



Our annual shipping update summarizes the most relevant Dutch and international tax developments for the shipping & offshore sector 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. It moreover highlights some relevant EU and international developments for the shipping & offshore sector.

1. Corporate tax

1.1 Corporate income tax rates

The Dutch corporate income tax (“CIT”) rates for 2023 are as follows:

Taxable amount	CIT Rate 2023
≤ EUR 200,000	19%
> EUR 200,000	25.8%

As per 1 January 2023, the threshold of the lower bracket of the CIT was decreased from EUR 395,000 to EUR 200,000. Moreover, the applicable tax rate for this bracket was increased from 15% to 19%.

1.2 No national exemption to the EU/EEA flag requirement in 2023

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 2023. 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. Evaluation report on tax schemes for the maritime sector

On 5 September 2022 the long-awaited evaluation report on the three Dutch tax schemes for the maritime sector (tonnage tax regime, wage tax reduction and random depreciation) ("the **Report**") was published.

In the Report it was mentioned that the three tax schemes have a broad objective: strengthening the maritime cluster, promoting employment linked to sailing under a Dutch flag and strengthening the Dutch competitive position. These objectives are in line with the Dutch maritime strategy, which aims to achieve a top position for the maritime cluster in the Netherlands.

The Report concludes that the tonnage tax regime and the wage tax reduction for seafarers are effective and efficient. This conclusion is based on interviews with a representative group of maritime parties, and figures regarding the international competitive position of the Dutch maritime sector. However, the effectiveness of these tax schemes cannot be demonstrated statistically. The Report moreover concludes that random depreciation on seagoing vessels is hardly used and therefore ineffective.

The Report concludes with 6 major findings and recommendations:

1. The total amount of vessels sailing Dutch flag has decreased over the tested period (2014 – 2019), which raises serious questions about the competitiveness of the Dutch registry;
2. The amount of cargo carriers has decreased and instead the amount of offshore service vessels has increased. This finding raises the issue whether the Dutch shipping tax schemes are still up-to-date with respect to the specific type of vessels that can qualify for these shipping tax schemes;
3. The shipping sector has indicated that the Dutch tax authorities have shifted the last years to a strict interpretation of the legal rules, which is sometimes against the objectives of the Dutch tax legislation which is based on the EU Maritime State Aid Guidelines;
4. The effects of the tax schemes are very difficult to quantify due to lack of data (both national as international). The clear recommendation is, therefore, given in the Report to start the gathering of relevant data on both levels;
5. Changes to the wage tax facility contain the risk that the EU Commission will require the Netherlands to give up the Dutch flag link (change to EU/EEA-link as in the tonnage tax regime);
6. Not only the competitiveness of the Dutch tax schemes or Dutch registry towards other EU Member States is at stake, but also the competitiveness of EU Member States' schemes and registries towards states outside the EU. Such issues can best be addressed on an international level (joint EU-approach).

Based on the outcome of the Report and current budget constraints the Dutch government has no current plans to adjust the tax schemes. However, the State Secretary of Finance and the Minister of I&W (Dutch: "*Minister van Infrastructuur en Waterstaat*", hereafter: "the **Minister**") will start discussions with the shipping industry to see what is possible in the longer term to maintain the attractiveness of the Netherlands and the Dutch flag for the shipping industry.

With regard to connecting the current schemes to broader activities of the maritime sector and whether the schemes need to be improved (findings 2 and 3), the Minister will start discussions with the State Secretary of Finance and the Dutch Tax Authorities to what extent the recommendations can be followed-up.

3. Value added tax

3.1 0% VAT rate for sea going vessels will not apply to jack-up drilling rigs as of 2023

As per 1 January 2023, the Dutch 0% value added tax (“**VAT**”) rate for sea going vessels will no longer apply to jack-up drilling rigs.

Based on amended Dutch VAT policy, as of that date, jack-up drilling rigs will not be considered sea going vessels anymore. This amended policy follows from the “Grup Servicii Petroliere” ruling of the EU Court of Justice (“**ECJ**”) that a ‘sea going vessel’ must be used for navigation on the high seas and should therefore not be in a predominantly stationary position. This restriction of the 0% VAT rate may result in companies having to charge Dutch VAT where this would not be the case in 2022. Businesses that are operating in the shipping sector should assess the VAT consequences of these changes in more detail (e.g. ERP-system / invoicing).

4. EU and international developments

4.1 OECD Pillar Two

On 24 October 2022, the Netherlands launched a public consultation on the draft bill to implement Pillar Two per 31 December 2023 (“**Draft Pillar Two Act**”).¹ At that timepoint there was still not an unanimous agreement on the draft EU Directive with the Pillar Two model rules for EU Member States (“**EU Directive**”). However, on 12 December 2022, the Council of EU Member States announced that such unanimity was reached², which forces EU Member States to implement the Pillar Two Implementations acts per 31 December 2023. The Draft Pillar Two Act follows quite closely the OECD GloBE-rules and the EU Directive. For that reason, also a shipping carve-out is contained, however, with the same inconsistencies with existing EU and non-EU shipping tax regimes as contained in the OECD GloBE-rules and the EU Directive (e.g. with respect to the definition of international traffic, various types of offshore service vessels, and ship management). Both the Royal Dutch Shipping Association (“**KVNR**”) and some other organizations (like the Dutch Association of Tax Advisers; “**NOB**”) have sent submissions to the public consultation focusing on those inconsistencies and suggesting changes to the text of the draft law or its commentary. It remains to be seen whether these inconsistencies will be adapted before the Draft Pillar Two Act will be brought into Dutch parliament.

4.2 EU Parliament and Council reach provisional agreement to include maritime transport in EU ETS

In December 2022, the European Parliament (“**EP**”) and the Council reached a provisional agreement on the reform of the EU Emissions Trading System (“**ETS**”) and the introduction of a Carbon Border Adjustment Mechanism (“**CBAM**”). Apart from tightening the current ETS and introducing a separate EU ETS system in relation to fuel distribution for commercial road transport and buildings, the scope of the EU ETS will be extended to maritime transport.

¹ Global Minimum Taxation (Pillar 2) | Loyens & Loeff (loyensloeff.com)

² EU set to implement Pillar Two by end of 2023 | Loyens & Loeff (loyensloeff.com)

These legislative proposals are part of the Fit for 55 package (“**FF55**”) that was presented by the EC in July 2021, aiming to achieve the EU’s climate ambitions as laid down in the European Climate Law. The EU’s climate 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 used 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 EP and Council agreed to introduce shipping companies gradually into the scope of the EU ETS. Shipping companies will be obliged to surrender emission allowances for 40% of their verified emissions in 2024 with an increase to 70% of their verified emissions in 2025. As from 2026, shipping companies should be fully integrated in the EU ETS and will have to surrender emission allowances for 100% of their verified emissions. It was agreed that most large vessels will be included in the EU ETS. From 2025, offshore vessels bigger than 5000 gross tonnage will be included in the EU regulation for monitoring, reporting and verification (“**MRV**”) of CO2 emissions from maritime transport, while being introduced in the EU ETS from 2027. In addition, general cargo vessels and off-shore vessels between 400 and 5000 gross tonnage will also be included in the MRV regulation from 2025. However, in 2026 it will be reviewed whether these vessels will be included in the EU ETS. Compared to the EC proposal which only included CO2 emissions, the EP and Council further agreed to include methane and N2O emissions in EU ETS from 2026 (and in the MRV regulation from 2024).

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