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The Government presents tax measures for 2021 on Budget Day

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On Budget Day, September 15, 2020, the government presented the 2021 Tax Plan package to the Lower House of Parliament. It contains the following bills:

- 2021 Tax Plan
- Other tax measures 2021
- Changes to Box 3 Act;
- Differentiation of Real Estate Transfer Tax Act;
- CO_2 tax on Industrial Emissions Act
- Improved Feasibility of Allowances Act
- ODE rates 2021 and 2022
- one-off rent reduction tenants with lower income

The 2021 Tax Plan package contains additional measures to stimulate economic growth during the corona crisis and measures for a better, fairer and greener tax system. Many of the proposed measures will take effect on January 1, 2021. Various tax measures related to the corona crisis that were elaborated on in a policy statement granting approvals have now been embedded in law. This memorandum outlines the main features of the 2021 Tax Plan package. Where possible and relevant, we have included in the individual topics other tax measures and developments related to those topics, but have indicated that these are not part of the 2021 Tax Plan package. Please refer to the last section for other tax developments.

A more detailed memorandum about specific corporate income tax issues will follow shortly.

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1 Corporate income tax

1.1 No reduction of general corporate income tax rate, extension of SME bracket

The reduction of the general corporate income tax rate from 25% to 21.7% as of January 1, 2021, which had been adopted in 2019, will be canceled. The general corporate income tax will thus remain at 25%. However, the reduction of the low CIT rate from 16.5% to 15% will go ahead. The SME bracket to which the low CIT rate applies will also be extended from EUR 200,000 to EUR 245,000 in 2021 and to EUR 395,000 as of 2022. This means the following:

CIT rates	1st bracket	2nd bracket
2021	15% on the first EUR 245,000	25%
2022 and subsequent years	15% on the first EUR 395,000	25%

For taxpayers with a financial year that is the same as the calendar year, the new rates will apply to the 2021 financial year and subsequent years. For taxpayers with a split financial year, a mixed effective rate will apply in proportion to the days of the financial year before and after January 1, 2021 and January 1, 2022 respectively. The withholding tax rate on interest and royalties that will apply as of 2021 is linked to the high CIT rate. That rate will – without an amendment of the law – also be 25%.

1.2 Preventing an exemption via a specific interest deduction limitation (Section 10a CITA)

In 2012 the Supreme Court ruled that Section 10a Corporate Income Tax Act 1969, the specific interest deduction limitation combating tax base erosion in a group context, not only leads to the limitation of the deduction of interest, costs and negative foreign exchange results on payables falling under this provision, but also to an exemption of (net) positive elements (negative interest and/or positive foreign exchange results). It is proposed, with effect from financial years commencing on or after January 1, 2021, to henceforth calculate the balance per 10a-payable and no longer exempt a positive balance. Taxpayers could take steps in anticipation of this by, in the 2020 financial year, settling 10a-loans against a positive foreign exchange result.

1.3 Clarification of overlap hybrid mismatch measures and interest deduction limitations

The possible overlap between the hybrid mismatch measures and certain interest deduction limitations will be clarified. The general rule is that where deduction limitations overlap, the order of the legislation will be adhered to. This means that first the hybrid mismatch measures will be applied and that, insofar as deductible interest still remains, the earnings stripping measure and the thin cap rule will be applied in respect of that interest.

Interest and other payments falling under the hybrid mismatch measures will in certain situations still be deductible, if they are deducted from income that has been taken into account twice. If the total interest and payments exceed the income that has been taken into account twice, it is important to establish which part of the interest is included in the amount to be deducted from the income that has been taken into account twice. It is proposed to apply that allocation on a pro rata basis. The part of the interest that is then considered to have been deducted from the income that has been taken into account twice must then, for the question whether that interest is deductible, subsequently be taken into account in respect of the earnings stripping measure and the thin cap rule.

A comparable allocation arrangement will apply to the situation that in any one year, under the hybrid mismatch measures non-deductible interest and payments in the absence of income taken into account twice will become deductible in a later year pursuant to the carry-forward rules.

1.4 Maximum annual loss set-off, however unlimited carry-forward (2022, not part of the 2021 Tax Plan package)

By way of a Memorandum of Amendment to the 2021 Tax Plan, the government will propose an in time unlimited carry-forward loss set-off as of January 1, 2022 (currently a carry-forward period of six years applies; the carry-back period is and will remain one year). However, losses will only be fully available for carry-forward and carry-back set off up to an amount of EUR 1 million of taxable profit. In the case of a higher profit, the losses will only be able to be set off up to 50% of that higher taxable profit.

1.5 Corona tax reserve (2019)

Further to and along the lines of the Corona Crisis Emergency Measures Decree, the 2021 Tax Plan contains the legal rules that make it possible, under certain conditions, to create a corona tax reserve (CTR) to be set off against the profit realized in 2019. A created CTR must be included in the profit in the following year. The rules are intended to realize a liquidity benefit at an earlier point in time, compared to the normal loss set-off.

The amount of the CTR is firstly set at the maximum of the expected loss for the year 2020 that is related to the corona crisis. Taxpayers are expected to make a reasonable estimate of how large the corona-related loss is. In addition, the CTR will amount to a maximum of the tax profit for 2019 (without taking the CTR into account).

The rules have retroactive effect through to the beginning of the last financial year ending in the period January 1, 2019 through March 31, 2020. Taxpayers with a financial year that differs from a calendar year may also create a CTR, provided they comply with the conditions for this.

1.6 Not applying the arm's length principle if this results in a mismatch (not part of the 2021 Tax Plan package)

The government has announced that a bill will be presented to the Lower House of Parliament in the spring of 2021, which will ensure that the arm's length principle is, in effect, not applied if this results in a reduction of the profit, insofar as the other country does not tax the corresponding adjustment. This bill will probably not limit the depreciation/amortization of assets that were transferred within the group, insofar as the write-off relates to untaxed gains and reserves in the asset that were not sufficiently taxed during the transfer.

1.7 Increase of Innovation Box tax rate

As of financial years commencing on or after January 1, 2021, the effective rate in the Innovation Box will be increased from 7% to 9% This means that the profit realized by innovative companies established in the Netherlands and which arises from innovation will be taxed more heavily. With regard to the crediting of foreign tax on royalties, the new effective rate will be used.

1.8 Tightening of the liquidation and cessation loss schemes (not part of the 2021 Tax Plan package)

The liquidation and cessation loss schemes will be tightened as of financial years commencing on or after January 1, 2021. A liquidation loss of a participation, insofar as it amounts to more than EUR 5 million per participation, will only be deductible if:

- the taxpayer holds a qualifying interest in the dissolved entity in terms of control (quantitative condition); and
- the dissolved entity is established in the Netherlands, another EU Member State, the EEA or a state with which the EU has concluded a specific association agreement (territorial condition).

In addition, a ring-fencing condition is also proposed. A liquidation loss is only deductible if the liquidation takes place within a period of three calendar years after the calendar year in which the business totally or almost totally ceased operating or the decision to do so was taken. Rebuttal evidence is possible. The ring-fencing condition will not be strictly enforced if there is a non-tax reason for not complying with the condition. For participations not yet liquidated at the time this measure takes effect, in principle no transitional rules will apply with regard to the quantitative and the territorial condition, but in certain situations they will apply with regard to the ring-fencing condition. The bill also provides for various anti-abuse provisions, such as look-through rules for the liquidation of an intermediate holding company.

Comparable limitations are proposed for the cessation loss scheme for permanent establishments.

1.9 Progress of new group corporate income tax scheme (not part of the 2021 Tax Plan package)

Work is in progress on a new group corporate income tax scheme. This is because the current fiscal unity regime is vulnerable under EU law. In connection with this, some elements of the legislation have already been amended, see the Fiscal Unity Emergency Repair Act (with, in principle, retroactive effect through to January 1, 2018). However, with regard to other elements, the risks under European law have not (or may not have) entirely disappeared. On Budget Day, the Deputy Minister of Finance, Mr. Vijlbrief, sent a letter to the Lower House of Parliament in which he outlined, among other things, the main features of a potential new group scheme and the follow-up process. The decision to present a bill to the Lower House will be left to a following government.

1.10 Changes to thin cap rule for banks and insurers

As of January 1, 2021, the additional Tier 1 capital (AT 1) will no longer be included as capital in determining the capital base for the leverage ratio for banks and the equity ratio for insurers used for the purposes of the thin cap rule. This as a result of the judgment rendered on May 15, 2020. As a result of this judgment, AT1 capital qualifies as debt, which means that the remuneration on AT1 capital is deductible for tax purposes. In addition, the percentage for the thin cap rule will be increased from 8% to 9%.

1.11 Payment discount abolished (not part of the 2021 Tax Plan package)

The government had intended to abolish, as of 2021, the payment discount that is currently granted for the payment, in full, of any corporate income tax payable that is paid before the first installment deadline (instead of in installments). The percentage at which the payment discount is calculated is linked to the rate for the late payment interest to be charged. We now know that the latter percentage will be 0.01 through to December 31, 2021. Despite the fact that the payment discount will not be abolished as of 2021, it will be extremely small in 2021 due to the calculation percentage of 0.01.

2 Withholding taxes

2.1 Introduction of a withholding tax on interest and royalties (not part of the 2021 Tax Plan package)

The government does not want the Netherlands to be used any longer as a gateway to low tax countries, and wants to lessen the risk of tax avoidance by shifting the (Dutch) tax base to low tax countries. A withholding tax on interest and royalties will therefore be introduced as of January 1, 2021, at a rate that is linked to the highest corporate income tax then applying (see 1.1 above). The measure will apply to cash flows to countries with a profit tax rate of less than 9% that appear on the Dutch blacklist and to countries appearing on the EU list of non-cooperative jurisdictions. More information can be found in our previous memorandum about this.

2.2 Expansion of withholding tax on dividends to low tax countries (2024, not part of the 2021 Tax Plan package)

By letter dated May 29, 2020 to the Lower House of Parliament, the Deputy Minister of Finance announced that as of January 1, 2024 dividend flows to low tax jurisdictions will be taxed. Measures to realize this will be worked out in detail before the government's term of office ends. With a view to this, as of 2024 the withholding tax on interest and royalties will be supplemented by a withholding tax on dividends.

2.3 Private Member's bill on conditional final settlement of dividend withholding tax (2020, not part of the 2021 Tax Plan package)

On July 10, 2020 Lower House MP Bart Snels (of the GroenLinks parliamentary party) presented a private member's bill to the Lower House of Parliament in which he proposes introducing a final settlement obligation for dividend withholding tax purposes for certain types of cross-border relocations of the registered office, cross-border mergers, cross-border divisions and cross-border share mergers. This concerns cross-border reorganizations with regard to Dutch-resident withholding agents that are members of a group as referred to in Section 24b of the Dutch Civil Code or similar foreign rules, with a consolidated net turnover of at least EUR 750 million. It is proposed to introduce the measures with retroactive effect to 12:00 noon on July 10, 2020. More information can be found in our previous memorandum about this.

3 Personal and corporate income tax

3.1 Changes to way in which small projects investment credit is calculated

The small projects investment credit (*kleinschaligheidsinvesteringsaftrek*; KIA) is tax relief to encourage relatively small-scale investments. The amount that a taxpayer may deduct from its profit under this tax relief is dependent on the annual amount invested.

However, the current legislative text does not provide sufficient information about how the amount of the KIA should be calculated if a taxpayer's business is part of a collaborative arrangement, such as a partnership or a general partnership (*vennootschap onder firma*; VOF). This lack of clarity has resulted in several court cases. The Supreme Court has rendered judgment in a number of these cases. To remove this lack of clarity, the government is proposing to amend the legislation. In part this concerns a clarification of the legislative text and in part repairs the legal rule formulated by the Supreme Court in these judgments.

The clarification and amendment of the legislative text includes the calculation of the amount of the KIA if a taxpayer's business is part of a collaborative arrangement.

The Supreme Court also noted in one of its judgments that, in the case of taxpayers with several businesses, the KIA must be determined on the basis of the total investments in all the businesses. However, the government never intended this. To prevent misunderstandings, the proposed amendment therefore explicitly provides for the determination of the amount of the KIA per business to also be based on the invested amount *per* business and thus not, as the Supreme Court noted, on the total investment for all the taxpayer's businesses combined.

3.2 TOGS and TVL exempt (2020)

The corona measures Compensation for Entrepreneurs in Affected Sectors COVID-19 (*Tegemoetkoming Ondernemers Getroffen Sectoren COVID-19*; TOGS) and Overhead Compensation SMEs (*Tegemoetkoming Vaste Lasten mkb*; TVL) will be made tax-exempt with retroactive effect. To realize this, an (objective) exemption for this compensation will be included in the legislation, with retroactive effect to January 1, 2020. Taxpayers can take advantage of this exemption by including this compensation in their (personal or corporate income tax) return under the heading 'Other extraordinary expenses' *and* under the heading 'Other exempt profit components'. The downside to this exemption is that any refunds of the above compensation will not be deductible.

3.3 Cash donations no longer deductible (not part of the 2021 Tax Plan package)

Donations are only deductible if a taxpayer can prove the donation by means of written documentation. This also applies to cash donations. To prove that the donation was made, a receipt can, for example, be used. However, in practice it turns out that receipts are also issued without the listed amounts having been donated. That is why cash donations will no longer be eligible for the donation deduction.

4 Personal income tax

4.1 Additional reduction of Box 1 basic tax rate.

As of 2021, the basic tax rate in Box 1 (including national insurance contributions) will be reduced from 37.35% to 37.1%. This basic rate will apply to income through to EUR 68,507. The top rate for income above this will remain at 49.5%. As of 2021 the rate for state pension beneficiaries will be reduced from 19.45% to 19.2% for income of roughly EUR 35,000. The reduction of the basic rate in Box 1 will continue until it has decreased to 37.03% in 2024.

4.2 Changes to Box 3

The changes to the taxation of income from savings and investment in Box 3 announced on September 6, 2019, which uses the actual ratio between a taxpayer's savings, investment and debts, will not be continued in this form. Although this would serve the interests of savers, it would disproportionately disadvantage other groups and thus lead to unbalanced outcomes.

To accommodate a large number of savers and the relatively small investors in the short-term, a change will be made within the current regime. In 2021, the tax-free amount in Box 3 will increase from EUR 30,846 to EUR 50,000 (for tax partners jointly from EUR 61,692 to EUR 100,000). New bracket limits will be set, with the second bracket beginning at a total of Box 3 assets of EUR 100,000 and the third bracket at total assets of EUR 1,000,000. As of 2021, the basic rate in Box 3 will increase from 30% to 31%.

The ultimate goal of the current government is to tax the actual return. However, this goal cannot be realized in the short-term, but the government will further examine the long-term options for reforming the Box 3 regime based on the options presented in the Building Blocks reports, such as a progressive tax rate, an assets tax and the taxation of the actual return. These are fundamental changes to the structure of the regime that require more time, because the Dutch tax authorities must be given the opportunity to make these changes in their systems and to implement them.

The proposed increase in the tax-free amount in Box 3 means that a significant number of taxpayers who currently file personal income tax returns, will no longer be obliged to do so under the prevailing rules. Since a number of schemes (for example the healthcare allowance and the child-related budget) have an assets test that is linked to the savings and investment tax base (that is the capital yield tax base for box 3 insofar as it exceeds the tax-free amount), this would mean that more people could claim these schemes. To prevent this undesired effect, assets tests will no longer use the savings and investment tax base but the capital yield tax base for Box 3. In addition, to continue to provide the administrators of these asset-dependent schemes with information about the assets, this bill proposes to set the amount of the capital yield tax base, insofar as it amounts to more than EUR 31,340 (the tax-free amount as of 2021 as it would be under unchanged policy) in a decision open to objection. This decision will be included in the personal income tax assessment. This means that also taxpayers who do not have to pay any personal income tax, must file personal income tax returns as appropriate.

The unintended effect that increasing the tax-free amount will have on the aggregate income, which also affects the income-dependent schemes (for example, the childcare allowance) will remain intact, because the government believes it is too complex in its implementation.

Old years

On June 14, 2019 the Supreme Court rendered several judgments on the tax on deemed investment income in the years 2013 and 2014. In these judgments the Supreme Court ruled that the taxation at the regime level is contrary to the European Convention on Human Rights and fundamental freedoms, insofar as the nominal return achievable without (too many) risks is less than 1.2%.

Whether there is actually such an infringement depends on whether the return reported during the years 2013 and 2014 was indeed less than 1.2% This also applies for the years 2015 and 2016, because the Box 3 regime applied unchanged in those years. After receiving the advice from the parliamentary lawyer engaged by the Lower House of Parliament, the government also asked three independent legal experts for advice. In addition, The Netherlands Bureau for Economic Policy Analysis (*Centraal Planbureau*; CPB) was asked to indicate which return was achievable without (too much) risk in the years 2013 through 2016. The advice and the CPB report were presented in March 2020. The experts advise compensating taxpayers where necessary; this advice is generally in accordance with the parliamentary lawyer's advice. The Deputy Minister has subsequently indicated that he aims to issue a (further) government response in the autumn of 2020.

4.3 Additional reduction of self-employed persons deduction

The self-employed persons deduction will be reduced from EUR 7,030 to EUR 6,670. The phasing out of the self-employed persons deduction is accelerating, on top of the steps already taken last year. The self-employed persons deduction will be reduced annually until it reaches EUR 3,240 in 2036 (this was initially EUR 5,000 in 2028). The government wants to use the reduction of the self-employed persons deduction to close the growing gap between flex and permanent jobs and to combat pseudo self-employment.

4.4 Increase in labor tax credit

As of 2021, the labor tax credit will be increased to the level initially set for 2022. Compared to 2020, this means the following changes for 2021:

	2020	2021
Labor tax credit: amount limit 1	EUR 279	EUR 463
Labor tax credit: amount limit 2	EUR 3,595	EUR 3,837
Labor tax credit: amount limit 3	EUR 3,819	EUR 4,205
Labor tax credit: amount limit 4	EUR 0	EUR 0
Labor tax credit: phasing out point	EUR 34,954	EUR 35,652
Labor tax credit: phasing out percentage	6%	6%

This means that for employment income of EUR 105,735, the full labor tax credit is phased out in 2021, compared to EUR 98,604 in 2020.

4.5 Deductible items in Box 1 gradually reduced to the basic rate (not part of the 2021 Tax Plan package)

In 2021 the accelerated phasing out of the rate at which deductible items in Box 1 can be taken into account will be continued. This concerns:

- the deductible expenses relating to the principal residence (such as the mortgage interest deduction);
- the entrepreneur's allowance;
- the SME profit exemption;
- the exemption in the regime for making assets available;
- the personal tax credit (partner alimony, expenditure on specific healthcare costs, weekend expenses for the disabled, educational expenses, deductible donations and – under transitional rules – losses on investments in venture capital).

These deductible items, insofar as they fall in the highest bracket, can only be deducted at 46% in 2020. In 2021 the deduction will be reduced to 43%, in 2022 to 40% and as of 2023 ultimately to 37.05%, the basic rate then applying.

4.6 Increase in Box 2 rate (not part of the 2021 Tax Plan package)

As a measure related to the reduction of the corporate income tax rates, the Box 2 personal income tax rate will be increased from 26.25% to 26.9% as of 2021. The increased rate will also apply to existing substantial interest claims. As of 2021, the combined rate (corporate income tax plus Box 2) will fluctuate between 37.87% and 45.18%, depending on, in particular, the size of a company's profits.

4.7 Gradual phasing out of credit for no or small home mortgage (‘Hillen credit’; not part of the 2021 Tax Plan)

The credit for not having a home mortgage or only having a small home mortgage (the ‘Hillen credit’) gives taxpayers who have repaid all or almost all of their home mortgage and thus pay no or almost no interest, a deduction item that, until 2019, was equal to the imputed income from home ownership (*eigenwoningforfait*) (less any remaining interest). As of 2019 the Hillen credit is being phased-out in equal steps over thirty years. In 2021 the credit to be taken into account will thus only be 90%.

4.8 Deduction for educational expenses abolished (2022, not part of the 2021 Tax Plan package)

The government wants to replace the current personal income tax deduction for educational expenses with an individual learning account: the STAP budget subsidy scheme. However, the introduction of this scheme has been delayed, so that educational expenses will still be deductible in 2021. The deduction is expected to be abolished as of January 1, 2022. Transitional rules will apply to the situation where someone has already deducted educational expenses and receives a refund after the deduction has been abolished.

4.9 Measure to counter excessive borrowing from own business (2023, not part of the 2021 Tax Plan package)

On June 17, 2020, the Deputy Minister of Finance presented the bill on the Excessive Borrowing from Own Companies Act to the Lower House of Parliament. In the case of substantial interest holders who borrow more than EUR 500,000 from their company, it is proposed to tax the excess as income derived from a substantial interest. Home acquisition debt is excluded. The measure will apply for the first time to the 2023 calendar year, one year later than originally planned. Each substantial interest holder who has borrowed more than EUR 500,000 will have to review their position before then. More information can be found in our previous memorandum about this.

5 Payroll tax and social security contributions

5.1 Changes to fixed exemption in the work-related costs rules 2020 and 2021

As a result of the corona crisis, the fixed exemption that employers have for untaxed reimbursements and provisions will be increased for 2020 from 1.7% to 3% for the first EUR 400,000 of the payroll per employer. The percentage of 1.7% for the first EUR 400,000 of the payroll per employer will remain the same in 2021 and the percentage of 1.2% applying to the payroll for tax purposes from EUR 400,000 will be reduced to 1.18% as of January 1, 2021.

5.2 Expansion of fixed exemption educational expenses

The specific exemption applying to employee educational expenses will be expanded to cover former employees (former employment). The exemption applies to the costs of a training program or course undertaken with a view to obtaining income. The expansion makes it possible to include an additional budget for education in a redundancy plan. Unlike employees in active employment, the exemption will not apply if the costs relate to updating and improving knowledge and skills for the purposes of any employment that former employees might already have.

5.3 Addition to income for zero emission company cars increased (not part of the 2021 Tax Plan package)

As of 2021, the reduced addition to income for zero emission company cars (cars without CO_2 emissions) will be increased. In 2021 it will increase from 8% to 12%. In addition, the maximum list price over which the reduced addition to income is calculated will be reduced from EUR 45,000 to EUR 40,000 in 2021. The normal addition to income of 22% will apply to the excess. An exception applies to hydrogen-powered cars and solar cars. For these cars, the reduced addition to income percentage applies to the full amount of the list price.

5.4 Tax treatment subsidy arrangement COVID-19 bonus healthcare professionals for non-employees

It is proposed to introduce a final levy of 75% for the net healthcare bonus of EUR 1,000 that healthcare professionals who are not employees (such as self-employed persons and externally insourced personnel) receive. The final levy must be paid by the healthcare institution that will be compensated for this by the government. Healthcare institutions must keep separate accounts and records for non-employees showing to whom the bonus was paid and must notify the healthcare professionals in writing that the final levy on the healthcare bonus has been paid. The healthcare bonus paid to employees can be deducted from the fixed exemption in the work-related costs rules. If the fixed exemption is exceeded, the government will compensate the employer for the 80% final levy payable.

5.5 Changes to transitional rules for special leave scheme

The transitional rules for the special leave scheme will be changed to enable the proper settlement of the special leave scheme and to resolve any practical objections. The deemed moment when the credit is made available to the employee (*fictief genietingsmoment*) of December 31, 2021 will be changed to November 1, 2021 and the institution that administers the special leave scheme will be obliged to withhold payroll taxes and social security contributions. Through to October 31, 2021 it will continue to be possible to withdraw the value of the special leave entitlement.

5.6 Rate increase first bracket R&D remittance reduction

To stimulate innovation, the first bracket of the R&D remittance reduction for start-ups and non-start ups will be increased from 32% to 40% as of January 1, 2021. In addition, the rate for start-ups will be increased from 40% to 50%.

5.7 Clarification of research and development remittance reduction

The research and development remittance reduction will be clarified with regard to public research institutions. As of 2016, public research institutions are not regarded as 'R&D withholding agents' and are therefore excluded from the R&D remittance reduction. It is proposed to delete the words 'not for profit' from the definition of the term 'public research institution' in the Wages and Salaries Tax and National Insurance Contributions Reduced Remittances Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*; WVA). In practice, these words have proved to be ambiguous. This ambiguity is related to a public research institution possibly being subject to tax. Deleting the words 'not-for-profit' is not expected to limit the current group of users.

5.8 Job-related investment allowance

The government will use the Job-related investment allowance (*Baangerelateerde Investeringskorting*; BIK) to encourage businesses to invest. If businesses make an investment, for example the acquisition of new equipment, they will receive a credit that they can set off via their payroll tax and social security contributions. The BIK is not yet part of the 2021 Tax Plan, but will be included by way of a Memorandum of Amendment to the 2021 Tax Plan.

5.9 Postponement of changes to taxation date for share option rights of start-ups and scale-ups

The change to the taxation date for share option rights of start-ups and scale-ups announced in May 2020 will be postponed. After consultation, it appeared that this sector is too diversified to be able to introduce a general rule. That is why the aim is to offer a bill for internet consultation in February 2021. The envisaged effective date is January 1, 2022,

5.10 Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (not part of the 2021 Tax Plan package)

On September 3, 2020 the Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (*Wetsvoorstel bedrag ineens, RVU en verlofsparen*) was presented to the Lower House of Parliament. This bill is part of the Pension Agreement. In this bill the government elaborates on three of the agreements made: more freedom of choice in the use of the pension (lump-sum payment), more options for early retirement (easing of the early retirement levy; *RVU-heffing*) and more scope to utilize the tax relief for saving leave for the purposes of early retirement (leave savings scheme). More information can be found in our previous memorandum about this.

6 Real estate transfer tax

6.1 Real estate transfer tax to 8%

The general real estate transfer tax rate will increase to 8% with effect from January 1, 2021. This rate applies to the acquisition of all immovable property, with the exception of the homes listed below.

6.2 Real estate transfer tax rate for homes (principal residence) 2%

As from January 1, 2021, the 2% real estate transfer tax rate that currently applies to the acquisition of all types of homes will only apply to the acquisition of the legal title to homes (and the appurtenances acquired at the same time) which:

- are acquired by individuals; and
- serve as principal residence

A further requirement is that immediately prior to the acquisition, a clear, firm and unreserved statement is made in writing that the home will serve as principal residence. The 2% rate will therefore no longer apply to the acquisition of:

- holiday homes;

- rented homes;
- homes used as offices;
- appurtenances acquired later, such as garages;
- homes acquired by legal entities, such as BVs and housing corporations;
- beneficial ownership of homes;
- shares in a BV that owns homes.

6.3 Temporary exemption for starters on the housing market

During the period from January 1, 2021 to December 31, 2025, home acquisitions by first-time buyers are exempt. A first-time buyer is someone who is of age but not yet 35 years old, has not yet made use of the exemption and is going to use the home as their principal residence. The exemption can only be utilized if a tax return is filed together with a written statement that all conditions have been met.

6.4 Always tax return if a real estate transfer tax exemption is invoked

In the case of acquisitions from January 1, 2021, a real estate transfer tax return must always be filed if an exemption is claimed, thus not only for the starters' exemption, but for all exemptions. In practical terms, this means that the tax return is automatically filed via the notary public when a notarial deed is prepared for an acquisition. If the acquisition is not recorded in a notarial deed, the acquirer will have to request the issue of a tax return within one month.

7 Environmental taxes

7.1 CO_2 tax on Industrial Emissions Act

The government is taking measures to reduce CO_2 emissions in the Netherlands and to encourage companies to operate more sustainably. As part of this, it is proposed to introduce, from January 1, 2021, a CO_2 tax on industrial emissions that will primarily cover greenhouse gas emissions from and for industrial production and waste incineration.

The CO_2 tax should apply to all industrial greenhouse gas emissions insofar as they are covered by the European Emissions Trading Scheme (EU ETS), together with the CO_2 emissions from waste incineration plants plus companies that emit relatively large amounts of nitrous oxide. The incineration of industrial waste gases in the electricity sector will also be subject to the tax. The tax does not apply to greenhouse horticulturists covered by the EU ETS, a number of hospitals, universities, Schiphol Airport and auction halls. Companies that for the most part (more than 75% of their emissions) supply district heating plants also do not have to pay tax on the emissions attributable to this.

The tax is levied on the excess CO_2 emitted with the exempt tax, in the form of dispensation rights, decreasing annually until 2030. Due to the corona crisis, companies receive relatively more dispensation rights than they need in the first few years.

The tax base in a year is determined by the taxed emissions. In the proposal, these are specified as the industrial annual emissions to be reduced with the granted exempted emissions in that year (dispensation rights), and to be reduced or increased by the transfer of dispensation rights in that year. Emissions related to power generation do not form part of the tax base, but are related to another bill that is currently pending before the Lower House of Parliament: the Power Generation (minimum CO_2 price) Act (*Wet minimum CO_2-prijs elektriciteitsopwekking*). Parties will therefore not be confronted with both taxes for the same emissions.

The rate will be EUR 30 per tonne of CO_2 with effect from January 1, 2021. This rate increases in a straight-line by EUR 10.56 per year through 2030, so that the rate in 2030 is EUR 125 per tonne of CO_2, according to the price level applicable for the year 2020. The level of the national tax per tonne of CO_2 also depends on the level of the EU ETS price. In the case of greenhouse gas systems, the difference between the rate laid down by law and the EU ETS price leads to the national tax. For taxpayers other than those with greenhouse gas systems, which are therefore not covered by the EU ETS, the national tax is equal to the rate laid down by law.

The tax due must be paid by way of a tax return no later than October 1 after the end of the calendar year in question. The distinctive characteristic of this taxation methodology is that the taxpayer itself calculates the tax that has become due and pays it by way of a tax return. The implementing tasks are the responsibility of the Netherlands Emissions Authority (NEA).

7.2 Air passenger tax

The government aims to introduce an air passenger tax on January 1, 2021. The relevant bill to this end was adopted by the Lower House on April 1, 2020 and is currently being debated in the Upper House. The bill provides for a charge per departing passenger. Transfer passengers are excluded. The proposal also provides for an air freight tax, whereby aircraft that produce less noise are taxed less.

7.3 Replacement of the reduced rate scheme (*postcoderoosregeling*) with a subsidy measure (energy tax)

With effect from 2021, cooperatives and owners' associations can apply for a subsidy for a solar energy project or a small-scale wind energy project. As with the current reduced rate scheme, the new measure uses the postcode area to guarantee the local character. The government proposes to replace the current reduced rate scheme with a subsidy measure, with the subsidy being paid to the cooperative or owners' association, which then distributes it among the members.

7.4 Extension of reduced rate for public charging stations (energy tax)

Until the end of 2020, a reduced rate of energy tax will apply to electricity supplied to charging stations for electric vehicles with a standalone connection. In practice, this concerns the public charging stations. In addition, for electricity supplied to a charging station for electric vehicles with a standalone connection no rate is set for the surcharge for sustainable energy (ODE). It is proposed to extend this measure until 2022.

7.5 Reduced rate for shore-side power plants (energy tax)

Shore-side power is electricity from the onshore distribution grid supplied to ships at berth. When ships use shore-side power, they are no longer dependent on their own mineral oil-powered generators for their own electricity supply. This improves air quality, reduces noise emissions and reduces CO_2 emissions. It is proposed to apply a reduced rate of EUR 0.0005 per kWh to supplies of electricity to shore-side power plants that meet the conditions for energy tax and not to set a rate for the surcharge for sustainable energy.

7.6 Legislative proposal for ODE rates 2021 and 2022 (energy tax)

This bill includes a proposal for the rates for the storage of sustainable energy and climate transition (surcharge for sustainable energy; ODE) in 2021 and 2022. The ODE is a tax on the use of electricity and natural gas that is designed to finance the cash expenditure associated with the *Stimulering Duurzame Energietransitie* (SDE++) subsidy measure. In addition to sustainable energy production, the SDE++ also stimulates a reduction in CO_2. The ODE is a surcharge on the energy tax and therefore follows the energy tax rate structure.

7.7 Changing the term 'establishment' in respect of waste tax

In respect of waste tax, reference is made to the term 'establishment' as intended by the Environmental Management Act (*Wet milieubeheer*). Upon the entry into force of a provision in the Act implementing the Environmental and Planning Act (*Invoeringswet Omgevingswet*), the definition of the term 'establishment' in the Environmental Management Act will no longer apply. This change must be reflected in the waste tax. The measure has been removed from the 2021 Tax Plan package and will be transferred to the Tax Miscellaneous Provisions Act 2022 (*Fiscale verzamelwet 2022*). This is possible because the intended entry into force of the Environmental and Planning Act has been postponed until January 1, 2022.

8 2021 Tax Plan miscellanea

- In order to remove any potential conflict with EU law, the government intends to limit the **crediting of dividend withholding tax** and tax on games of chance against corporate income tax as of January 1, 2022. The crediting of these withholding taxes will be limited to the corporate income tax due in one year. This is particularly important in loss situations. The withholding taxes that are not credited can be carried forward to a later year. In anticipation of and in deviation from this arrangement, a policy statement will be made to the effect that the inspector may, in certain situations and subject to conditions, grant a refund of dividend withholding tax and tax on games of chance to foreign entities, in order to prevent a conflict with EU law.

- The **bank tax** rate will be increased once in 2021 to 0.066% on short-term debt (term less than 1 year) and 0.033% on long-term debt (term from 1 year). This represents a 50% increase in the rates.

- Transitional rules will be included in the 1928 **Nature Conservation Act** (*Natuurschoonwet*; NSW) to accompany the amendment of the conditions for NSW estates following the evaluation of the NSW. In addition, an exemption from dividend withholding tax will be introduced for NSW estates.

- The taxable event in the private motor vehicle and motorcycle tax (**BPM**) is brought forward from the date of transfer to the date of registration. The CO_2 bracket limits and the bracket rates for private motor vehicles as well as the CO_2 limit and the rate for the diesel surcharge for private motor vehicles for 2021 will be tightened in line with technological developments. The tightening will not be applied to the flat rate. The bracket limits are reduced by 4.2%, the rates are first indexed with the table adjustment factor for 2021 (1.016) and then increased by 4.38%.

- The bill on the Improved Feasibility of **Allowances** Act (*Wet verbetering uitvoering toeslagen*) contains the initial improvements and alternatives for a better and more humane system within the allowances regime.

- With effect from January 1, 2021, **attachment by garnishment** can only be imposed electronically. For the Dutch tax authorities, an exception is included to the rule that attachment by garnishment can only be imposed electronically.

9 Other tax developments

There are a number of other relevant tax-related developments that are not part of the 2021 Tax Plan package. We will deal with some of these briefly below.

9.1 Relief and recovery package for the economy and labor market (Emergency package 3.0)

On August 28, 2020, by letter to the Lower House of Parliament, the government presented a relief and recovery package for businesses and workers, which follows on from the two previous emergency packages. The new package aims to provide perspective and clarity and is based on three pillars: (i) the continuance of relief, including liquidity relief and extending the Temporary emergency bridging measure to retain jobs *(Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*; NOW), the Overhead Compensation SMEs (*Tegemoetkoming Vaste Lasten mkb*; TVL) and the Temporary emergency bridging measure for self-employed persons (*Tijdelijke overbruggingsregeling zelfstandig ondernemers*; TOZO) by nine months; (ii) stimulating and accelerating investments; and (iii) a supplementary social package. The extension of the relief measures will take place under a (phased) tightening of the conditions, so that these are more focused on the long-term. An important part of the new package concerns the phasing out of the more flexible special deferral of payment policy for tax debts, including a payment arrangement for the accrued tax debt, and changes to several related measures. The relief and recovery package is discussed in more detail in this memorandum.

9.2 The UBO register

On June 23, 2020 the Upper House adopted the bill on the registration of ultimate beneficial owners (UBOs) of Dutch companies and other legal entities. With this approval, the parliamentary debates on the bill have been completed. With effect from July 8, 2020, all Dutch legal entities must keep records of their UBOs, and from September 27, 2020, the obligation to enter these details in the Dutch UBO register will take effect.

9.3 Mandatory Disclosure Directive (DAC6)

As of July 1, 2020 the Mandatory Disclosure Rules (EU DAC6 Directive) took effect in the Netherlands. However, as a result of the corona crisis, the deadlines for reporting reportable cross-border arrangements have been extended. During the parliamentary debates on the Dutch implementation of the Mandatory Disclosure Rules it was acknowledged that, in practice, it can be difficult to determine whether or not a certain arrangement is reportable. The 'Guidelines for Reportable Cross-border Arrangements' published on June 30, 2020 by Decree dated June 24, 2020, provide further details about the reporting obligation for 'Dutch' intermediaries or 'relevant taxpayers'. The Guidelines may be updated in the future. More information can be found in our previous memorandum about this.

9.4 Proposal to extend the Directive on administrative cooperation to digital platforms (DAC7)

On July 15, 2020 the European Commission approved a new tax package, including a proposal to extend the Directive on administrative cooperation to digital platforms (DAC7). This new proposal should ensure that these platforms provide information on the income generated by sellers on online platforms to the Member States that automatically exchange this information with the other Member States. This proposal is included in the tax agenda of the Council and requires unanimous approval before it can be applied.

9.5 Report by the Advisory Committee on the Taxation of Multinationals

The 145-page Committee report 'Striking a balance in corporate income tax' was published by the Ter Haar Committee on April 15, 2020. More information can be found in our previous memorandum about this. The government has announced that it will introduce legislation during the remaining term of this government in order to have two important measures from the report to take effect on January 1, 2022: the limitation of the loss set-off (see 1.4) and not applying downward adjustments by virtue of the arm's-length principle if this leads to a mismatch (see 1.6). With regard to the other measures outlined, such as, for example, tightening up the existing CFC rules, the government believes that further investigation or international consensus is desirable first.

9.6 Building Blocks for a Better Tax System

On May 18, 2020 the 'Building Blocks for a Better Tax System' package was published. The reports, which together contain more than 1000 pages of text, have resulted in 169 detailed policy options on a large number of taxes that can be used by a future government. The detailed policy options will obviously become part of the various election manifestos and will play a significant role in the formation of a new government after the national election in 2021. Although this is therefore all still in the future, it is nevertheless worthwhile examining the proposed policy options. More information can be found in our previous memorandum about this.

9.7 OECD Pillar 1 and Pillar 2: taxation in a digital economy

The OECD, together with the countries belonging to the Inclusive Framework (IF), has drawn up a Programme of Work to find a global solution to the taxation of profits in the digital economy. This Programme of Work comprises two pillars:

1. Pillar 1 deals with new rules on taxable presence and profit allocation. For the first pillar, a framework for a possible unified approach was developed in October 2019. This unified approach contains a new way of distributing profits between countries that fits within the digital economy by allocating more profits to market countries. New rules are introduced that apply to companies supplying products or services aimed at individual end users. In addition to the existing permanent establishment, a new nexus concept will be introduced and new and modified profit allocation rules will apply;
2. Pillar 2 concerns measures directed towards ensuring a minimum level of taxation for internationally operating companies. Despite the various anti-BEPS measures taken, several countries within the IF note that there are still incentives entailing residual risks of profit shifting to low-tax countries, partly in relation to intangible assets that are certainly vitally important in more digitalized business models. In the Programme of Work, the IF therefore agreed in November 2019 to develop measures to ensure that internationally operating companies always pay at least a minimum level of profit tax. Residual risks of base erosion and profit shifting can thus be effectively addressed. However, countries remain free to set up their own profit tax system and choose their own profit tax rate. Instead, the proposed Pillar 2 measures seek to give countries the freedom to levy taxes if the income of an internationally operating company outside its own country is not taxed at least at a minimum effective rate. This reduces the incentive to shift profits to low-tax countries and sets a lower limit on tax competition between countries.

Initially the aim was to reach a compromise on a global solution by 2020 at the latest, but this is unlikely to be achieved. Indeed, the date by which important decisions for both Pillars should be taken has been postponed from July 2020 to October 2020, due to insufficient progress being made, in particular on Pillar 1.

9.8 Financial service entities and provision of information followed by its exchange with other countries

At the end of 2019, the Deputy Minister of Finance published a draft of the proposed changes to the International Assistance in the Levying of Taxes Act (IALTA) Implementation Decree, which will enable financial service entities within a group to demonstrate their actual presence in the Netherlands. Based on the draft changes, the payroll requirement of EUR 100,000 and the office space requirement of 24 months will also be included. The requirements currently included (place of business must be in the Netherlands and the taxpayer must not be regarded as a tax resident in and by another country) will be canceled in order to maintain consistency and due to their limited added value. At the time, the Deputy Minister had explicitly promised that the draft changes to the IALTA Implementation Decree should not enter into force before January 1, 2021. This specifically means the two additional requirements will also have to be met throughout the whole of 2021 in order for the taxpayer to state in their corporate income tax return for 2021 that all the substance requirements have been met (and thus avoid the exchange of information). In such cases, steps will therefore have to be taken before January 1, 2021.

9.9 Ongoing investigations

The government notes that it is being investigated whether it is possible to introduce regulations by 2022 providing for the possibility of exchange with foreign countries for intermediate holding companies/conduit companies resident in the Netherlands (channeling of dividends) that do not have sufficient substance in the Netherlands. The government sees no reason to change the participation exemption rules for such intermediate holding companies. It has also announced an investigation into the budget-neutral introduction of a net equity deduction, including a further tightening of the earnings stripping measure. There are also a number of other ongoing investigations, such as those into:

- possible adjustment of the qualification policy for (foreign) legal entities;
- possible changes to the FBI regime for investment in real estate (this investigation is expected in 2021).

Meijburg & Co
September 15, 2020

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.