

Memorandum of Amendment to 2023 Tax Plan: includes cap on deductible gifts, relaxation of work-related costs rules

On October 4, 2022 the government presented a Memorandum of Amendment to the 2023 Tax Plan to the Lower House of Parliament. Both the memorandum and its overall content had already been announced on Budget Day, see our [coverage](#) about this. The presentation of the memorandum means more details are now available, including about the:

- cap on deductible periodic gifts for personal income tax purposes;
- cancellation of the efficiency margin for the normative salary scheme;
- relaxation of the work-related costs rules;
- increase in the duty rate in the Mining Act.

These measures are addressed in more detail below.

1. Cap on deductible periodic gifts

The deduction for gifts made by individuals means that periodic gifts to public welfare institutions (*algemeen nut beogende instellingen*; ANBIs) or associations are fully deductible for personal income tax purposes. The government has proposed capping this deduction at EUR 250,000 per annum per taxpayer as of January 1, 2023. If the taxpayer has a tax partner, that amount applies to both of them jointly. A transitional period of four calendar years applies for periodic donations made under an agreement entered into before 4:00 p.m. on October 4, 2022. This will ensure that these gifts are still fully deductible for a maximum of five calendar years and will prevent anticipatory action. Please note that the EUR 250,000 cap is exclusive of the multiplier for gifts to cultural ANBIs.

2. Cancellation of efficiency margin for normative salary scheme

The normative salary scheme applies to employees who perform activities for an entity in which they (or their partner) hold a substantial interest, i.e. directors/majority shareholders. Under this scheme, the salary to be taken into account for a director/majority shareholder for the year 2022 is, in principle, 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. The government has proposed canceling this efficiency margin as of January 1, 2023 ([please also refer to our previous memorandum](#)).

If the measure is adopted, director/majority shareholders who currently set their normative salary at 75% of the salary of the most comparable employment will thus as of 2023 in principle have to set it at 100% of the salary of the most comparable employment. Insofar as there is a settlement agreement that renews automatically after December 31, 2022 and which includes an efficiency margin, according to the

explanatory notes to the Memorandum of Agreement this settlement agreement will remain in force, with the exception of the efficiency margin. In other words: the taxpayer should use 100% of the salary of the most comparable employment as the basis for implementing the settlement agreement. Whether this is actually the case will depend on the relevant settlement agreement and will have to be assessed on an individual basis. The implementation test accompanying the proposal states that as a result of the cancellation of the margin more disputes about the amount of the normative salary can be expected. The measure will also result in more requests for preliminary consultation and more time will be needed to complete audits.

3. Relaxation of the work-related costs rules

Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions as part of their employment. The fixed exemption for the 2022 calendar year is set at 1.7% of an employer's payroll for tax purposes up to and including EUR 400,000 (first bracket), and 1.18% on the remainder of that payroll.

It was already clear on Budget Day that the government wanted to increase the fixed exemption for the first bracket from 1.7% to 1.92% ([please also refer to our coverage of the Budget measures](#)). This increase has now been incorporated into the Memorandum of Amendment. The fixed exemption for the payroll above the first bracket remains at 1.18%. No steps have yet been taken to legislate on the motions to increase the fixed exemption for the first bracket to 3%, which were adopted by the Lower House of Parliament during the parliamentary debate on the speech from the Throne.

4. Conditional increase in duty rate Mining Act

As we informed you on Budget Day, the government intends introducing a solidarity levy in the form of a temporary increase in the duty rate in the Mining Act, so that it can use the revenue from this to compensate citizens for the sharp rise in energy prices. Specifically, a temporary duty rate of 65% has been proposed for that part of the turnover realized from the sale of natural gas at a price higher than EUR 0.50 per m³ of natural gas in the years 2023 or 2024, for natural gas extracted both on land and offshore. Under the scheme now proposed, the license holder may use the average gas price during the year. This is calculated by dividing the turnover of a license holder by the number of units of natural gas extracted in the license area. What will also be looked into is whether, and if so how, hedge contracts – where the risks of market price fluctuations are hedged for a longer period – have to be included in the calculation of the increased duty rate. The current rate will continue to apply for turnover realized with an average price up to and including EUR 0.50 per m³. The proposed change will not apply to four concessions that were granted before 1965.

If you would like more information about any of the matters discussed here, please do not hesitate to contact your designated tax advisor at Meijburg.

KPMG Meijburg & Co
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