

Lower House of Parliament votes on the 2022 Tax Plan package and the bill on Combating mismatches in the application of the arm's length principle Act

On November 11, 2021, the Lower House of Parliament adopted elements of the 2022 Tax Plan package and the bill on Combating mismatches in the application of the arm's length principle Act. The following bills from the 2022 Tax Plan package were adopted:

- 2022 Tax Plan
- Other Tax Measures 2022
- Tax Status measure from Second EU ATAD Directive (Implementation) Act (tax status measure reverse hybrid entities)
- Reduction of landlord levy rate and monthly changes to tax reduction amounts

The following bills from the 2022 Tax Plan package were not voted on on November 11, 2021:

- Share Option Rights Tax Scheme (Amendment) Act
- Delegation clauses Extreme Cases (Compensation) Act

For a more detailed explanation of the proposals as these were presented to the Lower House on September 21, 2021, we refer to [our Budget Day memorandum](#). Limiting the possibilities for setting off holding company losses and expanding the permanent establishment concept for the purposes of the withholding tax on interest and royalties were just two of the measures adopted via separate memoranda of amendment on [October 5, 2021](#). On [October 15, 2021](#) the proposed measures were expanded further, including raising the top corporate income tax to 25.8% and tightening the generic interest deduction limitation by reducing the deduction percentage from 30% to 20% of the tax EBITDA.

Amendments and motions were also adopted in the vote on November 11, 2021. The adopted amendments and a selection of the adopted motions are briefly addressed below.

The vote on the bill on the Share Option Rights Tax Scheme (Amendment) Act has been postponed for the time being in connection with criticism from the Lower House that the proposal is too complex and large companies could also use it. The Deputy Minister of Finance wants to amend the bill so that it only applies to small start-up companies.

Tax Status measure from Second EU ATAD Directive (Implementation) Act (tax status measure reverse hybrid entities)

An amendment regulates the overlap between the legal methodology of levying corporate income tax at the open limited partnership (open CV) and the hybrid mismatch measures (ATAD2) implemented as of January 1, 2020. This boils down to the following. The Corporate Income Tax Act 1969 stipulates that the part of the profit of an open CV accruing to the general partners as such, is deductible. The hybrid mismatch measures stipulate – to put it simply – among other things that a payment that is not initially taxed in the Netherlands, but where there is a corresponding deduction in the state of the payor despite the fact that that state should have refused

the deduction pursuant to ATAD2, must nevertheless be added to the profit in the Netherlands. One provision thus prescribes that part of the profit is deductible, while the other provision dictates that certain income must be taxed.

The adopted amendment provides for an overlap rule and prescribes that the deduction must not be permitted insofar as the share of the profit of the open CV accruing to the general partners relates to the adjustment of the Dutch profit pursuant to ATAD2 (35931-9).

Combating mismatches in the application of the arm's length principle Act

This bill is aimed at situations where a difference in transfer prices between associated entities results in double non-taxation, the 'informal capital structures' or 'deemed dividend structures'. In that context accompanying rules have been proposed for assets that are acquired from associated entities and whereby the agreed fee is less than the arm's length price and the difference is not taxed at the transferor. That acquisition can take place by means of capital contributions, profit distributions, repayment of paid-in capital, liquidation dividends or comparable transactions.

An amendment that has now been adopted ensures that the acquisition of an asset under universal title as part of a merger or division/split-off is also regarded as comparable with the aforementioned transactions. As a result of this measure, assets acquired as part of a cross-border merger or division/split-off will no longer, by definition, be valued at their fair market value at the time of the transfer. If, in the country of the company being merged out of existence or the company being divided or split-off, tax relief in the context of the EU Merger Directive and national rules implementing this Directive is available for the merger or division/split-off, the foreign book value at the time of the merger or division/split-off will, in principle, be 'passed on' to the Dutch acquirer (35933-11).

2022 Tax Plan

Adopted amendment

- The option to refund energy tax to energy-intensive companies that use energy products has been removed from the legislation, because this scheme currently no longer has any substantive effect (35927-44).

A selection of the adopted motions

The Lower House of Parliament has asked the government:

- to monitor the scale of and how structuring takes place in order to make improper use of the low profit tax rate, and to present proposals to tackle improper use if the monitoring gives cause to do so (35927-64);

- to inform the Lower House immediately after an international agreement on a minimum profit tax rate has been concluded, about the national legislation that will have to be amended as a result of this agreement and in the further elaboration of this agreement to continue to argue, both in a European context and in the national implementation of legislation and regulations, for the most effective approach possible to tax avoidance with the watering down of measures and the number of exemptions being kept to a minimum (35927-65 and 35927-69);
- to indicate each year when presenting the Tax Plan by how much our CO₂ emissions will be reduced as a result of our tax legislation and what this means for realizing the climate goals (35927-74).

In conclusion

The adopted amendments are now being incorporated into the bills, after which they will be debated in the Upper House of Parliament in the coming weeks. Unlike the Lower House, the Upper House cannot make any changes, but can only adopt or reject the bills in their entirety (although the latter is unlikely). The Upper House will vote on the bills in mid-December 2021. The adopted motions described above will probably be implemented, because the Deputy Minister of Finance has not advised against them.

Meijburg & Co
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