due to capacity issues at the tax administration. If adopted, this measure applies to preliminary tax assessments issued on or after 1 January 2023.

Taxation of employee stock options

Currently, employee stock options are taxed at the moment these options are exercised and against their value at that moment. If the acquired shares cannot be sold upon exercise, this may give rise to liquidity problems. On the basis of a tax proposal submitted to parliament on Budget Day 2021 the taxable moment will shift to the moment the shares acquired upon exercise can be sold. On request and subject to certain conditions, an employee may opt to change the taxable moment to the moment the options are exercised. This tax proposal was already adopted by the Second Chamber of Parliament and will, if adopted by the First Chamber of Parliament in 2022, become effective as of 2023.

Avoidance of double taxation for Dutch resident (supervisory) board members

For the avoidance of double taxation, most tax treaties provide a credit of the tax paid in the source country against the Dutch personal income tax due. Nevertheless, the Dutch state secretary of Finance allowed (supervisory) board members to claim a tax exemption. This approval will end as of 1 January 2023 which implies that in most cases only a credit will be available resulting in a higher tax burden on such (supervisory) board member fees. The withdrawal of this approval will have no effect on situations covered by tax treaties allowing for a tax exemption.

Other relevant tax developments

Reinforcement of action against dividend stripping

On 15 July 2022, the state secretary sent a letter to parliament describing possible additional measures against dividend stripping. The government is still reviewing a combination of one or more additional measures, taking into account the outcome of a currently ongoing Supreme Court case. Furthermore, additional measures might be taken that target pension funds engaged in dividend stripping. Any measures will be introduced as of 2024 at the earliest.

Entity classification rules

In 2021, the Netherlands proposed to overhaul its tax classification rules for Dutch and foreign entities such as limited partnerships (see our tax flash of 30 March 2021). The related legislative proposal can be expected in the second quarter of 2023 with an envisaged entry into force per 1 January 2024.

We will keep you informed on further developments. Should you have any questions with respect to the above, please contact your trusted adviser.