KPMG Meijburg & Co Tax & Legal

Budget Day 2022: changes to payroll taxes and labor market developments

On Budget Day, September 20, 2022, the government presented the 2023 Tax Plan package to the Lower House. In this memorandum we address the most significant changes proposed for payroll tax and social security contributions. The proposals are intended to take effect on January 1, 2023, unless another date is explicitly stated. We also focus on some of the changes that have already been adopted and on developments in the labor market.

1. Tax rates and tax credits in the 2023 Tax Plan

As of January 1, 2023 the tax rate in the first bracket will be reduced by 0.14%. The top rate of 49.50% applying in 2022 will remain unchanged in 2023.

The rates for employees who will not yet reach the state retirement age in 2023 (in 2023: 66 years and 10 months) are as follows:

Taxable salary of more than	But not more than	Tax rate	National Insurance Contributions	Combined rate
	EUR 37,149	9.28%	27.65%	36.93%
EUR 37,149	EUR 73,031	36.93%	-	36.93%
EUR 73,031	-	49.50%	-	49.50%

The general tax credit
The maximum general tax credit will be increased by EUR 182 to EUR 3,070 compared to 2022. The amount of the general tax credit is dependent on a person's income. The general tax credit is gradually reduced for income of EUR 22,660 and above.

The labor tax credit
As of January 1, 2023 the maximum labor tax credit will be EUR 5,052. The amount of the labor tax credit is dependent on a person's income. Up to employment income of EUR 37,626: the higher the income, the higher the labor tax credit. The labor tax credit is gradually reduced for employment income of EUR 37,626 and above.[1]

Income-related contributions for health insurance under the Health Insurance Act
As of January 1, 2023, the income-related contributions for health insurance under the Health Insurance Act payable by the employer will be decreased from 6.75% to 6.68%. As of January 1, 2023, the maximum contribution base for the purposes of the Health Insurance Act will be EUR 66,952.

[1] The point at which the employment tax credit starts to decrease is linked to the statutory minimum wage and is only definite once this has been determined in November 2022.

2. Tax changes announced in the 2023 Tax Plan package

The 2023 Tax Plan package has proposed six changes for payroll tax and social security contributions purposes. If these are approved, the schemes and rules will be as follows.

30% ruling capped for foreign employees
Employees with specific expertise who have been recruited from outside the Netherlands and who meet certain conditions can apply the 30% ruling for a maximum period of five years. A decision from the Dutch tax authorities is required for this. By applying the 30% ruling, a maximum of 30% of the salary can be paid tax-free. This is intended to compensate for the additional expenses foreign employees incur when coming to work in the Netherlands (extraterritorial expenses such as travel and accommodation expenses). This effectively reduces the marginal tax rate from 49.5% to 34.65% (in 2022). Currently, the 30% ruling can be applied to the entire salary from current employment. Employers can also opt to reimburse the actual extraterritorial expenses incurred tax-free.

Cap
As of January 1, 2024 the 30% ruling will be capped at the public service pay cap, also referred to in Dutch as the *balkenendenorm*. This means that the 30% ruling can only be applied to salary from current employment up to the public service pay cap (2022: EUR 216,000). This means that if the 30% ruling is applied in full, a maximum of EUR 64,800 (2022 figure) can be paid tax-free. Because the public service pay cap is linked to the contractual wage costs for the government, this salary cap will likely be higher in 2024.

If an employee qualifies for the 30% ruling for only part of a calendar year, the maximum tax-free payment of EUR 64,800 (year: 2022) will have to be recalculated in proportion to the time elapsed.

To prevent improper use, additional rules will be stipulated if an employee works for more than one withholding agent (with at least a one-third interest) or for natural persons with at least a one-third interest in the withholding agent (employer).

If the 30% ruling is still being applied in the last salary period of 2022, the cap will apply as of January 1, 2026 (and thus not as of January 1, 2024).

Option regime as of January 1, 2023
The Tax Plan explicitly states that each calendar year employers must choose between:
1. reimbursing the actual extraterritorial expenses on the basis of expense claims submitted by employees;
2. applying the 30% ruling.

The choice is made by applying the chosen option in the payroll. It is thus not necessary to specifically report to the Dutch tax authorities.

The reason why employers have to opt for one of the above options is to prevent them alternating between applying the 30% ruling and reimbursing the actual extraterritorial expenses because this would be more attractive for tax purposes. As it can take some time for the Dutch tax authorities to issue a decision on the 30% ruling, an exception applies to the situation where an application for such a decision is filed within four months of the incoming employee having commenced their employment in the Netherlands. The choice for the calendar year in which this four-month period ends does not have to be made until the first payroll period after the end of those four months. That choice will then apply for the rest of the calendar year.

It will still be possible to reimburse, tax-free, the school fees for specific international schools, in addition to applying the 30% ruling.

Cancellation of efficiency margin in the normative salary scheme
The normative salary scheme applies to employees who work for an entity in which they hold a substantial interest, i.e. directors/majority shareholders. Under this scheme, the salary of a director/majority shareholder is, in principle, to be set at the highest of the following amounts:

(a) 75% of the salary of the most comparable employment;
(b) the salary of the best-paid other employees of the entity or entities affiliated with it;
(c) EUR 48,000.

The rule under (a) means that the salary of a director/majority shareholder can be set 25% under the salary for the most comparable employment. This is the efficiency margin. This efficiency margin will be canceled as January 1, 2023.

The above measure will be implemented by means of a Memorandum of Amendment.

Lower normative salary for innovative start-ups to end
Since 2017 the scheme regulating the amount of the normative salary for director/majority shareholders of innovative start-ups has been eased. Instead of the standard (as described above), the statutory minimum wage may be used as the basis for the normative salary; this may be done for a maximum of three years. It had already been announced that the easing of these rules would end on January 1, 2023.

The Tax Plan contains transitional rules for director/majority shareholders who were already using the scheme in 2022. That group can continue to use the lower normative salary for the remaining period (a maximum of three years), as laid down in current legislation. Specifically, this concerns 2023 and 2024, but is of course dependent on in which calendar year the director/majority shareholder applied the scheme for the first time. The transitional rules will thus cease to apply on January 1, 2025.

Increase of fixed exemption in the work-related costs rules
Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions. In 2022 the fixed exemption is calculated as follows:

- 1.7% on the first EUR 400,000 of the payroll for tax purposes;
- 1.18% on the payroll for tax purposes above EUR 400,000 (thus the excess).

As of January 1, 2023 the fixed exemption on the first EUR 400,000 will be increased to 1.92% but will stay at 1.18% for the excess above that amount.

The above measure will be implemented by means of a Memorandum of Amendment.

Untaxed travel allowance to be increased
As of January 1, 2023 employers will be able to pay their employees an untaxed travel allowance of EUR 0.21 per business kilometer. That was EUR 0.19 per business kilometer and is a specific exemption under the work-related costs rules.

As of January 1, 2024 the maximum travel allowance will be increased to EUR 0.22 per business kilometer.

Using the compulsory retirement provision to purchase an annuity after the annuity commencement date has passed
Director/majority shareholders already had the option to convert a self-administered pension plan into a claim under a compulsory retirement provision. A claim under a compulsory retirement provision can then be used to acquire an annuity, an annuity account or an annuity investment account. One of the requirements for doing this is that the annuity installments commence no later than the year in which the taxpayer to whom these installments are due, reaches the age of five years older than the state pension age. However, in response to signals received from interested parties who would have to implement this in practice, approval has been given to, under certain conditions, not apply the age limit if the amount of the compulsory retirement provision is used to acquire an annuity. This approval will now be codified.

3. Previously adopted tax changes with effect from 2023

Exemption method to no longer apply for directors' and supervisory board members' remuneration
The right to tax the foreign remuneration a Dutch-resident board member receives is often assigned to the foreign country. This means that the Netherlands must grant double tax relief. To avoid double taxation, tax treaties often provide for an entitlement to a tax credit equal to the foreign tax paid (credit method). There is currently an approval to apply an 'exemption method', subject to conditions.

In a decree dated July 8, 2022, the Deputy Minister of Finance withdrew the approval to apply the exemption method to directors' and supervisory board members' remuneration. The approval will therefore cease to apply as of January 1, 2023. In many situations this will lead to a higher net tax burden on a director's remuneration.

Addition to income for electric cars to be increased

The addition to income for an electric car that is registered for the first time or approved in the market for the first time in 2023 will be increased for cars with a list price above EUR 30,000. The low addition to income of 16% can then only be applied on the first EUR 30,000 (was EUR 35,000 in 2022) of the list price. An addition to income percentage of 22% will apply above that.

4. Miscellaneous - announced tax changes that are not part of the 2023 Tax Plan

Amendment of share option schemes: elective scheme

Under current legislation, the taxation moment for share option rights is the moment the options are exercised or disposed of; even if the shares that are acquired by exercising the options cannot immediately be sold. Tax must then be paid, but there is sometimes no cash to pay it. This is especially the case with start-ups and scale-ups.

On June 28, 2022 the Lower House of Parliament passed legislation allowing for the taxation moment to be deferred. Taxation will now take place at the time the acquired shares become tradeable; tax having to be paid on the then applicable value of the shares. 'Become tradeable' is defined as the moment on which any sale restrictions are lifted, and the employee may sell the shares they acquired upon exercising the option.

This concerns an elective scheme. The employee can still continue to elect to have taxation take place at the time the share option right is exercised and then to subsequently enjoy the further increase (or decrease) in the value of the shares in Box 3.

To prevent improper use and long-term deferral of taxation, additional rules have been stipulated with regard to shares that cannot be traded, that become only partly tradeable or that become fully tradeable. If an employee is not allowed to sell the acquired shares due to a contractual restriction, the taxation moment will be deferred for a maximum of five years after the IPO of the company in which the shares are held. If the company is listed, the deferral is a maximum of five years after the share option right was exercised. Benefits such as dividends employees receive in the meantime, are taxed as salary.

The above will take effect as of January 1, 2023, if the Upper House of Parliament also passes the legislation on time.

For the purposes of implementing this legislation, a fiction with regard to the tradability of shares has been included for the situation where there is a buy-up of the shares of an unlisted company by means of a share subscription. In general terms this means that:

- in the case of employees who have registered for the share subscription: the number of shares that they can dispose of on the basis of the outcome of the share subscription are deemed to have become tradable.
- For employees that could have registered for the share subscription but did not do so: the number of shares that they could have disposed of had they registered for the share subscription are deemed to have become tradable.

Discount scheme for innovative start-ups ends
The amendment of the share option scheme also means that the discount scheme for share options (an exemption of at most 25% up to EUR 50,000) used by innovative start-ups will end as of January 1, 2023.

Working from home allowance to increase
Employers may pay their employees a working from home (WFH) allowance. In 2022 the untaxed WFH allowance was EUR 2. This amount is indexed annually by means of a table correction factor (set at factor 1.063 for 2023) to take account of inflation. The untaxed WFH allowance will thus increase to EUR 2,13 per day as of January 1, 2023.

Assessment of Employment Relationships (Deregulation) Act - enforcement moratorium extended until January 1, 2025 at the latest
Currently the Assessment of Employment Relationships (Deregulation) Act is only sporadically enforced. Consequently, the Dutch tax authorities do not impose any additional tax assessments (and penalties), unless there is malicious intent. This is the case if, for example, parties knowingly and willingly/deliberately act fraudulently as regards pseudo self-employment. The government wants to lift the current enforcement moratorium on the Employment Relationships (Deregulation) Act by 2025 at the latest. The Dutch tax authorities will enforce if taxpayers fail to follow instructions.

Amendment of the Lump Sum Payment, Early Retirement and Leave Savings Scheme Act (commute 10%)
The Lump Sum Payment, Early Retirement and Leave Savings Scheme Act offers participants in a retirement plan the option to commute no more than 10% of the value of their entitlements to an old-age pension, periodic payments from compulsory retirement provisions in the third pillar or a net annuity ('lump sum option') The lump sum option has not yet taken effect. On the basis of a proposed amendment, the Act will take effect on July 1, 2023. Its main features are:

1. The maximum amount that can be commuted is 10% of the value of the accrued pension entitlements to an old age pension.
2. The partial commutation should take place on the commencement date of the old age pension.

3. It is possible for participants in a pension plan with a pension commencement date in the same month as in which they reach the state retirement age and for participants with a pension commencement date on the first day following the month in which the reach the state retirement age to defer the commutation until January of the following year. This will mean, for example, that no old-age pension contributions are then payable on the lump sum.
4. Partial commutation cannot be combined with the application of a high-low arrangement. This is where the level of the old age pension is allowed to fluctuate, with higher pension benefit payments in the first years after retirement.
5. The remaining lifelong pension benefit payments after the partial commutation should lie above the commutation limit for small pensions.
6. The participant must have the consent of the partner who is the beneficiary of the partner pension.

The commuted portion of the old age pension will be taxed as salary from former employment. No deemed interest is payable on the commuted portion.

The bill still has to be approved by the Lower and Upper Houses of Parliament. If the bill is passed, it is essential that when deciding whether or not to commute (with or without a deferral) the effects of such things as old age pension contributions, contributions under the Health Insurance Act, allowances, the difference in tax rates and tax credits are taken into account.

Approval tax credit for posted public servants
In contrast to the personal income tax regime, the payroll tax regime has to date never had a deemed residence rule for posted public servants. This will change as of January 1, 2024. The Deputy Minister of Finance has given approval to reduce the payroll tax payable for posted public servants, their partners and children younger than 27 who are deemed to live in the Netherlands, by the tax credit (irrespective of where the posted public servant actually lives). The Deputy Minister has thus created a fiction for payroll tax purposes similar to the one already used for personal income purposes, for Dutch citizens employed by the State of the Netherlands who are posted abroad. As a result of that fiction, that person will also be treated as a domestic taxpayer for payroll tax purposes and thus is entitled to tax credits, despite the fact that they actually live abroad.

Amendment of Liability of Recipients, Subcontractors and Clients Implementing Regulation
The blocked account, also referred to as the G account, is one of the measures used to mitigate the risk of vicarious tax and recipients' liability,

Currently, the payroll tax number and VAT identification number of the sub-contractor or the supplier of workers must be listed in full in the G account agreement. As of January 1, 2023 the G account agreement may only contain the last six digits of the payroll tax number and the VAT identification number.

This change concerns G account agreements applied for after December 31, 2022. Existing agreements will not be changed.

Interest stop for supplementary tax assessments
If the tax inspector takes too long to impose a tax assessment, an interest stop takes effect for personal income tax, corporate income tax and inheritance tax purposes. There is currently no interest stop for supplementary tax assessments.

With regard to supplementary tax assessments, without such an interest stop the period over which interest on tax due is calculated runs until 14 days (two weeks) after the date of the assessment. Thus, the longer it takes to impose the supplementary assessment, the higher the amount of interest on tax due.

As part of the Tax Miscellaneous Provisions Act 2023, an interest stop will be introduced for supplementary assessments for payroll tax, dividend tax, withholding tax, real estate transfer tax, motor vehicle and motorcycle tax, excise duties, consumption tax on non-alcoholic beverages or for one of the taxes referred to in Section 1 of the Environmental Taxes Act. If a supplementary assessment is imposed in accordance with the request, the period over which interest on tax due is calculated will end no more than 10 weeks after the date on which the request was received.

The proposed interest stop will take effect as of January 1, 2023 for supplementary assessments imposed for the aforementioned taxes. The interest stop for VAT purposes will take effect at a later date.

Disclosure obligation
As of January 1, 2022 an additional disclosure obligation was introduced for payroll tax withholding agents and for collective management organizations. The disclosure for 2022 should take place no later than January 31, 2023.

The Dutch tax authorities aim to use the disclosure obligation to receive information about the income of recipients of income from other activities. Despite this aim, the disclosure obligation may, in certain circumstances, be broader than the group of recipients of income from other activities. In the past, the Dutch tax authorities had used the IB 47 form to ask for this information. A taxpayer must now provide this information on their own initiative.

Information that must be disclosed is:
- name, address and date of birth of the recipient of the payment;
- Citizen service number (*Burgerservicenummer*; BSN) of the recipient of the payment;
- the amounts paid during the calendar year (including expense allowances/reimbursement of expenses)

There are several exceptions where the disclosure obligation does not apply:

- activities and services performed as an employee, entertainer, professional athlete or as a member of a foreign troupe as referred to in the Payroll Tax Act 1964;
- activities performed as a volunteer as referred to in Payroll Tax Act 1964;
- activities and services for which an invoice is issued as referred to in the VAT Act 1968 on which the VAT is stated;
- payments for copyright or neighboring right made to beneficiaries to an estate (including legatees).

5. Other labor market developments

Mandatory certification when supplying workers

To avoid misunderstandings in the employment agency sector, the government is working toward a mandatory certification system for employment agencies. To obtain a certificate, an employment agency must comply with the rules. This means that employment agencies will be subject to inspection to check, for example, that they are paying the correct salary and filing tax returns correctly. In addition to this, employment agencies must have a Statement of Good Conduct, pay a bond of EUR 100,000 and offer certified accommodation.

The bill is expected to be presented to the Lower of House of Parliament at the beginning of 2023.

Salary Costs (Incentive Allowances) Act

The government is also preparing a bill on changes to the methodology used for wage cost benefits. The envisaged effective date of this bill is January 1, 2025. Various wage cost benefits can be transferred to a new employer if the target group statement is still valid. The wage costs benefit of relocating disabled workers will be reviewed and will be made available to more employers. The low-income allowance (*lage-inkomsensvoordeel*; LIV) will be canceled as of January 1, 2025.

Act on Future of Pensions

In 2019 the government and employers’ and employees’ organizations agreed a broad package of measures for the Pension Agreement. These measures were elaborated on in the bill on the Act on Future of Pensions, which the Minister for Poverty Policy, Participation and Pensions, Ms. Schouten, presented to the Lower House of Parliament on March 30, 2022. The bill is currently being debated in the Lower House. Pensions will become more flexible and more in line with economic developments. Participants in pension plans can also expect more transparency about these pension plans and there will be a shift to personal pension capital. Everyone will start accruing a pension via a contribution scheme. The focus will be on the pension contribution, which will be the same for all age groups.

The bill also contains agreements to look at the current system from the viewpoint of the new system during the transition period (2023-2027). Pension funds that also intend to transfer current pensions to the new system (i.e. 'convert' the pensions) may use more flexible indexation rules to calculate with, although this will be subject to conditions. As a result, there is already more insight into the indexation in the run-up to the transition to the new system. For 2022, a separate policy statement will arrange for funds to be given leeway to index more quickly in anticipation of the new Pensions Act. The expectation is that the rules will apply as of January 1, 2023, but this depends on how long the Lower and Upper Houses of Parliament take to debate the legislation. The employers' and employees' organizations and pension administrators will then have four years to adapt their pension plans to the new legislation, i.e. until January 1, 2027.

Minimum wage increased
The 2023 Tax Plan proposes increasing the minimum wage by 10.15% in 2023.

On-call contracts abolished
The government is preparing various bills on protecting vulnerable groups in the labor market. It was therefore announced in the framework letter on the labor market drawn up by the Ministry of Social Affairs and Employment in mid-2022 that the government wants to offer workers with flexible contracts more security. The government has indicated that work of a permanent nature should, in principle, be organized on the basis of open-ended employment contracts (with the exception of high school students and university students). The government thus, in principle, expects to be able to abolish on-call contracts, such as zero-hours contract and min-max contracts. These on-call contracts must be replaced with standard contracts, the details of which still have to be worked out by the government and employers' and employees' organization.

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