

Temporary solidarity contribution by fossil fuel sector

On November 1, 2022, Deputy Minister of Finance Mr. Van Rij presented a bill to the Lower House of Parliament that is meant to introduce a temporary solidarity contribution payable by, put simply, companies with activities involving crude oil, natural gas, coal and oil refinery ([bill for Temporary Solidarity Contribution Act](#) – in Dutch). These companies are expected to pay a contribution based on their profit for 2022. The contribution will be due by about 40 companies that generated above-average profits in 2022 because of the high energy prices. The idea is for the solidarity contribution to be implemented with retroactive effect for the year 2022. The temporary increase in the duty rate under the Mining Act is expected to apply in the years 2023 and 2024, as proposed in the Memorandum of Amendment to the 2023 Tax Plan ([see our coverage of October 5, 2022](#)). We will discuss the bill in greater detail below.

Substantive design

Who will be subject to the contribution obligation?

The solidarity levy will be imposed on corporate income taxpayers that, in a financial year commencing in 2022 (hereinafter: contribution year) generate at least 75% of their net turnover (as referred to in Section 377, Book 2 of the Dutch Civil Code) from economic activities involving the extraction of hydrocarbons, mining, oil refinery or the manufacture of coke oven products as referred to in [Regulation \(EC\) No. 1893/2006](#). For non-resident corporate income taxpayers, the reference revenue will be the net turnover generated by a permanent establishment or permanent representative in the Netherlands. The solidarity contribution is a separate levy; it will be imposed in addition to corporate income tax.

Please note: an entity that is a member of a fiscal unity for the purposes of Section 15 or Section 15a CITA (hereinafter: fiscal unity) will individually be liable to pay the contribution.

Basis of contribution

The solidarity contribution will be due on any excess profit, i.e. the portion of the taxable profit for the purposes of CITA (hereinafter: CIT profit) generated in the contribution year that exceeds 120% of the average taxable CIT profit for the four financial years preceding the contribution year (the reference profit). Although the basis is the same for non-resident corporate income taxpayers, for them, the reference profit will be the Dutch-taxable CIT profit that is generated by a permanent establishment or permanent representative in the Netherlands.

Please note: if an entity subject to the contribution obligation is a member of a fiscal unity, the taxable CIT profit must be calculated as if it were *not* a member of the fiscal unity.

Tax rate

The solidarity contribution will be due at a rate of 33%. It will be non-deductible for corporate income tax purposes.

Procedural design

The bill also has a number of procedural provisions. These can be summarized as follows:

- The solidarity levy will take the form of a remittance-based tax and will require paper tax returns to be filed.
- The filing deadline will be 17 months after the end of the contribution year.
- The payment deadline is the same as the filing deadline. In other words, the solidarity contribution will also be due within 17 months of the end of the contribution year.
- The deadline for imposing additional tax assessments is seven years.
- The administrative penalty provisions of the General Taxes Act will apply to non-compliance with the filing deadline and failure to pay all or part of the contribution (specified in the tax return), either intentionally or not, or failure to do so within the deadline.
- The limitation period for certain administrative penalties is seven years.
- The rules concerning interest on tax due will apply *mutatis mutandis*.
- All companies that are or were members of the same fiscal unity for corporate income tax purposes as the entity subject to the contribution obligation in the period in question will be jointly and severally liable for paying the solidarity contribution and any related other recoverable amounts (such as interest due and penalties).

KPMG Meijburg & Co comments

It was just over a year ago that the previous Deputy Minister of Finance (Mr. Vijlbrief) categorically rejected the introduction of a solidarity levy. The current Deputy Minister Mr. Van Rij did the same in July 2022 for reasons of it not being workable. Now, only a few months later, the solidarity levy seems to have become a feasible option after all; it is supposed to generate around EUR 3.2 billion. A limited number of companies whose activities involve the extraction or refining of oil and gas (approximately 40) are expected to become subject to the solidarity levy. The scope of the levy does not include other businesses in the energy sector, such as oil and gas merchants and operators of solar farms. If an entity is subject to the contribution obligation because, simply put, it generates at least 75% of its turnover from extracting or refining oil and gas, the basis of the contribution will not be limited to the profit generated from those activities. Any profit from other activities that qualifies as excess profit will then also be included in the solidarity levy.

Please do not hesitate to contact your tax advisor at Meijburg to find out more about the solidarity levy. We are happy to assist.

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.