# NETHERLANDS
# Budget Day 2023 update

**Introduction**

On Tuesday September 20th 2022, the Cabinet presented their Tax Plans for 2023. Below you will find a high-level overview of the matters from the Tax Plans. Note that all matters are still proposals and subject to parliamentary discussions. Hence, they may see some changes. Final voting into law is expected early December.

## 1. Corporate Income Tax ("CIT")

CIT rates

The top CIT rate will remain at 25.8% in 2023. However, the step-up rate will be increased from 15.0% to 19.0%. Moreover, this step-up rate will only apply up to a taxable amount of €200,000, compared to €395,000 in 2022. Below you will find a comparison with the applicable rates and step-ups.

| Year | 2022 | 2023 |
|---|---|---|
| Step-up rate | 15.0% for <395,000 EUR | 19.0% for <200,000 EUR |
| Top rate | 25.8% for >395,000 EUR | 25.8% for >200,000 EUR |

Real estate fiscal investment institutions ("FBI's")

As of 1 January 2024, a CIT measure will prevent fiscal investment institutions (FBI's) from investing directly in real estate (in the Netherlands or abroad). An FBI can still hold real estate indirectly through e.g. via a regularly taxed company.

An FBI is taxed at a CIT rate of 0%. The income from the investments of the FBI is taxed at the level of the participants, as the FBI is generally required to distribute its profits to the participants every year. These profit distributions are subject to 15% dividend withholding tax. In situations with foreign investors, the taxing right on Dutch real estate income held by FBI's cannot always be (fully) effected; the same goes for foreign investors holding Dutch real estate, and claiming FBI status. Hence, as of 1 January 2024, a company may no longer directly invest in real estate in order to qualify for the FBI regime.

**Taxand's Take**

It is expected that certain real estate FBI's will restructure before the implementation of the measure to avoid independent CIT liability. Real estate transfer tax ("RETT") may be payable on such restructurings. The government will examine whether it is desirable and possible to take accompanying measures for this purpose, with Dutch pension funds specifically mentioned. For FBI's owning direct real estate we recommend to consider restructuring options.

## 2. Personal Income Tax

Introduction of two rates for Box 2

Currently, Box 2 only has a single tax rate of 26.9%. As of 2024 two tax brackets will be introduced. The first EUR 67,000 of Box 2 income will be taxable at a rate of 24.5%, whilst the excess will be taxed at a rate of 31%. These amounts apply per person.

| Year | 2022 | 2024 |
|---|---|---|
| Step-up rate | 26.9% | 24.50% for < EUR 67,000 |
| Top rate | 26.9% | 31% for >EUR 67,000 |

With introducing a progressive tax rate in Box 2, the government tries to encourage substantial interest holders to distribute dividends on an annual basis.

Restoration of rights and bridging legislation in Box 3

*i. restoration of rights*

On 24 December 2021, the Dutch Supreme Court ruled that the investment yield tax system ("Box 3"), which is in effect since 2017, is in contravention with various provisions of the European Convention on Human Rights. Compensation will be offered to taxpayers who participated in the mass objection proceedings and for taxpayers whose income tax assessments for the years up to 2021 had not been irrevocably established on 24 December 2021.

For the years 2017 up to and including 2022, income from savings and investments in Box 3 will be calculated based on an actual distribution of savings and investments, instead of the contradictory fictitious distribution. The return on savings is calculated using the average interest rate on savings in the year in question. For debts, it is the average interest rate on outstanding mortgage debts. The flat-rate return in the category investments has remained unchanged.

For a long period of time, it remained unclear whether non-appealers would be eligible for (ex officio) compensation. On Budget Day, the final decision has been to not compensate taxpayers that did not make objection against their income tax assessment for the years prior to 2021.

*ii. bridging legislation*

As of 2023, bridging legislation will apply until a new Box 3 system, based on actual yields instead of notional income, becomes effective. The bridging legislation is based on the solution that has been chosen for the restoration of rights for the period 2017 to 2022 as described above.

As the reference date is 1 January, it may seem attractive to transfer investments to a savings account prior to the reference date. In order to avoid this kind of arbitration, it is expected that an arbitration period of three months will be included in the bridging legislation. This means that transactions done between 1 October and after 31 March will be considered to be done for tax reasons. At the request of the tax inspector, the taxpayer must be able to demonstrate plausibly that there were no tax motives.

In the Tax Plan 2023, the cabinet announced that the new Box 3 system can be introduced in 2026, instead of 2025 as earlier communicated. It is expected that the starting point will be taxation based on the actual return.

Furthermore, the tax-free allowance in Box 3 will be increased to € 57,000 (2022: € 50,650). In addition, the government proposed to increase the Box 3 rate gradually from 32% in 2023, to 33% in 2024 and 34% in 2025.

Legislative proposal excessive current account debts of substantial shareholders

Not part of the 2023 Tax Plan, but of much relevance is that the legislative proposal for excessive debts of substantial shareholders has been adopted by the House of Representatives ('Tweede Kamer') on 13 September 2022.

Under the legislative proposal, substantial shareholders in Dutch companies (i.e. shareholders with an interest of at least 5%) will be taxed on a deemed dividend basis if an insofar the debts of that shareholder to the company exceed the amount of € 700,000 – (shareholder debts related to the (Dutch) residential home are excluded).

Deemed dividends received by a substantial shareholder are taxed in Box 2 of 2023. If this legislative proposal will be adopted by the Upper House ('Eerste Kamer'), the first reference date for determination of a deemed profit distribution will be 31 December 2023. Therefore, it is possible for substantial shareholders to anticipate on this expected legislative proposal up to 30 December 2023.

**Taxand's Take**

As a result of changes in CIT rates and brackets, Box II rates and brackets, legislation in Box III and the limitation of the debt of a substantial shareholder with its company, we recommend substantial shareholders to re-assess their current position in relation to their company and to determine a strategy going forward.

Furthermore, the announced changes will also have a significant impact on the effective tax rate of management participations, which are traditionally structured via Box II.

## 3. Real Estate

Change in RETT rate

The general property transfer tax rate will be increased from 8% to 10.4% as of 1 January 2023.

Reduction of empty value ratio ('leegwaarderatio')

The empty value ratio ('leegwaarderatio') rates will not be abolished as of 2023, as communicated earlier, but will be reduced. The empty value ratio can be applicable to houses that are rented out, resulting in a discount on the so-called WOZ value that needs to be taken into account in Box 3. As of 1 January 2023, the discount that can be taken into account will be less. In addition, the empty value ratio will not be applicable as of 2023 when there is a temporary rental contract and when the house is rented out to associated parties. The empty value ratio is also relevant when filing a gift or inheritance tax return.

Abolishment of the joyous tax-free lump sum ('jubelton') as of 2024

As of 1 January 2023, the joyous tax-free lump sum for owner-occupied homes ('jubelton') will be reduced and thus equated with the one-time free gift tax exemption of € 28,947 (2023 amount). Therefore, 2022 will be the last year to make full use of the gift tax exemption of € 106,671 to children or others, aged 18 to 40 - the gift tax exemption is not limited to the ratio of parents to children.

The joyous tax-free lump sum can be used for the acquisition, improvement or maintenance of an owner-occupied home and repayment of the home acquisition debt. If the gift is done in 2022, the recipient has until 31 December 2024 to spend this one-time tax free gift.

## 4. Indirect Tax

Reduction of the VAT rate for solar panels

As of 1 January 2023, the VAT rate on the import, the intracommunity acquisition and the supply and installation of solar panels will be reduced from 21% to 0%. This includes solar panels intended to be installed as roofing and solar panels installed in the immediate vicinity of homes, such as on roofs of garages and garden sheds. The reduction does not affect the right to recover VAT incurred by the supplier and installer.

With this rate reduction, the Ministry of Finance aims to reduce the compliance burden for both the tax authority and the solar panel owners, that is linked to the time-consuming VAT reclaim procedures. At the same time it is thought that the rate reduction expedites the conversion to sustainable energy sources.

Temporary reduction of the VAT rate for energy

From 1 July to 31 December 2022, the VAT on energy (natural gas, electricity and district heating) is reduced from 21% to 9%. The reduced VAT rate applies to all parts of the energy bill that regard the supply of energy. For example, also administration and network management costs. This is a temporary measure that will not be extended beyond 31 December 2022.

5. **Disputes**

Tailor-made solutions in which no interest on overdue tax will be due

The government wants to explore whether providing tailor-made solutions, in which no interest on overdue tax ('invorderingsrente') is charged, is possible in exceptional situations. Such exceptional situations, in which it is considered not reasonable that interest on overdue tax is charged, will be included in a forthcoming implementing decree.

6. **Global Mobility**

Cap on 30%-ruling

As of January 1, 2024 the 30% ruling will be capped to the maximum wage under the Top Income Standardization Act. For 2022 this amount is € 216,000 per year. If the 30% ruling has been applied for the last wage period of 2022, a transitional period of three year is applicable. For these situations the salary cap will apply as of 1 January, 2026.

7. **Other Tax Developments (not part of the 2023 Tax Plan)**

Overhaul partnership classification rules

The Dutch government has announced plans to overhaul its partnership classification rules per 2024. Although draft rules are expected only in Q3 of 2023, it is generally expected to result in a new system whereby the Dutch tax classification will follow the foreign tax classification. In addition, the new rules are expected to see a withdrawal of the 'unanimous consent' requirement for Dutch limited partnership agreements.

**Taxand's Take**

As the rules are expected to come without any transitional provisions, we recommend to carefully review existing partnership structures.

ATAD III

Recently, the European Parliament ("EP") published a draft report that contains proposed amendments to the ATAD III Directive proposal. This report provides welcome suggestions with respect to the gateway criteria and the suggestion to postpone the implementation of ATAD III to 2025.

Please note, ATAD III is still in draft version. The next version of the ATAD III directive will be expected by the end of 2022. Please find our submission letter here during the latest feedback round.

Pillar I

The OECD published a revised schedule for implementation on 11 July 2022, which delays the planned reforms by 12 months to 2024.

Pillar II

The entry into force of the income inclusion rule (''IIR'') and the undertaxed profit rule (''UTPR'') would be delayed by a year. The IIR would apply in tax years beginning on or after 31 December 2023 and the UTPR in tax years beginning on or after 31 December 2024.

Hungary is the only EU country blocking an agreement on Pillar II within the EU. The OECD will meet again in October 2022 to discuss further progress on Pillars I and II.

Debt-equity bias reduction allowance

This Directive is still in draft version and the public consultation ended on 29 July 2022. Taxand also contributed to this feedback round through a submission letter.

Making no distinction between external and intercompany financing, the Directive is expected to have a financial impact on interest deductibility in general - certainly also in a private equity fund context. We recommend clients assess the potential financial impact, allowing timely communication with internal and external stakeholders/investors. Please click here for our newsflash on DEBRA.

Multilateral instrument

The Ministry of Finance has published an overview of Dutch tax treaties on which the MLI has an effect[1]. This concerns the state of affairs as of 1 July 2022. The table is updated quarterly. The overview lists which tax treaties and from what moment the MLI can be applied by the Netherlands. The overview shows that of the 45 tax treaties through which the MLI provisions have an effect, the Ministry has made 16 so-called synthesized texts available. Given that a synthesized text makes the application of an affected tax treaty a lot easier in practice, it would be beneficial if this is further picked up by the Ministry in the next quarter.

Conditional withholding tax on dividends per 2024

An additional withholding tax on dividends to low-tax jurisdictions and in abuse situations will be introduced as of 1 January 2024.

Providing information by platform operators (DAC 7)

There will be a reporting obligation for platform operators based on the recent DAC 7 directive. Platform operators will have to report to the Dutch tax authorities the amount of income earned through the platform. The income in question is derived from the sale of goods and services and the rental of property through the platform.

The Netherlands must implement the provisions to comply with the directive by 31 December 2022. The provisions should become effective as of 1 January 2023.

Public country-by-country disclosure

There will be public country-by-country disclosure of CIT information based on a recent EU directive. Multinationals in which consolidated group income, or the income of the stand-alone company, over two consecutive financial years exceeds €750 million must disclose how much CIT they pay in each EU country.

The Netherlands has to implement the directive by 22 June 2023. The provisions should apply no later than the commencement date of the first fiscal year starting on or after 22 June 2024. A legislative proposal has been submitted to parliament.

**Taxand's Take**

The international developments were announced with much bombast and the expectation was that the international tax initiatives would be implemented quickly worldwide. Now we see several countries not fully supporting these initiatives. The general expectation is that most international proposals will make it to the finish line anyhow. We recommend closely monitoring all the developments and reviewing business structures to assess the potential impact.

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[1] Multilateraal Instrument (MLI) en Nederlandse belastingverdragen | Brochure | Rijksoverheid.nl