TAX ALERT | DUTCH GOVERNMENT PUBLISHES 2023 TAX PACKAGE

30 SEPTEMBER 2022

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On 20 September 2022 on the occasion of Budget Day the Dutch government presented its 2023 Tax Package.

We already informed you about the expected changes by way of our tax alert dated 13 September (https://www.burenlegal.com/en/news/tax-alert-tax-measures-expected-dutch-budget-day-2022)

Please find below the main highlights of the proposed tax measures that are relevant for companies and entrepreneurs doing business in or with the Netherlands, with a special focus on new developments. Also, certain other legislative proposals are summarized which are expected to enter into force on 1 January 2023 or 1 January 2024.

Corporate income tax

Increase of CIT rate for SME

In 2022, the Dutch corporate income tax (CIT) rate is 15% for taxable profits up to and including EUR 395,000 and 25.8% for taxable profits exceeding this amount. The bracket limit of the lower rate will be reduced to EUR 200,000 and the CIT rate over the lower bracket will be increased to 19% on 1 January 2023. The CIT rate for taxable profits exceeding this amount will remain 25.8%.

Changes to REIT regime

As per 1 January 2024, REITs (FBI's - fiscale beleggingsinstellingen) will no longer be allowed to invest directly in real estate. As a consequence, profits derived by REITs from Dutch real estate investments will be subject to Dutch CIT as per 1 January 2024.

Personal income tax (PIT)

Changes box 2 rules

The PIT rules of the so-called substantial interest holders of box 2 shall change. In short, this relates to individuals holding at least 5% of (a certain class of) shares, either on their own or together with certain others. As of 2024, box 2 is expected to have two brackets. The first EUR 67,000 of taxable income will be taxed at a rate of 24.5% and any excess will be taxed at a rate of 31%. The current rate in box 2 is 26.9%.

Changes box 3 rules

A Dutch tax resident individual is subject to PIT in box 3 in respect of investment income (including share interests of less than 5% and real estate which is not used as the residential home (and not derived in the form of an enterprise) of the taxpayer). The tax basis is in principle determined on the value of all investment assets minus debts for the fair value on 1 January each year. In view of case law, the determination of taxable income based on deeming provisions is not allowed. As of 2026, a new box 3 regime will be introduced in which the taxable income will be based on actual income. In the meantime, a transitional regime applies based on certain deeming provisions which resemble as much as possible the actual income.

Payroll tax

It is proposed to maximize the basis for the calculation of the extraterritorial allowance (also known as 30% allowance or 30% ruling) to the maximum amount under the Standards for Remuneration Act (EUR 216,000 in 2022).

In addition, the so-called customary wage rules will be amended. The customary wage rules require a substantial shareholder performing services for his company to pay a minimum salary. For 2022 the customary wage amounts to the highest of the following amounts (i) € 48,000 (ii) 75% of the wage for the most similar position (iii) the highest wage of the employer or the group of companies of the employer. As per 1 January 2023, the condition under (ii) will be changed to 100% of the wage for the most similar position.

Real estate transfer tax (RETT)

Increase of RETT rate

The general RETT rate will be increased from 8% to 10.4% as of 2023. The RETT for residential properties that will serve as the principal residence for the individuals purchasing such property will remain 2% (and 0% in specific situations).

Other rules which enter into effect on 1 January 2023

Draft law on excessive borrowing

Besides the proposals sent on Budget Day, also other legislative changes will enter into effect on 1 January 2023 which are relevant for CIT payers involved in cross border corporate structures such as the law on excessive borrowing from a private company. At the moment a shareholder with a substantial shareholding in a Dutch company may take a loan from this company without paying PIT in box 2. Under

the latest version of this legislation – which can still be subject to change – a Dutch company that directly or indirectly provides a loan receivable exceeding EUR 700,000 to a shareholder holding a substantial shareholding in such creditor, will be deemed to distribute a hidden dividend distribution in the amount of the loan receivable exceeding EUR 700,000.

Other rules which enter into effect from 1 January 2024 onwards

Conditional withholding tax
The scope of the conditional withholding tax (CWT) will apply to distributions (e.g. dividends) on 1 January 2024. In addition, the CWT will apply to certain tax treaty jurisdictions.

Exit tax for Dutch DWT purposes
Based on a draft law which is currently discussed in Dutch parliament, exit taxation rules may be included in the Dutch dividend withholding tax (DWT) Act 1956. Since the Dutch government does not support this bill, it is likely that this draft law will not be enacted.

Changes transparency rules for partnerships
A highly criticized draft legislation was published for consultation changing the criteria determining the qualification of Dutch CVs and foreign entities as “transparent” or “non-transparent” for Dutch tax purposes in 2021. Under the proposed rules, Dutch CVs would always be treated as transparent entities for Dutch tax purposes. In other words, the so-called consent requirement (based on which the transparency depends on whether or not both the admission and change of partners are subject to the approval of all partners) would no longer be relevant. This change would also be relevant for the qualification of foreign entities that are comparable to a CV, such as a foreign limited liability partnership. Such foreign partnerships would be treated as transparent for Dutch tax purposes as well. Based on the legislative proposal, the general partner of a non-transparent CV would be deemed to have transferred its assets on the moment directly prior to the conversion from a non-transparent entity to a transparent entity. In view of the reactions obtained in the consultation process the proposal is currently subject to review and most likely change. It is now expected that the new legislation will be published in Q3 2023 and will apply from 1 January 2024 onwards.

Dutch dividend stripping rules
Recently, draft legislation has been published for consultation aimed to make the Dutch anti-dividend stripping rules stricter. The new rules are expected to apply not before 1 January 2024.

Take away

In the past years significant legislative changes have taken place in Dutch tax laws aimed at preventing the use of artificial structures and arrangements and anti-tax avoidance. At the same time, the Dutch government tries to improve the business climate for companies with operational activities in the Netherlands by reducing the tax rates in order to benefit companies. The tax measures as described above are in line with these developments.

We recommend assessing whether your structure meets the current and future requirements. If you have any questions regarding the above, please do not hesitate to contact us.

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