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The Government presents tax measures for 2022 on Budget Day

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On Budget Day, September 21, 2021, the caretaker government (hereinafter: the government) presented the 2022 Tax Plan package to the Lower House of Parliament. It contains the following bills:

- 2022 Tax Plan
- Other Tax Measures 2022
- Tax Status measure from Second EU ATAD Directive (Implementation) Act (tax status measure reverse hybrid entities)
- Share Option Rights Tax Scheme (Amendment) Act
- Delegation clauses Extreme Cases (Compensation) Act
- Reduction of landlord levy rate and monthly changes of tax reduction amounts

On September 21, 2021 the government also presented the bill on Combating Mismatches in the application of the arm's length principle Act to the Lower House of Parliament. Many of the proposed measures will take effect on January 1, 2022. This memorandum outlines the main features of the 2022 Tax Plan and the latter bill. 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 2022 Tax Plan package. Please refer to the last section for other tax developments.

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1 Corporate income tax

1.1 Taxpayer status measure for reverse hybrid entities

Background

As of January 1, 2020 several measures took effect in the Corporate Income Tax Act 1969, which serve to combat tax avoidance by using differences between tax systems (hybrid mismatches). The second EU Anti-tax Avoidance Directive (ATAD2) required the introduction of these normal hybrid mismatch measures. In implementing these measures the Netherlands made use of the option to have the tax status measure for reverse hybrid entities only take effect as of January 1, 2022. The government has now followed up on this by means of a separate bill. A draft of this bill had been submitted earlier this year for the purposes of an [internet consultation](#).

Taxpayer status measure

Under the bill, a reverse hybrid entity will become fully liable to corporate income tax as a resident taxpayer. A reverse hybrid entity is defined as:

- a partnership entered into under Dutch law or established in the Netherlands that is regarded as a dependent taxpayer ('transparent') for Dutch tax purposes;

- of which at least 50% of the voting rights, capital interests or profit rights are directly or indirectly held by one or more entities associated with that partnership, which are established in a state that regards that entity as an independent taxpayer (non-transparent).

The taxpayer status measure does not apply to designated undertakings for collective investment in transferable securities (UCITS) and alternative investment institutions, provided they invest in securities and there is a diversified portfolio. For the time being, open limited partnerships will also not be affected by the measure.

Deduction item

Insofar as the profit of a reverse hybrid entity directly accrues to the holders of voting rights, capital interests or profit rights who reside or are established in a state that regards that entity as transparent, it has been regulated that the relevant part is deductible from the profit of the reverse hybrid entity, provided that profit share is subject to a profit tax.

Partly in connection with this deduction item, it has also been regulated that in certain cases voting rights, capital interests or profit rights in a reverse hybrid entity, which are held by participants who are established or reside in a state that qualifies the reverse hybrid entity as transparent, are considered part of a Dutch business or constitute a Dutch business.

Participation and substantial interest

Partly as a result of the reverse hybrid entity becoming fully liable for corporate income tax as a resident taxpayer, participations or substantial interests may arise in that entity. The profit entitlement in that entity will be used to determine whether there is a participation or substantial interest in a reverse hybrid entity. In short, a participation or substantial interest requires that the participant has a share in the reverse hybrid entity and thus holds at least a 5% share in the profit of the reverse hybrid entity for the purposes of the above deduction item.

Changes to dividend tax

Under the bill, several amendments will be made to the Dividend Withholding Tax Act 1965 and the General Taxes Act so that, where possible, Dutch dividend tax may be imposed on dividend distributions made to and by a reverse hybrid entity.

Withholding tax on interest and royalty payments

Under the bill, several amendments will also be made to the Withholding Tax Act 2021 and (again) to the General Taxes Act so that, where possible, Dutch withholding tax may be imposed on interest and royalty payments made to and by a reverse hybrid entity.

Scope of hybrid mismatch measures extended to natural persons

At present only entities may qualify as 'associated with the taxpayer'. This is an incorrect implementation of the ATAD2 Directive. It has been proposed amending the association definition so that natural persons (individuals) may also qualify as 'associated with the taxpayer'. As a result of this, the normal hybrid mismatch measures may also apply if the hybrid mismatch arises between the taxpayer and an (associated) natural person. A consequence of these extensions of the scope is that other provisions in the hybrid mismatch measures will also be (further) adapted to natural persons.

1.2 Introduction consecutive order for setting off foreign taxes in the case of multiple controlled entities

For the purposes of implementing an EU directive, the Netherlands introduced an additional Controlled Foreign Company (CFC) measure on January 1, 2019 aimed at combating profit shifting to foreign low-taxed controlled entities or permanent establishments. In short, under this CFC measure certain undistributed passive income ('tainted benefits') derived by a low-taxed controlled entity will be included in the tax base of the Dutch parent company. By applying the additional CFC measure the profit tax paid by a controlled entity may, under certain conditions, be set off. If a taxpayer has multiple controlled entities, the offsettable foreign tax will be calculated separately for each entity. Because the set-off is subject to a maximum of the corporate income tax payable in the Netherlands in a year, there may be insufficient scope in a particular year to set off the full amount of foreign profit tax. A choice will then have to be made to set off some of the tax in that year and carry forward the rest to subsequent years. The law currently does not prescribe the order in which the set-off must take place. The proposal is to introduce a compulsory consecutive order for the set off as of January 1, 2022. On this basis, the reduction is taken into account in increasing size, which means that the smallest amount of offsettable foreign profit tax will first be set off. If the reductions are all the same size, then a proportionate part of each reduction is taken into account. The unoffsettable foreign profit tax can, as is now the case, be (indefinitely) carried forward to a following year.

1.3 Announcement that consequences of the Supreme Court judgment on concurrence holding company losses and fiscal unity will be repaired

In its judgment of June 11, 2021 the Supreme Court further clarified the concurrence between the loss set-off rules and the fiscal unity regime for corporate income tax purposes. The judgment may mean that in certain circumstances holding company and group financing losses from years before 2019 may be set off against non-holding company and group financing losses, resulting in a significant loss of tax revenue and the Deputy Minister of Finance, Mr. Vijlbrief, believes that this is contrary to the spirit and intent of the legislation. A proposal to repair the consequences of this judgment was therefore announced in the cover letter. This will take place by means of a Memorandum of Amendment to the bill Other Tax Measures 2022.

1.4 Combating mismatches in non-arm's length transfer pricing (not part of the 2022 Tax Plan package)

On September 21, 2021 the bill on Combating Mismatches in the application of the arm's length principle Act was also presented to the Lower House of Parliament. The proposal had previously been submitted for an [internet consultation](#). Several aspects of the final bill differ from the consultation proposal, such as the transitional rules. The proposal will apply for the first time to financial years commencing on or after January 1, 2022.

The bill is aimed at informal capital arrangements and deemed dividend arrangements. The bill means that downward adjustments of the Dutch profit for tax purposes on the basis of the arm's length principle in transactions between associated entities will, in principle, no longer be taken into account. However, the downward adjustment may be taken into account insofar as the taxpayer can convincingly demonstrate that a corresponding upward adjustment is subject to profit tax at the other (associated) entity with which the legal relationship was concluded. If the associated entity is a hybrid entity, then it is important that the underlying participant is taxed on the upward adjustment.

There is also a measure for assets that are acquired from an associated entity and whereby the agreed fee is less than the arm's length price and the difference is not taxed at the transferor. For assets acquired from an associated entity on or after July 1, 2019, any future depreciation/amortization may be limited (as of financial years commencing on or after January 1, 2022). A deposit in kind of an asset is also affected by the proposal. Not falling under the proposal is the situation that an asset is purchased for the correct arm's length price, but is not taxed at the vendor.

1.5 Extension of SME bracket (not part of the 2022 Tax Plan package)

The SME bracket to which the low CIT rate of 15% applies instead of the normal 25% CIT rate will be extended from EUR 245,000 in 2021 to EUR 395,000 as of 2022.

On September 16, 2021 the Lower House of Parliament adopted a motion to increase salaries in the healthcare sector and to finance this by a corporate income tax increase. It is still unclear what the government will do with this motion.

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

As part of the 2021 Tax Plan, an indefinite carry-forward [loss set-off](#) will apply as of January 1, 2022 (the carry-forward period is currently six years; 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.

1.7 Payment discount canceled as of 2023 (not part of the 2022 Tax Plan package)

The government intends to cancel, as of 2023, 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).

1.8 Progress of new group corporate income tax scheme (not part of the 2022 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 our previous memorandum on 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 in 2020, the Deputy Minister of Finance, Mr. Vijlbrief, sent a letter to the Lower House of Parliament in which he had 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 of Parliament has been left to a following government.

1.9 Investigation into tax treatment of equity and debt (not part of the 2022 Tax Plan package)

On Budget Day 2020 the Deputy Minister of Finance had announced an investigation into the desirability and structure of a budget-neutral introduction of a net wealth deduction for corporate income tax purposes. The findings of this investigation were sent to the Lower House of Parliament on September 13, 2021. The Deputy Minister indicated that in general a more equal tax treatment of equity and debt is desirable as a way of limiting the debt bias and strengthening the financial resilience of the Dutch business sector. According to the Deputy Minister, the preference is for realizing a more equal treatment of equity and debt in international or multilateral situations. In that context, the European Commission in its notification of May 18, 2021 – containing its views on Business Taxation for the 21st Century – published a proposal for the multilateral introduction of a net wealth deduction or the further limitation, on a multilateral basis, of the deductibility of interest. The government regards the attention paid by the European Commission on the tax treatment of equity and debt as positive. A coordinated approach within the EU will contribute to the prevention of mismatches, combating tax avoidance and will lead to less excessive debt financing.

The government does not consider it desirable to unilaterally introduce a net wealth deduction, either fully or incrementally. Another manner to unilaterally realize a more equal treatment of equity and debt is by further limiting the deductibility of interest. To further limit the deductibility of interest, the current generic interest deduction limitation for corporate income tax purposes - the earnings stripping measure - may be tightened. This can be achieved by further reducing the deduction percentage of the EBITDA (currently 30%) or the threshold (currently EUR 1 million) in the earnings stripping measure, or by a combination of both. This increase in the tax burden can be structured budget-neutrally by using the tax revenue for a generic reduction of the corporate income tax rate. Tightening the earnings stripping measure in combination with this compensatory reduction of the corporate income tax rate is a way of ensuring that the attractive business and investment climate for entrepreneurs and investors with activities of substance in the Netherlands is retained.

2 Withholding taxes

2.1 Limiting the crediting of dividend tax and tax on games of chance (Sofina judgment)

In order to remove any potential conflict with EU law, the government will limit the crediting of dividend tax and tax on games of chance against corporate income tax as of January 1, 2022. This is a response to the judgment by the Court of Justice of the European Union in the French Sofina case. The crediting of these advance taxes will be limited to the corporate income tax payable in one year. This is particularly important in loss situations. The uncredited advance taxes will be carried forward to a later year by means of a decision open to objection. In anticipation of and in deviation from this measure, a [policy statement](#) published on September 4, 2020 regulated that the tax inspector may, in certain situations and subject to conditions, grant a refund of dividend tax and tax on games of chance to non-resident entities, in order to prevent a conflict with EU law. This policy statement will be withdrawn. In this context, accompanying measures will also be taken for the addition and the removal of companies from the fiscal unity, for mergers and for divisions/split-offs.

2.2 Permanent establishment concept expanded

It was announced in the cover letter to the 2022 Tax Plan package that the government will submit a proposal to expand the permanent establishment concept as of 2022. Interest and royalties payable by entities not established in the Netherlands will only be subject to withholding tax if these are attributable to a permanent establishment located in the Netherlands. For the meaning of the permanent establishment concept, reference is also made to the Corporate Income Tax Act 1969. This concept will be expanded to other Dutch sources. Consequently, withholding tax will also be imposed on interest and royalties attributable to, among other things, immovable property located in the Netherlands.

2.3 Rebuttal provision reverse hybrid entities

It was also announced in the cover letter to the 2022 Tax Plan package that the rebuttal provision for hybrid entities will be clarified. As a result of this amendment, hybrid entities will not be subject to withholding tax if at least one of the underlying beneficiaries (by themselves or via a cooperating group) has a qualifying interest in the hybrid entity. This amendment will have retroactive effect to January 1, 2021,

2.4 Withholding tax on dividends to low-tax jurisdictions (2024, not part of the 2022 Tax Plan package)

In a [letter](#) to the Lower House of Parliament dated March 29, 2020, the Deputy Minister of Finance announced that as of January 1, 2024 dividend flows to low-tax jurisdictions will be subject to tax. After an [internet consultation](#) that ran from September 25 through to October 23, 2020, a bill was presented to the Lower House of Parliament on March 24, 2021. The reason for this is that the government wants to put an end to the Netherlands being used as a gateway to low-tax countries. To this end, a withholding tax on interest and royalties had been introduced as of January 1, 2021. As of 2024, this tax will be supplemented with a conditional withholding tax on dividends. The measure will apply to cash flows to countries with a profit tax rate of less than 9% and to countries appearing on the EU blacklist, even if the Netherlands has a tax treaty with these countries. If the dividend tax and the conditional withholding tax cumulate, the withholding tax will be reduced by the imposed dividend tax. On balance, the withholding tax rate payable will therefore be the rate that is equal to the normal CIT rate (25%).

2.5 Private Member's bill on conditional final settlement of dividend tax (2020, not part of the 2022 Tax Plan package)

On July 10, 2020 MP Bart Snels (the Greens) submitted a [Private Member's bill](#) to the Lower House of Parliament introducing a dividend tax settlement obligation on cross-border relocations of the registered office, mergers, split-offs/divisions and share mergers, if as a result thereof the (deferred) profit reserves of the withholding agent established in the Netherlands is transferred to a jurisdiction that does not take over the Dutch dividend tax claim; the 'qualifying state'. Mr. Snels had already submitted a Memorandum of Amendment on the bill on September 18, 2020, in which he also announced that more changes would follow. In response to criticism from the Council of State, he finally submitted a [completely new legislative text](#) and Explanatory Memorandum to the Lower House of Parliament on October 9, 2020. The Memorandum in response to the Report followed on March 12, 2021, in which Mr. Snels indicated that he

saw [no reason](#) to withdraw his proposal or fundamentally change it, as did a supplemental Memorandum of Amendment.

3 Personal and corporate income tax

3.1 Exemptions normal TVL and TVL for SME startups (2021)

It has been proposed to exempt the Overhead Compensation SMEs (*Tegemoetkoming Vaste Lasten mkb*; TVL SME), the Overhead Compensation (*Tegemoetkoming Vaste Lasten*; TVL) and the Overhead Compensation start-up SMEs (*Tegemoetkoming Vaste Lasten voor startende mkb-bedrijven*; TVL start-up SMEs) from tax. The 2021 Tax Plan had already included an exemption for the year 2020 for the at the time still applicable Compensation for Entrepreneurs in Affected Sectors COVID-19 (*Tegemoetkoming Ondernemers Getroffen Sectoren COVID-19*; TOGS) and the TVL SME for the period through to September 2020. The proposal is to amend these exemption provisions so that all the aforementioned TVL schemes fall under the exemption. 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 repayments of the above compensation are not deductible.

3.2 Environmental investment allowance (*milieuinvesteringsaftrek*; MIA) to increase significantly

It has been proposed to increase the aid percentages in the MIA from 13.5%, 27% and 36% to 27%, 36% and 45% respectively as of January 1, 2022. This will thus act as an additional stimulus for businesses subject to personal income tax and corporate income taxpaying entities to invest in MIA assets.

4 Personal income tax

4.1 Amendment of homeownership scheme for partners

In response to questions from the Lower House of Parliament about the application of the homeownership scheme in the Personal Income Tax Act 2001 to partners, the Deputy Minister of Finance announced several law amendments in a letter sent to the Lower House of Parliament on August 31, 2021. These amendments have now been elaborated on in the bill Other Tax Measures 2022 and the intention is to have them take effect as of January 1, 2022. According to the Deputy Minister, these law amendments will make the application of the additional loan scheme (*bijleenregeling*) and the repayment position

(*aflossingsstand*) in partnership situations more equitable and prevent unintended interest deduction limitations. This partly concerns the codification of a policy statement. For example, in the joint purchase and financing of a home, the additional loan scheme will effectively be applied at the level of the partners. What they – taking account of their home equity reserve (*eigenwoningreserve*) – may jointly finance as a maximum home acquisition debt, but which due to the manner of financing and operation of the additional loan scheme cannot be regarded as home acquisition debt (*eigenwoningsschuld*) by them individually, will now be regarded as home acquisition debt. The homeownership scheme has also been simplified in the event of the death of one of the partners so that the surviving partner is not unnecessarily confronted with the homeownership past of the deceased. For example, a home equity reserve can arise upon the death of one of the partners, but it will automatically end and thus will not transfer to the partner.

4.2 Income-dependent combination tax credit repaired

The income-dependent combination tax credit (*inkomensafhankelijke combinatiekorting*; IACK) is intended for parents who combine work and the care for children. In light of this, the application of the IACK has been made subject to the condition that the taxpayer does not have a tax partner or is the tax partner who earns the least. Resident taxpayers who do not meet this condition are not eligible for the IACK. A limited group of non-resident taxpayers may however be entitled to the IACK in family circumstances that are actually the same, because, for example, the spouse of the non-resident taxpayer cannot be their tax partner because he/she does not earn any income in the Netherlands. This is an unintended effect of the legislation and is not in line with the spirit and intent of the law. The legislation will therefore be amended in such a way that the effect of applying the IACK to non-resident taxpayers is the same as that for resident taxpayers.

4.3 Rectification of technical omissions and clarification of calculation method of return on investment percentages Box 3.

The Amendment of Box 3 Act (part of the previous tax package) still contains some technical omissions that have now been rectified. The exact calculation method for the underlying parameters of Box 3 has also been clarified. However, this is not a substantive change.

4.4 Reduction of self-employed persons deduction (not part of the 2022 Tax Plan package)

The self-employed persons deduction (*zelfstandigenaftrek*) will be reduced from EUR 6,670 to EUR 6,310. The self-employed persons deduction will be reduced annually until it reaches EUR 3,240 in 2036. 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.

4.5 Reduction of Box 1 basic rate (not part of the 2022 Tax Plan package)

As of 2022, the basic tax rate in Box 1 (including national insurance contributions) will be reduced from 37.10% to 37.07%. This basic rate will apply to income up to EUR 69,398. The top rate for income above this will remain at 49.5%. As of 2022 the rate for state pension beneficiaries with an income of up to EUR 35,472 (or EUR 36,409 if born before 1946) will be reduced from 19.20% to 19.17%. In 2023 the basic rate in Box 1 will be further reduced to 37.05% and to 37.03% in 2024.

4.6 Deductible items in Box 1 gradually reduced to the basic rate (not part of the 2022 Tax Plan package)

In 2022 the rate at which deductible items in Box 1 can be taken into account will be further reduced. 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, deductible donations and – under transitional rules – losses on investments in venture capital).

Insofar as these deductible items fall in the highest bracket, they will only be able to be deducted at 40% in 2022 where in 2021 this is still possible at 43%. In 2023 the deduction will be the same as the applicable basic tax rate of 37.05%.

4.7 Gradual phasing out of credit for no or small home mortgage ('Hillen credit'; not part of the 2022 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 2022 the credit to be taken into account will thus be only 86 2/3%.

4.8 Deduction for educational expenses canceled (not part of the 2022 Tax Plan package)

The government is replacing the current tax deduction for educational expenses for personal income tax purposes with a personal budget for education and development, the STAP budget subsidy scheme (Labor market position incentive; *Stimulans van de ArbeidsmarktPositie*). However, the introduction of this scheme has been delayed, so that educational expenses will still be deductible in 2021. The deduction will be canceled 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 canceled.

4.9 Measure to counter excessive borrowing from own business (2023, not part of the 2022 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.

4.10 Uncertainty requirement for periodic deductions for gifts canceled (2024, not part of the 2022 Tax Plan package)

For personal income tax purposes, the deduction of periodic gifts is not subject to the threshold and cap applying to ordinary gifts. The uncertainty requirement is one of the requirements that must be met for qualifying as a periodic gift. This uncertainty must amount to at least 1%. In practice, the basic assumption is that the uncertainty requirement is met if the periodic gift is dependent on one life for a period of five years. However, in practice the uncertainty requirement is experienced as complicated. By letter to the Lower House of Parliament dated June 29, 2021, the Deputy Minister announced a law amendment under which the uncertainty requirement for periodic gifts will in fact be canceled. A minimum term of five years will however still apply and can only be deviated from in specific cases. The aim is to have the law amendment take effect as of January 1, 2024.

5 Payroll tax and social security contributions

5.1 Change to taxation moment for share option rights

A new interpretation is being given to the manner in which employee share option rights will be included in payroll tax and social security contributions. The taxation moment will be moved from the moment that the share option was exercised to the moment that the shares acquired under the exercise of the share option become tradable. This offers a solution for situations in which tax must be paid at a moment when insufficient liquid assets are available. Moreover, the employee can opt to still have the tax imposed at the moment the share option rights are exercised. If a share in a listed company is not yet tradable due to a legal or contractual restriction, the tax may be deferred for five years at most in order to prevent improper use and long-term deferral of tax. This both applies if the company is listed or if the share option right is awarded during the IPO. These amendments will apply as of January 1, 2022 to all employers that are withholding agents.

The current tax credit for share option rights for start-ups with an R&D declaration will thus be canceled as of January 1, 2022.

5.2 Extension of normative salary for innovative start-ups

The easing of the tax measure for innovative start-ups in respect of being allowed to determine the normative salary at the statutory minimum wage will be extended until January 1, 2023 pending the evaluation that is to take place.

5.3 Increase of fixed exemption in the work-related costs rules

As a result of the corona crisis, the fixed exemption that employers have for untaxed reimbursements and provisions was increased for 2020 from 1.7% to 3% for the first EUR 400,000 of the payroll per employer. This increase will also apply – with retroactive effect - to 2021. The increase will be canceled as of the 2022 calendar year.

5.4 Specific exemption working from home allowance

The 2022 Tax Plan proposes a specific exemption for reimbursing certain working from home (WFH) costs. This measure is an addition to the current options to reimburse specific WFH costs, being health and safety provisions and IT equipment, untaxed. It concerns a maximum amount of EUR 2 per WFH-day. This amount will be inflation-adjusted annually as of 2023. The allowance covers additional costs for water and electricity use, heating, coffee, tea and toilet paper. The specific exemption may also be applied if an employee works part of the day from home. However, such a 'combined working day' must not overlap with the specific exemption for a travel allowance for commuting or, for example, using the company car to commute to a permanent workplace.

5.5 Simplification and clarification of R&D remittance reduction

The application system for the research and development (R&D) remittance reduction will be simplified. The legislation on costs and expenses claimed for R&D will also be clarified by notification.

5.6 Job-related Investment Allowance (*Baangerelateerde Investeringskorting*; BIK) replaced by reduced AWF contribution

The government has decided not to introduce, with retroactive effect to January 1, 2021, the [Job-related Investment Allowance \(*Baangerelateerde Investeringskorting*; BIK\)](#). The government wanted to use the BIK to simulate companies to make investments and retain jobs, but it cannot rule out that the European Commission will regard the measure as prohibited State aid. Instead of the BIK, the government will accommodate companies by reducing the contributions for the General Unemployment Fund (*Algemeen werkloosheidsfonds*) (AWF contribution) for all salaries paid as of August 1, 2021 and as of August 16, 2021 for employers that file four-weekly payroll tax returns. The low contribution on the salary of employees with an open-ended contract will be reduced from 2.7% to 0.34%. The contribution percentage

for the salaries of other employees will be reduced from 7.7% to 5.34%. The new percentages will apply through to December 31, 2021.

5.7 Increase in addition to income for zero emission company cars

As of 2022, the reduced addition to income for zero emission company cars (cars without CO₂ emissions) will be further increased from 12% to 16%. The maximum list price on which the reduced addition to income is calculated (the cap) will be reduced to EUR 35,000 in 2022 and to EUR 30,000 in 2023. 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.

5.8 Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (not part of the 2022 Tax Plan package)

On January 12, 2021 the Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (*Wetsvoorstel bedrag ineens, RVU en verlofsparen*) was adopted by the Upper 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. The easing of the RVU levy and more scope for saving for leave already applied as of January 1, 2021. The date on which the lump sum option was to take effect has been postponed by one year to January 1, 2023.

5.9 Broadening of concept of 'person required to keep records' (not part of the 2022 Tax Plan package)

As of January 1, 2022 the concept of the 'person required to keep records' will be broadened for the purposes of the Dutch Tax and Customs Administration. This concerns the obligation for the periodic reporting of data and information from the IB-47 form, without listing the Citizen Service Number (*burgerservicenummer*; BSN) The new reporting obligation will apply to two groups that are required to keep records: Firstly, withholding agents that make payments to an individual for activities and services performed for the withholding agent itself or for a company related to the withholding agent. Secondly, collective management organizations (*collectieve beheersorganisaties*; CBOs). These are organizations that act on behalf of a group of beneficiaries to collect payments for a copyright or neighboring right and that distribute the payments to those beneficiaries; such actions being taken on a not-for-profit basis. The new reporting flow will actually only take place for the first time as of January 1, 2023. The information for a certain calendar year must be provided after the end of that calendar year and no later than on January 31 of the following calendar year. This should give both the Dutch Tax and Customs Administration and the relevant persons required to keep records sufficient time to set up the new process in a timely and adequate manner. The new reporting flow means that the entire IB-47 form process is not included in this measure. The current process with the IB 47 form – thus without the request for the BSN – will, in the meantime, be maintained for payments not falling under the new reporting obligation.

6 VAT

6.1 Simplified 'one counter' system for e-commerce.

On July 1, 2021, the Mini One Stop Shop scheme (MOSS scheme for digital services to private individuals in other EU Member States) will be replaced by the One Stop Shop (OSS) scheme. After registration, businesses can use the OSS portal of the Dutch Tax and Customs Administration to report (tax return) digital services, distance selling to individuals in other EU Member States and certain import transactions. These reports can be made by taxpayers established outside the Netherlands via the OSS portal of another EU Member State.

In the bill on the Other Tax Measures 2022, an amendment is included for the treatment of a report (tax return) via the OSS portal of a foreign tax authority with, on balance, a negative total for the services in the Netherlands. In practice, this will only occur when there are adjustments for earlier periods. After the amendment, these negative reports will be regarded as refund requests. This reduces the administrative burden for businesses because, following this amendment, no separate refund request needs to be made. This amendment has retroactive effect to July 1, 2021.

7 Real estate transfer tax

7.1 Exemption from real estate transfer tax for repurchasing home with a sales restriction clause

Housing associations and project developers sometimes sell homes with a sales regulation clause, so-called 'VoV homes'. The property is sold at a (buyers) discount to an occupant, and the occupant, upon disposal, must offer this property again to the original/previous seller. It is proposed that the repurchase of a VoV home from a natural person will be exempt from real estate transfer tax subject to strict conditions.

7.2 Adjustments to aggregation rule for real estate transfer tax exemption for first-time buyers

First-time buyers pay no real estate transfer tax on the acquisition of a house with an imputed value of up to EUR 400,000, provided that they will use the house as their main residence (first-time buyers' exemption). Part of this first-time buyers' exemption is the aggregation provision. This anti-abuse measure prevents the purchase of a home from being split into several acquisitions of less than EUR 400,000 each. In that case, the acquisitions made by the same person within 12 months are added together. If the sum of the various acquisitions exceeds EUR 400,000, the first-time buyers' exemption does not apply or no longer applies. This anti-abuse measure contains a number of ambiguities which are now being repaired.

7.3 2% rate / first-time buyers' exemption and unforeseen circumstances

When acquiring a home that is to be used as a main residence, the 2% rate or the first-time buyers' exemption applies under certain conditions. Due to unforeseen circumstances occurring before the acquisition of legal ownership, but after the purchase agreement has been concluded, the main residence criterion may sometimes no longer be met. An example of this is two partners who have concluded a purchase agreement for a home, but before the legal transfer takes place they separate due to unforeseen circumstances and the house must be sold again. In that case, use can still be made of the 2% rate or the first-time buyers' exemption. This amendment codifies what had already been approved by means of a policy statement.

8 Environmental taxes

8.1 Transitional rules for reduced energy tax rate scheme (*postcoderoosregeling*) expanded

By virtue of the *postcoderoosregeling* for energy tax, energy cooperatives could apply for designation from the Dutch Tax and Customs Administration. Companies supplying electricity to the members of the cooperative or the owners' association could then apply a reduced energy tax rate for a period of 15 years. With an energy cooperative, a renewable energy project can be set up, the proceeds of which are shared among the members. As of April 1, 2021, the *postcoderoosregeling* has been replaced by the Cooperative Energy Generation subsidy arrangement (SCE). Cooperatives and owners' associations can apply for a subsidy for a solar energy project, for example. As with the *postcoderoosregeling*, the new measure uses the postcode area to guarantee the local character. The subsidy is paid to the cooperative or owners' association, which then distributes the benefit obtained to its members.

The transitional arrangement now stipulates that existing members in a designated cooperative, as long as they live within the postcode area, can still benefit from the tax advantage of the *postcoderoosregeling* for fifteen years after the designation of the cooperative. New members, who join on or after April 1, 2021, are not eligible to benefit from the *postcoderoosregeling*. The fact that new members do not receive the same benefits as existing members has proven to be a problem for cooperatives and their remaining members. Therefore, it is proposed that if a member leaves, a new member can be entitled to the benefits of the *postcoderoosregeling* as long as this still applies to the cooperative in question. It is proposed that this measure should apply with retroactive effect to April 1, 2021. In anticipation of this, approved policy has been developed for the period from April 1, 2021 through January 1, 2022.

8.2 Changes to energy tax to avoid double taxation on battery storage

The primary taxable event for Dutch energy tax is the supply of natural gas and electricity by means of a connection to the consumer. However, within this system, double taxation of energy can occur. It is proposed that the supply of electricity to an energy storage facility (e.g. a battery) should, under certain conditions, not be regarded as a taxed supply for the purposes of energy taxation. In the case of the

storage of electricity in the chain, this prevents energy tax being levied twice on the supply of electricity, i.e. once on supply to the energy storage facility and again when the electricity is supplied to a consumer further down the chain after storage. As a result of the proposed legislative amendment, the first supply – the supply to the energy storage facility – will not be regarded as a taxed supply for energy tax purposes. To this end, an existing provision to avoid double taxation of energy will be extended as of January 1, 2022.

8.3 Changes to reduced rate for shore-side power

In last year's Tax Plan, it was 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 (zero rate) for the surcharge for sustainable energy and climate transition (*Opslag Duurzame Energie en klimaattransitie*; ODE). These provisions will enter into force on October 1, 2021. 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, and the consumption of these mineral oils for that electricity supply is avoided. This improves air quality, reduces noise emissions and reduces CO₂ emissions.

It is proposed to amend the definition of shore-side power plant so that plants without an independent connection can also qualify for the reduced rate (e.g. behind a connection or via a direct line).

8.4 Clarification overlap zero rate and natural gas exemption

Energy tax has a zero rate for products designated as natural gas, provided that they are used as fuel in the establishment in which they originate. In addition, an exemption applies in respect of the supply or consumption of natural gas that is not used as a fuel, or natural gas used as an additive or filler in products intended, directly or indirectly, for consumption as natural gas. The zero rate and the exemption may overlap, which is not the intention. The government therefore wants to amend the law to prevent this overlap.

8.5 Reduced rate for public charging stations (energy tax, not part of the 2022 Tax Plan package)

Until the end of 2022, 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 ODE.

9 2022 Tax Plan package miscellaneous

- The CO₂ bracket limits and rates for private motor vehicle and motorcycle tax (*belasting van personenauto's en motorrijwielen*; **BPM**) will be adjusted for the period from 2022 through 2025 due to the expected autonomous greening.
- The **BPM** will be adjusted with regard to the valuation of imported motor vehicles and motor vehicles with damage.
- The **landlord levy** (*verhuurderheffing*) will be reduced to 0.485% in 2022. The new rate will be incorporated into the regular tax return application that taxpayers can complete as of July 1, 2022. In addition, the possibility is provided of 'closing' or adjusting the levy reductions each month with effect from the first day of that month in order to be able to respond more quickly to budget overruns. This possibility currently only exists every quarter.

10 Other tax developments

There are a number of other relevant tax-related developments that are not part of the 2022 Tax Plan package. We will deal with some of these briefly below.

10.1 Amendment of tax qualification policy for legal forms

The [internet consultation](#) on the Bill on the Tax Qualification Policy for Legal Forms Amendment Act ran from March 29 through April 26, 2021. The intention of this bill is to qualify certain legal forms differently than in the past. This is because the current qualification policy often causes international mismatches. However, as a result of the proposed changes, purely domestic situations in which there are no mismatches will also be affected. This is particularly the case with open limited partnerships (*open commanditaire vennootschappen*) and mutual funds (*fondsen voor gemene rekening*). Open limited partnerships will, by definition, be transparent. Whether mutual funds will be open or closed under the new rules, depends on the new legal criteria that will then apply. This may, for example, have implications for existing investment structures in which a fund has the status of fiscal investment institution (*fiscale beleggingsinstelling*; FBI) or structures that were set up in connection with the coming into effect of the UBO register or in order to invest Box 3 investment capital in Box 2. The consultation proposal thus has a broad impact, with potentially far-reaching consequences. If a legal form is qualified differently, this will in principle result in tax claims having to be settled. However, transitional rules offer opportunities for avoiding the settlement of these claims.

The bill was intended to be part of the Tax Plan 2022 package with an intended effective date of January 1, 2022. However, in view of the many substantive responses during the internet consultation, the Deputy Minister of Finance has decided to deviate from this in order to see where and to what extent justice can

be done to the concerns expressed during the internet consultation. The bill is now only expected next winter. The initially intended amendment of the definition of mutual funds will not be part of the bill, but will be considered later within a broader framework.

10.2 Relief and recovery package for the economy and labor market

On [May 27, 2021](#) the government announced in a letter sent to the Lower House of Parliament that it was extending the current relief and recovery package for the economy and labor market by three months as of July 1, 2021. The extension of the relief package means, among other things, that the NOW (Temporary emergency bridging measure to retain jobs; *Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*) and the TVL (Overhead Compensation; *Tegemoetkoming Vaste Lasten*), will also still be available to businesses in the third quarter of 2021. The government has also provided a broader payment arrangement for accrued tax debts.

Due to the improved economic situation, the government announced on June 29, 2021 that the NOW will be amended. Within the new package, a business is only allowed to report a maximum 80% loss of turnover for the third quarter of 2021. The government has also extended the period during which businesses can apply for a tax deferral or extension until October 1, 2021.

By letter to the Lower House of Parliament dated [August 30, 2021](#) the government announced that as of October 1, 2021 the generic relief and recovery package would largely end.

10.3 Bank tax rate

The bank tax rate has been 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). In 2022, the rate will revert to the rate in force before 2021: 0.044% on short-term debt and 0.022% on long-term debt.

10.4 Tax on games of chance

As of October 1, 2021, providers of online games of chance licensed by the Netherlands Gaming Authority must file their own gaming tax returns. If the provider is not licensed, the player must file a gaming tax return. Furthermore, on October 1, 2021 the gaming tax rate will be reduced from 30.1% to 29%.

10.5 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. More information can be found in [our previous memorandum](#) about this.

KPMG Meijburg & Co
September 21, 2021

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.