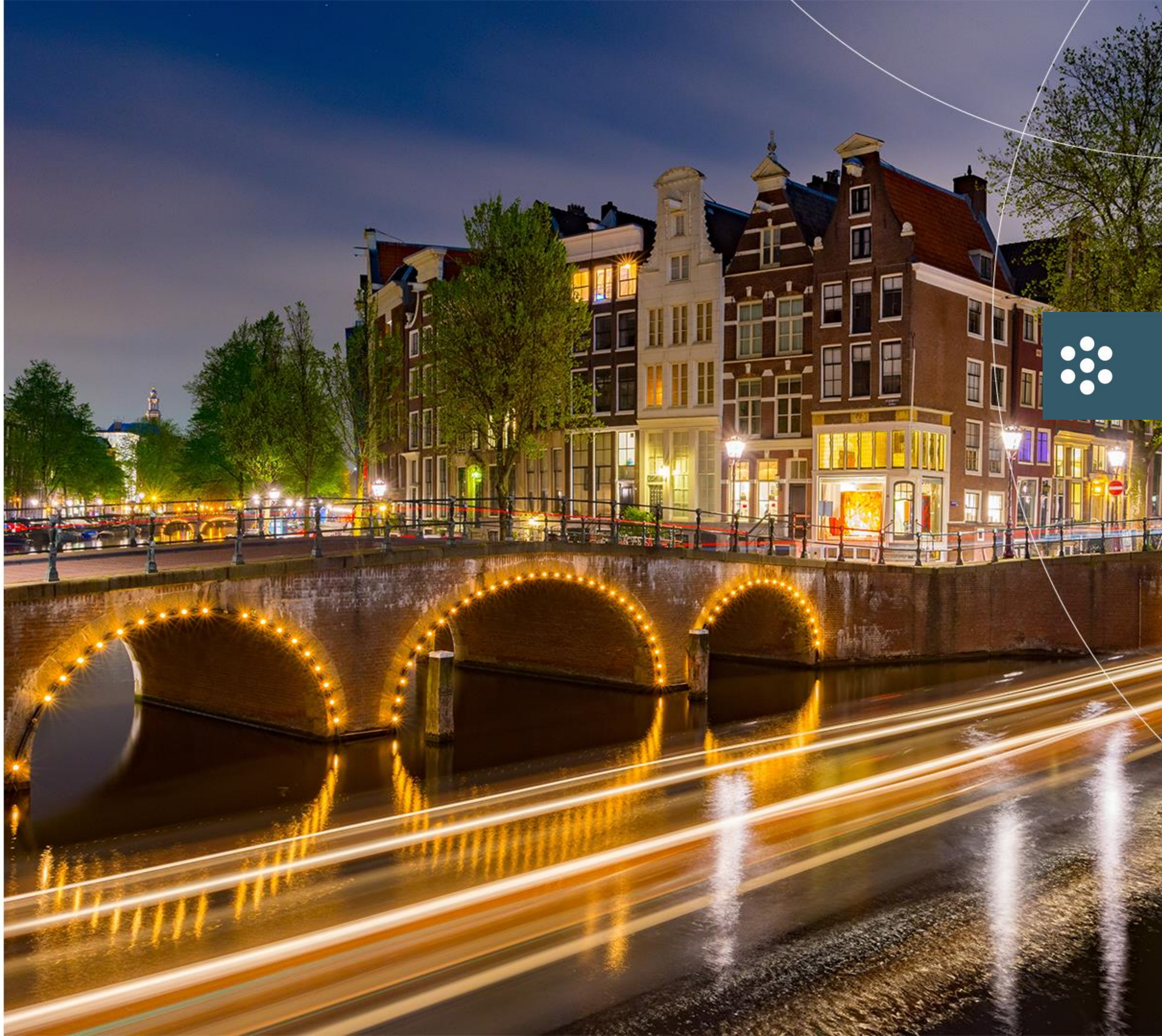
Tax Plans 2025

Key items



Introduction

On Tuesday September 17, 2024, the Dutch Cabinet presented their Tax Plans for 2025. This presentation provides a high-level overview of key items of the Tax Plans for 2025.

Note that all matters are still proposals and subject to parliamentary discussions. Hence, these proposals may see some (material) changes. Final voting into law is expected early December 2024.

2025 Tax Rates

- Corporate income tax rates: no changes.

Year	2024	2025
Step-up rate	19% for < € 200,000	19% for < € 200,000
Top rate	25.8% for > € 200,000	25.8% for > € 200,000

- Personal income tax rates: changes to Box 1 (income from work and residence), Box 2 (substantial interest taxation) and Box 3 (passive income).

Year	2024	2025
Box 1 (including social premiums)	• € 0 - 75,518: 36.97% • € 75,518 and up: 49.5%	• € 0 - € 38,441: 35.82% • € 38,441 – € 76,817: 37.48% • € 76,817 and up: 49.5%
Box 2	33%, with 24.5% step-up rate for income < € 67,000	31%, with 24.5% step-up rate for income < € 67,000
Box 3	36%	36%

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Corporate tax changes

Amendments to earnings stripping rule

- The earnings stripping measure is a general interest deduction limitation in corporate income tax. Interest is not deductible to the extent that it exceeds the higher of €1,000,000 or 20% of the EBITDA. This threshold applies per taxpayer.
- Two changes are announced per 2025:
  - The 20% limit will increase to 25% of EBITDA.
  - The € 1,000,000 threshold will be abolished for real estate entities, whose assets comprise for 70% or more of real estate leased to third parties. This is to prevent splitting up leveraged real estate investments over different entities, each benefiting from the threshold.

Takeaway

- We recommend to model the impact of these measures for current and future (portfolio) investments.

Codification general anti-abuse rule

- A general anti-abuse measure will be codified in the Dutch corporate income tax act as of 2025. This will allow the tax inspector to intervene if an arrangement is used whose main purpose, or one of its main purposes, is to obtain a tax advantage, but which undermines the purpose of the applicable tax law.

- This concerns the implementation of the ‘general anti-abuse rule’ from the European Anti-Tax Avoidance Directive (ATAD). The Netherlands was initially of the opinion that the general anti-abuse measure did not need to be introduced because the Netherlands already has a similar measure in the form of ‘fraus legis’.

- However, the introduction of the general anti-abuse rule does not envisage a material change compared to 'fraus legis'.

Takeaway

- The change does not envisage a material change compared to the 'fraus legis’ concept developed in case law.

- It remains to be seen upon the exact wording whether this will be the case.

Withholding tax changes

New group concept in conditional withholding tax

- Since 2021, the Netherlands has had a conditional withholding tax on interest and royalty payments made by a Dutch entity to an affiliated entity in a low-tax jurisdiction. From 2024, a conditional withholding tax on dividends has been added.

- A condition for levying conditional withholding tax is that the beneficial owner has a qualifying interest. This qualifying interest can also be determined when there is a *cooperating group*. In practice, the concept of cooperating group is unclear.

- As from 2025, the concept of cooperating group will be replaced with the concept of *qualifying unit*.

- A *qualifying unit* exists if (i) entities are acting together **and** (ii) the main objective or one of its main objectives for this acting together is to avoid conditional withholding tax.

Takeaway

- The introduction of the new *qualifying unit* concept is helpful, reducing the potential application of conditional withholding tax in fund structures.

- The burden of proving the existence of a qualifying unit will reside with the Dutch tax authorities.

- This new definition is expected to provide much more certainty in international investment structures and is a welcome addition.

- It is the question how the Dutch tax authorities will approach structures prior to 2025 in practice where there could be a cooperating group but would be no qualifying unit.

Preservation share repurchase facility

- The dividend withholding tax act provides for an exemption in the case of a repurchase of listed shares. This allows, under certain conditions and up to certain limits, the levying of dividend withholding tax to be exempt when companies on the stock exchange repurchase their own shares.

- Given the adverse impact of the abolition of the dividend withholding tax repurchase facility on the competitive position of Dutch companies and thus also on the Dutch business climate, the government intends to retain this facility in the dividend withholding tax.

- The abolition of the repurchase facility, which was foreseen as of 1 January 2025, will not go ahead.

Takeaway

- The Cabinet decided that after receiving feedback from listed multinationals not to abolish repurchase facility as this would adversely impact the Dutch business climate.

Indirect tax changes

VAT – Revision period for real estate services

- From 1 January 2026, a revision period (*herzieningsregime)* is introduced for 'capital real estate services' over EUR 30k. This for example regards renovation works.
- VAT reclaimed for services in scope of this regime is subject to revision if the use of the services (VATable or exempt) changes during the revision period. This is reviewed annually.
- Under the current rules, the VAT on (e.g.) renovation works can be fully reclaimed if a real estate asset is rented out subject to VAT in the year following the renovation. The revision rule was introduced to spread VAT recovery over multiple years and to prevent short-term VATable use solely for VAT savings.
- A similar revision period already applies to VAT incurred in relation to the construction or supply of real estate. That revision period applies for 10 years and remains unchanged.

- The new revision period results in increased administrative burdens for real estate investors.
- Case law will be required to determine which services are considered 'capital real estate services'.
- The new revision period already appears to conflict with recent case law of the CJEU. Following the case law, the revision period for capital services should apply for 10 years. If the revision period is implemented as now presented, tax-payers can freely choose to apply a 5 or 10 year revision period.

RETT – Rate for residential properties to 8% per 2026

- The RETT rate for non-owner-occupied residential properties is reduced from 10.4% to 8% per 2026.

- Application of the reduced rate will solely depend on the type of property acquired. The actual usage of the property is not relevant. It is therefore expected that also residential properties that are acquired to be demolished or that are used as office (but originally built as residence) will be in scope of the reduced rate.

- The rate decrease is announced but not yet incorporated into a legislative proposal. The formal proposal will likely be part of the Tax Plan 2026.

- Investments in residential real estate are likely to be reduced in 2025 due to the expected rate decrease per 2026.

- It will again become relevant to determine whether a property can be considered a residential property.

RETT – Concurrence exemption share transactions

- As of 1 January 2025, the RETT concurrence exemption will no longer apply for the acquisition of newly built real estate or building plots via share transactions, in so far these assets are used for >10% for VAT exempt activities (e.g. residential real estate).
- A new rate of 4% is introduced for transactions that are out of scope of the concurrence exemption due to this change.
- The concurrence exemption remains in place for the acquisition of newly built real estate or building plots via share transactions, in so far these assets are used for ≥90% for VAT taxed activities.
- This change was already included in the 2024 Tax Plan.
- Transitional law is provided for ongoing transactions.

Takeaway

- This change is introduced to treat direct acquisitions of real estate more similar to indirect acquisitions.
- It should be carefully reviewed for each transaction whether a direct or indirect acquisition provides for a better tax position.
- Transitional rules for ongoing projects require that a request for application of these rules was submitted to the NLTA before 1 April 2024.
- The limitation of the concurrence exemption can have significant impact on the commercial side of real estate projects.

Employment taxes

Wage taxes 30% ruling

- Following the 2024 Tax Plan, the 30% ruling for reimbursement of extraterritorial expenses has been scaled back with effect from 1 January 2024. During the total period of the 30% ruling of 60 months, the percentage for the reimbursement for extraterritorial expenses will be scaled back from 30% in the first 20 months, to 20% in the next 20 months and ultimately 10% in the last 20 months.

- Based on the 2025 Tax Plan, the planned scaling down will be reversed. From 2027, a fixed percentage of 27% will apply for the entire period of the 30% ruling. For the years 2025 and 2026, the percentage of 30% will apply.

- The salary norm is increased from €46,107 to €50,436 (for incoming employee under 30 with a master's degree from €35,048 to €38,338). For employees for whom the 30% ruling was applied before 2024, the previous salary norm (indexed) and the percentage of 30% remain applicable.

Takeaway

- The scaling down of the 30% ruling for the reimbursement of extraterritorial expenses will be reversed.

- From 2027, a percentage of 27% will apply for the entire period of the 30% ruling. For the years 2025 and 2026, the percentage of 30% will apply.

- The salary norm is increased from €46,107 to €50,436 (for incoming employee under 30 with a master's degree from €35,048 to €38,338).

Other changes per 2025

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Entity tax classification: overhaul

- Per 2025, the Dutch limited partnership (CV) and foreign similar entities will classify as tax transparent by default. This will apply to the Dutch CV, and foreign similar LP entities like SCSp, LP and KG.

- The default classification as tax transparent implies that the current “unanimous consent” requirement on LP admissions and transfers (currently relevant to classify as tax transparent) will no longer be a requirement to qualify as tax transparent as of 2025.

- The Dutch tax classification of foreign entities incomparable to a Dutch legal entity (e.g. UK LLP, Irish ULC, German KgAA, French SCPI) will align with the entity’s tax treatment in the foreign jurisdiction (symmetry approach). An exception applies if the foreign entity is resident in the Netherlands, which will result in a non-transparent classification (fixed approach).

- A deemed disposal rule will apply to Dutch and foreign entities switching their Dutch entity tax classification from non-transparent to tax-transparent, both at entity and investor level. Certain transitional rules and roll-over relief will be available, subject to meeting certain conditions.

Takeaway

- After decades of lobbying, the Dutch partnership entity tax classification finally aligns with global standards. This should mitigate hybrid entity mismatches.

- At the same time, the switch in entity tax classification may have a serious negative impact on existing structures (notably Dutch tax planning on withholding taxes and the participation exemption regime).

- We strongly recommend to review international investment structures involving Dutch investors, holdings entities or investments, to anticipate on the upcoming overhaul.

Dutch FGR fund entity: overhaul entity tax classification

- Under current law, the Dutch entity tax classification of a Dutch FGR fund entity can either be tax transparent or non-transparent. The choice depends on the liquidity mechanism.

- As of 1 January 2025:

  - A Dutch FGR can (continue to) qualify as a non-transparent entity, provided that:
    (i) it classifies as an AIF or UCITs under the Dutch Financial Supervision Act, and
    (ii) its units are tradeable.

  - In all other cases the FGR will be deemed tax transparent. In case units of an FGR can only be sold to the FGR (i.e. a redemption only mechanism) it is also considered non-tradeable even when it is regulated.

- Certain transitional rules apply during 2024 for FGR's switching tax classification as a result of this change.

Takeaway

- As a tax transparent version remains available, the FGR remains an attractive product for collective investments.

- Existing non-transparent FGR structures should be reviewed, to timely anticipate on the proposed overhaul. This requires assessing the impact of the transitional rules to determine whether dry income can be avoided.

Dutch FBI REIT fund regime: exclusion for real estate

- As of 1 January 2025, Dutch funds benefiting from the FBI-regime (also: REIT regime) will be restricted from directly holding real estate in the Netherlands.
- An FBI can still hold real estate indirectly through e.g. a regularly taxed company.
- Transitional rules will apply during 2024, allowing a RETT-neutral conversion of existing FBI's into tax-transparent fund structures.
- The FBI-regime continues to be available for other (i.e. non Dutch real estate) investments.

Takeaway

- Whilst largely in line with previous announcements, the exclusion of Dutch real estate from the Dutch FBI-regime marks an apparent move knowing that the FBI-regime was initially introduced as the Dutch REIT.
- As existing REITs are considering restructuring options, we recommend investors to also review their Dutch tax position. This could dramatically change, if the REIT converts into a tax-transparent fund entity.

Other key proposed tax legislation

Item	Date
Wage Taxes: The NLTA will actively enforce the DBA Act on false self-employment of independent contractors and will impose retroactive correction obligations, additional tax asessments where necessary. NLTA will be reluctant in imposing penalties for 2025 if one can demonstrate that measures were taken in limiting false self-employments	1 January 2025
RETT demerger exemption: tighten conditions for transfers to third parties	Expected: 2025
Individual income tax “box 3”: capital growth tax for liquid investments and capital gains tax for illiquid investments (including real estate and shares in uisted companies <5%)	Expected: 2027

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