

## **Tax changes announced in the 2023 Spring Memorandum**

The [2023 Spring Memorandum](#) was published on Friday, April 28, 2023. In this Memorandum, the government announces a number of proposed tax changes. In particular, property owners, businesses faced with business successions and Box 3 investors will experience the effect of these plans.

We explain the most important proposed tax changes below. We have divided the measures into four categories and also indicated when a particular measure should come into force. For most tax changes, we expect the final legislative texts on Budget Day.

### **1. Dealing with tax arrangements and tax schemes**

Tax arrangements are regularly reviewed. Negatively evaluated measures must be abolished, cut back, reformed or converted into a subsidy. In particular, the government also wants to deal with the negatively evaluated regulations that make the tax system more complicated. It has been stated that the government will examine:

- the reduced VAT rate as a whole and in particular its application to floriculture, labor-intensive services (such as painters, hairdressers and shoemakers), culture (books, museums and cinemas) and accommodation (hotels and campsites);
- the abolition or scaling back of a number of special arrangements with respect to motor vehicle tax and the tax on passenger cars and motorcycles (BPM);
- limiting the deduction of expenditure for specific health care costs.

In the coming period, the government will investigate which measures can be taken and what the impact is for various target groups. It is not yet known when the changes should take effect.

The government has also designated eight structures as artificial tax arrangements. These alleged artificial tax arrangements are included in Appendix 12 to the Spring Memorandum. An indication is given in each case of what measures can be taken against these. Below we describe these artificial tax arrangements, in addition to the other proposed measures.

### **2. Real estate**

#### *2.1 Treatment of real estate share transactions*

VAT is normally payable on the supply of – in short – new Dutch immovable property. Such transactions are exempt from real estate transfer tax (concurrency exemption). No VAT is payable on the acquisition of shares in legal entities that own such new Dutch immovable property. In some cases, however, no real estate transfer tax is payable. This is the consequence of case law of the Supreme Court from 2010, which concluded that the concurrency exemption can also apply to share transactions. The government no longer considers such situations desirable and it is proposed to exclude the concurrency exemption for share transactions from January 1, 2024. Real estate

transfer tax will therefore be payable in future. This measure was already published as an internet consultation on February 27, 2023 (see [our memorandum of March 1, 2023](#)). Transitional rules will be added as a result of this internet consultation. The final bill will probably be published on Budget Day.

### *2.2 Non-application of threshold earnings stripping measure for real estate entities with property leased to third parties*

In practice, activities are sometimes spread over several companies in order to make more frequent use of the threshold of EUR 1 million in the generic interest deduction limitation (earnings stripping measure). This concerns, for example, situations in which property investors use a separate company for each building. The government will combat this 'splitting up' of real estate companies. As of January 1, 2025, the threshold of EUR 1 million in the earnings stripping measure for real estate entities with property leased to third parties will no longer apply.

### *2.3 Adjustment of the legal division exemption in real estate transfer tax*

The government believes that the legal division exemption in real estate transfer tax is being used improperly to segregate property in a company and subsequently (some time later) to dispose of the shares in that company. In the view of the government, the current anti-abuse test is not strong enough to combat these structures. Consideration is being given to bringing the conditions of the legal division exemption more in line with the other business facilities in real estate transfer tax (merger exemption and internal reorganization exemption). In effect, this means that a legal division that takes place within the group would only qualify for tax relief under the conditions of the internal reorganization exemption. A legal division that takes place outside the group only qualifies for tax relief under the conditions of the business merger exemption (retention requirement on shares and continuation requirement with regard to business activities).

### *2.4 Short-term lease arrangements in VAT*

In the case of property that is leased on a VAT-exempt basis, the VAT on the purchase or renovation costs cannot be reclaimed. This is in contrast to the VAT on property that is used for VAT-taxed services. By first leasing property with VAT for a short period and later switching to exempt leasing, the VAT can still be reclaimed. The government is investigating whether a revision option can be included in the VAT regulations for (expensive) renovation services. This option is currently being investigated in more detail and will possibly be opened for public consultation at a later date, with the government considering the feasibility of the measure for the Dutch Tax and Customs Administration and its consequences for the sector.

### 3. Business succession schemes

Business successions qualify for tax relief in personal income tax (a transfer arrangement) and in the Inheritance Tax Act (a 100%/83% exemption). These tax facilities are very complicated and lead to many discussions with the tax authorities.

#### 3.1 Changes as of January 1, 2024

The government proposes to automatically qualify immovable property leased to third parties as investment capital. As a result, such leased properties no longer qualify for business succession tax relief. This should prevent many discussions. The government had already included this in the 2023 Budget Memorandum. This intention has therefore been confirmed once again in the Spring Memorandum.

#### 3.2 Changes as of January 1, 2025

As of January 1, 2025, the business succession schemes will be further adjusted:

- The exemption in the Inheritance Tax Act will be expanded on the one hand and scaled back on the other. Up to EUR 1.5 million in business assets, the exemption is increased to 100% (currently approximately EUR 1.2 million). For everything above, 70% will be exempted (currently 83%).
- The 5% efficiency margin will be abolished. This margin means that invested equity capital of up to 5% of the business assets is regarded as business assets.
- Operating assets that are used partly in the company and partly for private purposes (optional assets) will only qualify as business assets for the business succession schemes if the operating asset is actually used within the company.
- For substantial interest holders, access to business succession schemes will be limited with effect from January 1, 2025 to persons with *ordinary shares* with an *interest of 5% or more who fully participate in the profit entitlement and the liquidation proceeds*. This measure can have a major impact. Persons who currently hold class shares or a notional substantial interest will have to re-examine their position. The dilution arrangement (interests between 0.5%-5% that have arisen due to dilution as a result of inheritance or a marriage) and the arrangement for preference shares that have arisen in the context of a phased business succession will continue to exist, however.
- It is proposed to remove certain bottlenecks in the holding requirement and continuation requirement of the business succession scheme in the Inheritance Tax Act. At present, these requirements stand in the way of adjustments to the activities or restructuring that are desirable from a commercial point of view.
- The employment requirement in the business succession scheme in personal income tax will be abolished, because this condition appears to be ineffective.
- The government believes that the business succession scheme in the Inheritance Tax Act is sometimes used improperly, for example because elderly people convert their assets into business assets while no real business transfer has taken place. Or if parents gift the company to their children to qualify for tax relief then buy it back years later and subsequently gift the company again many years later to once more

qualify for tax relief (double use). In order to tackle these alleged artificial tax arrangements, in addition to the aforementioned measures, it is being considered whether the ownership and continuation period may be extended, in combination with an anti-abuse provision.

#### **4. Box 3**

##### *4.1 From flat-rate tax to tax based on the actual return on investment*

The introduction of the system in Box 3 based on the actual return will be postponed from 2026 to 2027. The postponement of implementation leads to a loss of tax revenue of EUR 395 million in 2026. The exact design will be decided on in August 2023. Until then, tax in Box 3 will be based on fixed returns.

##### *4.2 Box 3 in the years 2023 through 2027*

The current fixed Box 3 system will be adjusted on a number of points with retroactive effect from January 1, 2023.

- In the 2022 End-of-Year Decree, the calculation method to prevent double taxation in Box 3 on foreign assets has already been brought into line with the transitional legislation. To avoid double taxation, the tax payable is reduced by a portion attributable to the foreign assets and liabilities.
- The share in the assets of an owner-occupiers' association is classified under the category 'bank balances'. This also applies to the share in the assets on the trust account of a civil-law notary.
- Receivables and payables between tax partners and between parents and minor children are 'made tax-exempt'. This means that these receivables and payables no longer have to be reported in tax returns. In the case of parents and minor children, this only concerns the situation where the income of the minor child is allocated to the parents, because only then is the same return involved.

##### *4.3 Avoidance of Box 3 via share premium contribution and asset buybacks*

In practice, savings are often transferred from Box 3 to Box 2 by means of a share capital contribution or a share premium. In some cases, the money is then loaned back to the shareholder, who uses it to buy Box 3 investments. And even though corporate income tax is due on the interest payable on the loan and measures against excessive borrowing are already in place, this arrangement can still be beneficial on balance. The government is currently investigating what options are available to combat this arrangement. One of the options is to further discourage borrowing from one's own company.

## **5. Other important measures**

### *5.1 Additional margin scheme and the place of virtual services for VAT*

With effect from January 1, 2025, cultural, artistic, sporting, scientific, educational or entertainment services rendered virtually will be subject to VAT in the Member State of the customer's place of residence or establishment. This is more in line with VAT as consumption tax.

### *5.2 Adjustment of thin cap rule internal treasury and percentage increase*

The specific interest deduction limitation for banks and insurers (thin cap rule in the Corporate Income Tax Act 1969) has an unbalanced effect on internal treasury activities. The thin cap rule will be adjusted to avoid this distortion. The resulting EUR 60 million loss will be covered by increasing the percentage of the thin cap rule that is not deductible from 9% to 9.4%.

### *5.3 EIA deficit and cover*

In 2022 there was a budget deficit for the energy investment allowance (EIA) of EUR 60 million (after exhaustion of the reserve). In accordance with the EIA budget system, this overrun is covered by adjusting the EIA parameters. From 2024, the deduction percentage will be structurally reduced and the ceiling for the maximum investment amount will be lowered.

### *5.4 Expansion of HIR with regard to cessation schemes*

The application of the reinvestment reserve (HIR) in the event of the partial cessation of a business due to government intervention will be expanded. This makes the use of the HIR more accessible to entrepreneurs who, for example, are forced to cease part of their agricultural activities as a result of government measures.

### *5.5 Abolition of personal income tax payment discount*

As of January 1, 2023, the payment discount for the provisional corporate income tax return has been abolished. In line with this, the payment discount for the provisional personal income tax return will also be abolished as of January 1, 2024.

### *5.6 Dividend stripping*

The 2024 Tax Plan includes two measures to tackle dividend stripping more effectively from January 1, 2024, i.e. the laying down in law of a registration date and the adjustment of the division of the burden of proof in order to improve the evidentiary position of the tax inspector.

## **6. KPMG Meijburg & Co comments**

The 2023 Spring Memorandum provides an outlook of the tax measures that are planned in the short and somewhat longer term. Property owners in particular will be taxed much more heavily. Substantial interest holders will be delighted that the business succession schemes will continue to exist and that a number of technical points will be cleared up. Box 3 remains an enduring issue. As long as a tax based on actual return has not been introduced and the difference between the tax boxes has not been mitigated, tax-driven behavior will be displayed and the tax authorities will want to take action against this, or taxpayers will litigate. It is also to be appreciated that adjustments are being made quickly and a number of matters are being arranged. In particular, making mutual receivables and payables between partners tax-exempt prevents many discussions. Finally, we note that the government is still referring to a simplification of the tax system, but that the announced measures will most likely only make it more complicated.

If you would like to know more about the 2023 Spring Memorandum, please contact your Meijburg advisor.

KPMG Meijburg & Co  
May 2023

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