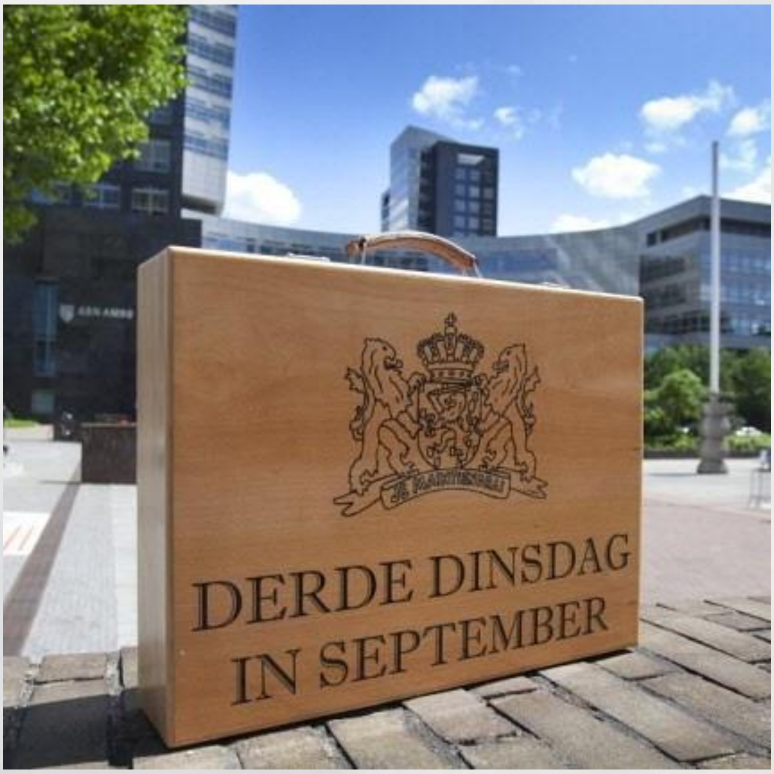
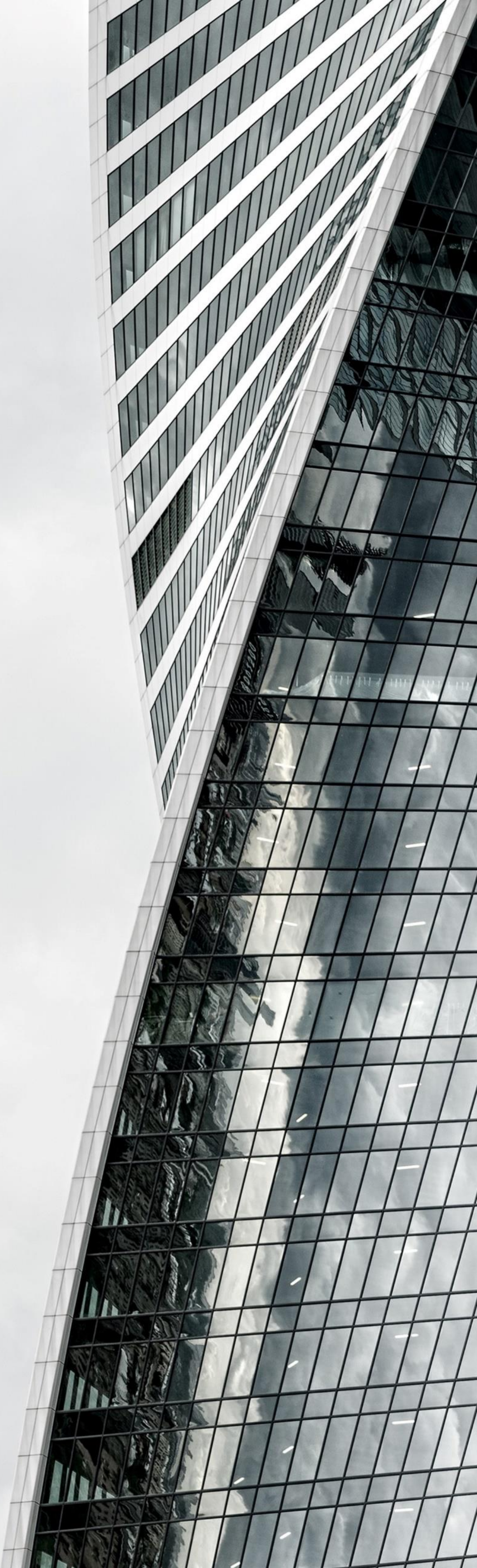
Meijburg & Co
Tax & Legal

Government presents tax measures for 2024 on Budget Day





September 19, 2023

www.meijburg.com

Government presents tax measures for 2024 on Budget Day

On Budget Day, September 19, 2023, the caretaker government (hereinafter: government) presented the 2024 Tax Plan package to the Lower House of Parliament. It contains the following bills:

- 2024 Tax Plan
- 2024 Tax Plan BES islands
- Other Tax Measures 2024
- Mutual Fund and Exempt Investment Institutions (Amendment) Act
- Fiscal Investment Institution (Amendment) Act
- Legal Forms Tax Qualification Policy Act
- Business Succession Tax Relief (Amendment) Act
- Reassessment Legal Costs WOZ and BPM Act
- Climate Tax Measures for Greenhouse Horticulture Act
- Climate Tax Measures Electricity and Industry Act
- Selective Intake Compensation Act
- Temporary Scheme Revision of Personal Income Tax Return Act
- Personal Rent Allowance Contribution (Reduction) Act
- Amendment of the Surviving Dependents Act and the Participation Act in connection with the double general tax credit in the reference minimum wage not being phased out in 2024
- Amendment of the Child-related Budget Act to increase the child-related budget as a means of improving consumer purchasing power

Many of the proposed measures will take effect on January 01, 2024. This memorandum outlines the main features of the 2024 Tax Plan. 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 2024 Tax Plan package. Please refer to the last section for miscellaneous tax developments.

Contents

1 Corporate income tax

1.1 Amendment 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) limits the deduction of the interest payable insofar as the borrowed capital amounts to more than 91% of the balance sheet total. This rule has an unbalanced effect with regard to internal treasury activities. As of 2024, the thin cap rule will be amended to avoid this distortion. It is proposed to adjust the thin cap rule in such a way that the deduction of interest expenses on the payables to group entities will in future not be limited subject to certain conditions. The resulting EUR 73 million loss will be covered by increasing the percentage of the thin cap rule that is not deductible from 9% to 10.6%. This means that the deduction of interest expenses is limited insofar as the borrowed capital amounts to more than 89.4% of the balance sheet total.

1.2 Amendment to FBI regime, introduction of real estate measure (2025)

The bill on the Fiscal Investment Institution (Amendment) Act (FBI) introduces the real estate measure. As a consequence of this real estate measure, as of 2025 an FBI may no longer *directly* invest in Dutch property or in rights to which the property is subject (hereinafter: property). If they do this, they will lose their FBI status. An FBI is still permitted to invest in shares in a regular taxable subsidiary that holds property located in the Netherlands (indirect investment in Dutch property). Contrary to the draft bill launched for public consultation earlier this year (see our memorandum of March 13, 2023), an FBI is still permitted to invest directly in *foreign* property, the financing requirement is *not* adjusted and an FBI may (continue to) manage a property development or property management subsidiary.

Temporary real estate transfer tax exemption in connection with changes to FBI regime

The government wants to introduce a conditional and temporary real estate transfer tax exemption in order to give FBIs that currently own property the opportunity to restructure. This exemption is intended to maintain the fiscal neutrality offered by the FBI by means of a restructuring of the property and will apply for the 2024 calendar year. It has been decided to only include the acquisition of the beneficial ownership under this exemption, with the aim being to maintain the fiscal neutrality associated with the FBI regime while restructuring. This could be achieved by means of a structure with an entity that qualifies as transparent for Dutch tax purposes. Such a restructuring looks (mostly) in broad terms as follows:

1. the FBI establishes a transparent entity and acquires a participation therein;
2. the FBI contributes the beneficial ownership of the property to that transparent entity;
3. the FBI transfers the acquired participation certificates to its shareholders.

The conditional and temporary exemption can only be used if, in summary, the following conditions are met:

- The economic ownership of the property is acquired.
- This beneficial ownership is acquired from a legal entity that at the time immediately prior to the acquisition of the beneficial ownership qualifies as an FBI and that at that time would not have qualified as such if the real estate measure had already been in force.
- The acquisition of the beneficial ownership takes place by means of a participation in a non-independent (transparent) taxpayer in which the legal entity had contributed that beneficial ownership.
- The acquirer is entitled in equal measure to the assets of the non-independent (transparent) taxpayer, in the same way that it previously was via its shares in the FBI.
- A tax return is filed in respect of the acquisitions.

This conditional and temporary exemption does not mean that current exemptions cannot be relied on in order to avoid the acquisition of, for example, the legal ownership leading to real estate transfer tax (for example, the internal reorganization exemption).

1.3 Amendment of VBI regime and change in definition of mutual fund (2025)

The government proposes the following changes with effect from 2025: the change in the definition of the mutual fund ('FGR'), the change in the exempt investment institution regime ('VBI') and transitional rules.

Change in definition of mutual fund ('FGR')

Under existing law, an FGR is independently taxable if the certificates of participation in the FGR are negotiable. The certificates of participation are deemed to be negotiable if the consent of all unitholders is required for their disposal (consent requirement). In the proposed change to the definition of the FGR, there is no longer a consent requirement as a distinguishing criterion for the independently taxable FGR. Instead, alignment is sought with the terms 'investment fund' and 'fund for the collective investment in transferable securities' used in the Financial Supervision Act. Only investment funds within the meaning of the Wft and funds for collective investments in transferable securities may still be subject to corporate income tax. In short, these are funds that focus on a broad public; family funds fall outside this definition. For corporate income tax liability, it is additionally required that the participations in such funds are freely negotiable. If the participations can only be sold to the fund itself (redemption option), then the participations are deemed not to be freely negotiable, as is currently the case.

Transitional rules FGR

The proposed change to the definition of FGR in corporate income tax means that certain funds are no longer independently taxable. In the proposed transitional rules, therefore, it is regulated by fiction that – for Dutch tax purposes – an FGR that no longer meets the definition of FGR as a result of the proposed change as of January 1, 2025, disposes of all assets to its unitholders immediately prior to this. For Dutch tax purposes, the unitholders of such an FGR will also be independently subject to personal and corporate income tax with effect from January 1, 2025. In order to avoid immediate settlement, the transitional rules contain three facilities: (i) a transfer facility for the tax claim on the hidden reserves, tax reserves and goodwill present in the FGR, (ii) a share merger for certain unitholders and (iii) payment in installments over no more than ten years.

In addition, the unitholders are deemed to have disposed of their share in the FGR, resulting in principle in a final settlement, such as settlement of the substantial interest claim. Transitional law is also provided for here. In many cases, the claim on the participation certificates can be transferred to the shares in the acquiring company via a share swap. In addition, a real estate transfer tax facility applies to this share swap. In order to avoid announcement effects with regard to this real estate transfer tax facility, the transitional rules for the real estate transfer tax will not be made available in situations in which, after publication of the bill on September 19, 2023, 3:15 p.m., the FGR has come into being or property has been contributed in an existing FGR by joining unitholders after September 19, 2023, 3:15 p.m.

Changes to VBI regime

Furthermore, it is proposed to align the definition of investment institution or UCITS as referred to in the Wft with investment institutions eligible for the VBI regime. The proposed change to the VBI regime aims to restrict access to the VBI regime to investment funds and UCITS that offer participation rights to a broad public or to institutional investors. This means that the existing options for using the VBI regime when investing private capital will no longer be available (family VBIs). VBIs with the legal form of a public limited company (NV) will be subject to corporate income tax with effect from January 1, 2025. VBIs with the legal form of an FGR will also be confronted with the aforementioned changes with regard to the FGR regime itself.

1.4 Reassessment of the Legal Forms Tax Qualification Policy (2025)

The government proposes to adjust the qualification policy for (foreign) legal entities for Dutch tax purposes. With these adjustments, the Netherlands is more in line internationally.

The first adjustment is the codification of the Dutch qualification policy for foreign legal entities on the basis of the legal form comparison method, supplemented by two additional methods (the fixed method and the symmetrical method) if the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law. According to the existing Dutch qualification policy, for the qualification of a foreign entity, certain civil law characteristics are compared with those of Dutch legal forms, and that entity is treated for tax purposes in the same way as the Dutch entity with a comparable legal form. If the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law, this method offers no solution. Therefore, the government proposes the following additional methods for such entities:

(i) If they are established in the Netherlands, they are always regarded as non-transparent entities and therefore independently taxable (fixed method);
(ii) If they are not established in the Netherlands, the qualification in the country of establishment is followed (symmetrical method).

The legal form comparison method and the two additional qualification methods are anchored in personal income tax, corporate income tax, dividend tax and withholding tax as much as possible.

The second adjustment is the discontinuation of the open limited partnership (CV). As a result of this, the independent tax liability (for, among other things, corporate income tax) of the open limited partnership is terminated, and the fiction that the interest of the limited partner in the open limited partnership is regarded as a share. This has consequences for the assessment of similar foreign limited partnerships, i.e. that they also become transparent by definition. The proposed transparency of the limited partnership has consequences for both personal and corporate income tax. In addition to the general partners, with effect from 2025 the limited partners will also be directly subject to personal or corporate income tax for their share in the results of the limited partnership. At the same time, the open limited partnership will be deemed to have stopped receiving taxable profit in the Netherlands. In principle, this fiction leads to a mandatory final corporate income tax settlement in respect of all hidden reserves, tax reserves and goodwill present in the business (profit on final settlement). However, transitional rules are provided for in the form of various facilities with the claim being transferred to the limited partners, and alternatively a payment in installments over no more than ten years. In addition, the limited partners are deemed to have disposed of their share in the limited partnership, resulting in principle in a final settlement, such as settlement of the substantial interest claim. Transitional law is also provided for here. In many cases, the claim on the shares can be transferred to the shares in the acquiring company via a share swap. Furthermore, a real estate transfer tax facility applies to this share swap, if it concerns a real estate limited partnership. In order to avoid announcement effects with regard to this real estate transfer tax facility, the transitional rules for the real estate transfer tax will not be made available in situations in which, after publication of the bill on September 19, 2023, 3:15 p.m., the open limited partnership has come into being or property has been contributed in an existing open limited partnership by joining limited partners after September 19, 2023, 3:15 p.m. In this respect, the transitional rules for open limited partnerships are comparable to the transitional rules for open FGRs.

1.5 Changes to the tax treatment of corporate donations

The government wants to encourage large donations to public benefit organizations (ANBIs) and social interest-promoting institutions (SBBIs) from the companies of director-major shareholders. It is therefore proposed that with effect from January 1, 2024, the amount of that donation is not taken into account as income of the substantial interest holder in Box 2 or as income for dividend tax. This is different if the amounts are not transferred directly by the company to the ANBI but, for example, are paid via the substantial interest holder’s bank account, or if there are benefits or contributions in cash.

On the other hand, the corporate income tax deduction for donations is discontinued, not only for the companies of director-major shareholders, but for all entities that are subject to corporate income tax. The changes do not affect the tax treatment of corporate charitable donations, such as through sponsorship or advertising. Such costs remain deductible.

1.6 Tax Plan BES islands

Instead of profit tax, revenue tax is levied on the BES islands, the purpose of which is to tax profit distributions (dividends) from entities to the beneficiaries at such an entity. In order to prevent profit erosion, entities on the BES islands must possess an ‘establishment decision’. This decision is an anti-abuse measure by virtue of which entities that do not carry on a business of substance are not covered by the BES Tax Act but are deemed to be established in the Netherlands for corporate income tax and dividend tax purposes. An exception is made for holding companies established on the BES islands. These companies receive an establishment decision because they hold a qualified percentage in an operating company on the BES islands that possesses an establishment decision. Although it is proposed in the Tax Plan to reduce the percentage of shares that the holding company must own in the operating company from 95% to 50%, the other activities of the holding company must in future also comply with a number of stricter conditions that apply to regular BES companies.

In addition, it is proposed to introduce a minimum tax on the BES islands with effect from January 1, 2025 by means of a link to the bill on the Minimum Profit Tax Act 2024 (see also §13.1 Pillar 2 below), with a number of adjustments and exceptions.

1.7 Non-application of threshold earnings stripping measure for real estate entities with property leased to third parties (2025, not part of the 2024 Tax Plan package)

The generic interest deduction limitation (earnings stripping measure) prescribes that the net interest payable by a taxpayer can only be deducted up to 20% of the EBITDA for tax purposes, or up to EUR 1 million if that is higher. In practice, activities are sometimes spread over several companies in order to make more frequent use of the EUR 1 million threshold. This concerns, for example, situations in which property investors use a separate company for each building. It was noted in the 2023 Spring Memorandum that the government wants to combat this 'cutting 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. This measure will be included in the 2025 Tax Plan package.

2 Withholding taxes

2.1 Dividend stripping

Two measures are now being proposed by the government to more effectively combat dividend stripping as of January 1, 2024. The first measure entails changing the division of the burden of proof in order to improve the position of the tax inspector. The proposed changes mean that a burden of proof rests on those who invoke a concession (for example, a refund or credit) to convincingly demonstrate that they are the ultimate beneficiary. For the interpretation of the term 'ultimate beneficiary', aside from the 'threshold' discussed below, the OECD Model Convention, the corresponding OECD commentary and the case law of the Court of Justice of the European Union (CJEU) are important. To avoid unduly burdening small investors, this burden of proof only applies from an amount of more than EUR 1,000 in withheld dividend tax per financial year or calendar year. The current legislation includes a threshold with regard to the further substantiation of the term 'ultimate beneficiary'. In short, the threshold in any case determines when there is no ultimate entitlement. This threshold remains valid for all cases. However, it is proposed to supplement the threshold in such a way that it is assessed at group level whether there is a combination of transactions.

The second measure entails legally stipulating a 'registration date' (also called a 'record date') for dividends on shares traded on a regulated market (e.g. a stock exchange). This will establish who is entitled to a credit, reduction or refund of dividend tax on the legally set record date. At that time, the positions are determined on the basis of 'securities deposits'.

According to the government, ongoing research into alternative measures to continue to combat dividend stripping remains necessary. The Lower House of Parliament will be informed of the results of this in the spring of 2025.

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

As of January 1, 2021, a withholding tax on interest and royalties already applied to payments of interest and royalties to affiliated entities in designated jurisdictions. As of 2024, that tax will be supplemented with a conditional withholding tax on dividends paid to affiliated entities in designated jurisdictions. These are countries that have been placed by the Netherlands on the list of low-tax jurisdictions and 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 corporate income tax rate (25.8%).

2.3 Private Member's bill on conditional final settlement of dividend tax (2021, not part of the 2024 Tax Plan package)

On July 10, 2020, the former Lower House MP Snels (of the GroenLinks parliamentary party) presented a private member's bill to the Lower House of Parliament to introduce a final settlement obligation for dividend withholding tax purposes in the event of a cross-border relocation of a registered office, a merger, a division/split-off and a share merger. After Mr. Snels' departure from the Lower House, MP Van der Lee defended and radically amended the bill. On May 20, 2022, the Council of State's negative advice on the proposal was published. On July 15, 2022 the Deputy Minister of Finance announced that the government had advised the Lower House not to pass the Private Member's Bill.

3 Personal and corporate income tax

3.1 Reduction of deduction percentage and cap on maximum invested amount EIA, extension of sunset clauses Energy Investment Allowance, Environmental Investment Allowance and Free Depreciation of Environmental Investments

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 to 40% (in 2023, the deduction percentage is 45.5%). The cap on the maximum invested amount remains unchanged. In response to the outcome of the evaluation of the EIA, the government, in a letter sent to the Lower House of Parliament on July 14, 2023, stated that it saw sufficient reason to continue with the EIA. The sunset clause will therefore be extended in the 2024 Tax Plan from January 1, 2024 to January 1, 2029. The same applies to the Environmental Investment Allowance (MIA) and the Free Depreciation of Environmental Investments (VAMIL).

3.2 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 and want to invest in another business. The reinvestment period is three years.

4 Personal income tax

4.1 Box 1 basic tax increased

As of 2024, the basic tax rate in Box 1 (including national insurance contributions) will be increased from 36.93% to 36.97%. This basic rate will apply to income up to EUR 75,624. The top rate for income above this amount will stay at 49.5%. As of 2024, the rate for state pension beneficiaries with an income of up to EUR 38,139 (or EUR 40,007 if born before 1946) will change from 19.03% to 19.07%.

4.2 Increase in general tax credit

As of 2024, the maximum general tax credit will increase from EUR 3,070 to EUR 3,374. The general tax credit is gradually reduced by 6.652% for Box 1 income of EUR 24,904 and above.

4.3 Increase in labor tax credit

As of 2024, the maximum labor tax credit will increase from EUR 5,052 to EUR 5,553. The amount of the labor tax credit is dependent on a person's income from current employment. Up to employment income of EUR 39,898 (provisional amount), the higher the income, the higher the labor tax credit. For income above that amount, the labor tax credit will decrease by 6.51%.

4.4 Increase in Box 3 rate and non-indexation of tax-free assets

The government proposes to increase the tax rate in Box 3 from 32% to 34% as of January 1, 2024. In 2025, the tax rate will remain at 34%. In addition, the government proposes not to index tax-free assets of EUR 57,000 (EUR 114,000 for tax partners jointly). These measures are intended to cover the loss of tax revenue (EUR 395 million) due to the postponement of the new Box 3 system until 2027.

4.5 Refinements to and clarification of Box 3

It was noted in the 2023 Spring Memorandum that the introduction of a Box 3 regime based on actual return on investment will be postponed from 2026 to 2027. A draft bill for this was launched for internet consultation on September 8, 2023. Under the Box 3 Bridging Act, taxation in Box 3 will be based on three asset categories each with their own flat rate: bank balances, other assets and debts; this will remain so until the new regime is introduced. The current flat-rate Box 3 regime will be adjusted on a number of points with retroactive effect from January 1, 2023:

- 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. The government argues that these assets in fact consist mainly of money held on bank accounts. As a result, the flat-rate return for bank balances, which is only 0.01% in 2023, better reflects the return on these types of assets than the return rate for 'other assets and debts'. Incidentally, there are several situations possible in which money is held by a third party, but the proposal is confined in this respect to the legally regulated third-party accounts of notaries and bailiffs, in order to limit the risk of abuse by using the funds in another way (for example, for investment).

- Receivables and payables in Box 3 between tax partners and between parents and minor children have been '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.

In order to avoid any ambiguity, it will also be explicitly included in the legislative text with retroactive effect through January 1, 2023 that the joint capital yield tax base is used for calculating the effective return on investment percentage for tax partners. The existing calculation method thus remains unchanged.

4.6 Reduction of SME profit exemption

The government proposes to reduce the percentage of the SME profit exemption from 14% to 12.7%.

4.7 Limitation of depreciation on buildings owned by businesses subject to personal income tax and recipients of income from other activities

With effect from January 1, 2024, businesses whose income is subject to personal income tax and recipients of income from other activities can only depreciate their buildings up to a minimum value of 100% of the WOZ value (the minimum value is now still 50% of the WOZ value), which leaves little or no room for depreciation. However, transitional rules apply to buildings that are already part of business assets or result-based assets before January 1, 2024 and that have not yet been depreciated for three years. For these buildings, the higher minimum value of 100% of the WOZ value will only apply in the first financial year that starts after the financial year in which the building has been depreciated for three years. Incidentally, for several years now it has been possible to depreciate buildings up to a maximum of 100% of the WOZ value for corporate income tax purposes.

4.8 Abolition of personal income tax payment discount

As of January 1, 2023, the payment discount for the provisional corporate income tax assessment 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.

4.9 Reparation of undesirable outcome tax collection of protective assessment excessive borrowing

An undesirable outcome of the measure against excessive borrowing from the own company will be repaired. The proposed amendments concern both additions and improvements to the Tax Collection Act 1990 in connection with the Excessive Borrowing from Own Company Act. The measure against excessive borrowing, which came into effect on September 13, 2022, means that substantial interest holders who borrow more than EUR 700,000 from their company, will have the excess taxed as income from a substantial interest. Home acquisition debt is excluded. The measure will apply for the first time to the 2023 calendar year and will take into account the level of debt as at December 31, 2023. The proposed amendments will ensure that:

- the deferral of payment of the protective tax assessment after emigration only ends insofar as an increase in debt has not previously led to the withdrawal of the deferral of payment, and;
- after emigration, collection of the protective tax assessment does not take place insofar as there is excessive borrowing from companies in which the taxpayer has acquired a substantial interest after emigration and in which the benefits from those companies are not part of the taxable income from a substantial interest of the taxpayer in the Netherlands.

Collection of the protective assessment should only take place insofar as there is direct or indirect excessive borrowing from companies in respect of which the taxpayer has been granted a deferral of payment for the protective tax assessment and insofar as an increase in debt has not previously led to the withdrawal of the deferral of payment.

4.10 Lucrative interest regime repaired

The lucrative interest regime relates to the taxation of property rights that have (also) been obtained as remuneration for performing activities. The remedial legislation follows a judgment rendered by the Supreme Court on April 14, 2023 on the ‘catch-all clause’ in the lucrative interest regime.

In the judgment, the Supreme Court ruled, among other things, that for the application of the 10% criterion, loans must only be taken into account if and insofar as they can be regarded as informal capital for the application of tax legislation (i.e. a profit participating loan, sham loan or loan with no expectation of repayment). The Deputy Minister of Finance later explained that the Supreme Court’s ruling leads to undesirable consequences when implementing this in practice and in respect of government finances. The lucrative interest regime will be repaired on the abovementioned point by also including loans that do not qualify as informal capital in the assessment of whether there is a lucrative interest if the loan contributes to a fee for the holder of the interest. This could include loans that from an economic perspective fulfill the same function as cumulative preference share capital. The loan qualifies as a separate share class.

This change will have retroactive effect to June 26, 2023, the date of the letter sent to the Lower House of Parliament in which the Deputy Minister announced this.

4.11 Adjustment of homeownership scheme for joint purchase of own home

With effect from January 1, 2022, a number of changes have been made in respect of the joint purchase and financing of an own home by tax partners. One of these legal amendments pertained to the application of the repayment position at a joint level, at least to the amount of the share in the debt of the partner with the respective repayment position, effectively examining at a joint level whether the repayment position has been sufficiently applied. This legal amendment, which took effect in 2022, only relates to the situation in which the home of the partner in question was first sold and a home is subsequently jointly purchased. However, it can also occur that a home is purchased jointly first, and only then is the respective partner's home sold. For the latter situation, the prevention of an unintended interest deduction limitation has not yet been provided for. It is proposed to arrange this with retroactive effect to January 1, 2022.

4.12 Changes to income-related combination tax credit (IACK)

It is proposed to adjust the co-parenting scheme for the income-related combination tax credit (IACK) with effect from January 1, 2024. In the opinion of the government, this repairs an undesirable outcome of a Supreme Court judgment of September 30, 2022. That ruling allows a taxpayer in a co-parenting situation that only cares for a child for 78 days in a calendar year to qualify for the IACK. With the adjustment, parents, as originally intended, can only qualify for the IACK if they have divided the care of a child equally during the calendar year. Specifically, the proposal requires the child to stay in each of the two households for at least 156 days of the calendar year.

It is also proposed to replace the formal registration requirement with a substantive test with effect from January 1, 2025. As a result, the IACK can be granted even if there is no joint registration at the same residential address, but the taxpayer and child do belong to the same household for at least six months in the calendar year.

4.13 Two tax rates for a substantial interest 24.5% and 31% (not part of 2024 Tax Plan package)

At present, Box 2 only has one rate of 26.9%. As of 2024, two tax brackets will be introduced in Box 2. The first EUR 67,000 in income from substantial interest (Box 2 income) will be taxable at 24.5%; any excess will be taxable at 31%. These amounts are per person. By introducing a progressive tax rate, the government hopes to encourage substantial interest holders to distribute a small amount of dividend annually, and so combat the deferral of tax. By introducing the high tax rate, the government is seeking to bring the tax burden in Box 2 more in line with the tax burden imposed on businesses in Box 1. In 2023, the tax rate for a substantial interest will stay at 26.9%.

4.14 Phasing out of self-employed persons deduction (not part of the 2024 Tax Plan package)

The government is phasing out (at an accelerated pace) the self-employed persons deduction. By decreasing the deduction the government hopes to narrow the divide between how employers and self-employed persons are treated for tax purposes. In figures per year:

Year	Self-employed persons deduction
2023	EUR 5,030
2024	EUR 3,750
2025	EUR 2,470
2026	EUR 1,200
2027	EUR 900

4.15 Average income plan abolished (not part of the 2024 Tax Plan package)

The average income plan was intended to compensate the disadvantage associated with progressive tax rates which taxpayers with strongly fluctuating incomes in consecutive calendar years may experience as a result of the progressive tax rate in Box 1. This scheme was evaluated in 2018 and it was concluded that the scheme had been only partially effective and efficient. That is why the government abolished the average income plan as of January 1, 2023. Under the transitional rules, the last period over which averaging can take place is 2022-2023-2024.

4.16 Gradual phasing out of credit for not having a mortgage or only having a small mortgage ('Hillen credit'; not part of the 2024 Tax Plan)

The credit for not having a mortgage or only having a small 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 2024 the credit to be taken into account will thus only be 80%.

4.17 Changes to deduction for gifts and ANBI regulations (not part of the 2024 Tax Plan package)

The 2024 Tax Miscellaneous Provisions Act contains a measure under which gifts in kind with a total fair market value exceeding EUR 10,000 per calendar year will, as of 2024, only be eligible for deduction for personal income and corporate income tax purposes if an objective value assessment has taken place that has been included in an independent valuation report or that follows from an invoice. The threshold for personal income tax purposes is EUR 10,000 per taxpayer and applies separately to ordinary and periodic gifts in kind. For periodic gifts, this measure will only apply if the obligation is entered into on or after January 1, 2024. Policy under which approval is given will be codified. This means that for periodic gifts it will now be possible to include in the notarial or non-notarial deed of gift that the obligation for making the periodic gift will end if the organization loses the status of ANBI or association or if the organization or association is declared bankrupt. It will then also be possible to include in the notarial or non-notarial deed of gift that the obligation to make a periodic gift will end if the giver or givers become occupationally disabled or unemployed. It is proposed that the periodic gift may only be terminated in the interim if the giver or givers have little or no influence on the aforementioned circumstances and the termination relates to still pending payments of the periodic gift. Lastly, it has been clarified that the conditions applying to an ANBI in the Netherlands, another Member State of the European Union or in a state designated by ministerial regulation will also automatically apply to ANBIs that are established elsewhere, i.e. in a third country.

5 Payroll taxes

5.1 Simplification of public transport pass exemption from payroll tax

The legislator is relaxing the exemption for facilitating public transport passes to employees. The current two schemes for employers providing public transport passes tax-free to their employees will be replaced by one simplified exemption. This is a response to a motion that was approved in respect of the 2023 Tax Plan package, in which Parliament had asked the government to look into how the tax-free reimbursement and provision of public transport passes could be simplified. In addition, the simplification of the exemption should also contribute to an incentive for employees to travel privately by public transport.

With the existing two schemes, employers face a considerable administrative burden. When reimbursing a public transport pass, the employer must determine whether the reimbursement does not exceed the business costs actually incurred. Currently, the difference is taxable salary. There has been an additional increase in the administrative burden due to the increase in hybrid working. On the basis of the new targeted exemption, the private use of a public transport pass that is reimbursed, provided or made available is specifically exempted if it is also used for business purposes. The Tax Plan does not distinguish between reimbursing, providing or making available a first or second class public transport pass.

5.2 Untaxed travel allowance to be increased

The tax-free travel allowance will be further increased to EUR 0.23 per kilometer with effect from 2024, with the aim being to encourage employers to pay a higher travel allowance to their employees. The allowance of EUR 0.23 is intended to cover more of the costs in comparison with the previous amounts.

5.3 Rectification of mistake regarding available 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 as part of their employment. In the 2023 Tax Plan, the percentage of the first bracket for calculating the fixed exemption of the work-related costs rules was adjusted. By means of the adjustment, the first bracket (on the first EUR 400,000 of the payroll for tax purposes) was therefore increased from 1.7% to 3% as of January 1, 2023 and decreased from 3% to 1.92% as of January 1, 2024.

In making these changes, the maximum amount of the available fixed exemption after applying the first bracket (EUR 12,000 in 2023) has mistakenly not been adjusted, however. It has therefore been announced in the 2024 Tax Plan that it will be restored with retroactive effect to January 1, 2023. The fixed exemption in the second bracket for the payroll above that amount will remain at 1.18% in 2024.

5.4 Guaranteeing the obligation for R&D withholding agents to submit electronic applications (WMEBV)

The Electronic Administrative Communications (Modernization) Act (*Wet modernisering elektronisch bestuurlijk verkeer*; WMEBV) obliges the government to provide an electronic option for submitting applications, notices of objection, complaints and other mandatory official notifications to an administrative body. However, for individuals and for legal entities and companies, the principle will continue to be that electronic communication cannot be made mandatory.

For R&D withholding agents (withholding agents who apply the remittance reduction for research and development work), an exception is included in Section 22 of the Wages and Salaries Tax and National Insurance Contributions (Reduced Remittances) Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*; WVA) as a means of guaranteeing that the application process will continue to take place electronically.

5.5 Change to the definition of solar-powered cars (not part of the 2024 Tax Plan package)

The reduced addition to income for the private use of a new company car without CO_2 emissions has been slowly phased out since 2019. An exception applies to cars that run on hydrogen or solar cells. As of January 1, 2024, there will be a new definition for solar-powered cars. For a solar-powered car as referred to in Section 3.20 Personal Income Tax Act 2001 and Section 13 bis Payroll Tax Act 1964, the car must have integrated solar panels where the power of the solar panels in watt peak divided by the consumption in watt hours per kilometer measured according to the WLTP is at least 7. The narrowing down of the definition of a solar-powered car only applies to new company cars registered after January 1, 2024.

5.6 30% ruling limited to the public sector pay cap (not part of the 2024 Tax Plan package)

The 30% ruling is a form of tax relief for employees coming to the Netherlands who are recruited from abroad and have specific expertise that is scarce or unavailable in the Dutch labor market. Under this tax relief, an employer may reimburse a maximum of 30% of the employees' salary tax-free. In addition, employees can opt to be regarded as a partial foreign taxpayer. When applying the partial foreign taxpayer status, the assets are not subject to tax in Box 2 and Box 3 with the exception of income from a substantial interest in a company established in the Netherlands and the value of property located in the Netherlands and Dutch business assets.

In the 2023 Tax Plan it was previously announced that with effect from 2024 the maximum tax-free expense allowance would be limited to 30% of the then applicable public sector pay cap, also referred to as the 'balkenendenorm' (2023: EUR 223,000). Under the transitional rules, the cap will not apply until January 1, 2026 for employees who fell under the 30% ruling in the last salary period of 2022. In addition, it will remain possible to opt for tax-free reimbursement of the actual extraterritorial costs instead of the 30% ruling if the costs incurred exceed the tax-free allowance under the 30% ruling. The decision to opt for this must be made by employers annually at the beginning of the year.

5.7 Future of Pensions Act (not part of the 2024 Tax Plan package)

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 Future of

Pensions Act, which the Minister for Poverty Policy, Participation and Pensions, Ms. Schouten, presented to the Lower House of Parliament on March 30, 2022. 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 on the Future of Pensions Act was adopted by the Lower House of Parliament on December 22, 2022 and by the Upper House on May 30, 2023. The Act took effect on July 1, 2023. A transitional stage until 2028 started on that date (one additional year compared to the original proposal) during which employers and employees can make agreements about changing their pension plans and pension administrators must implement these agreements.

6 VAT

6.1 General VAT rate for agricultural goods and services (2025)

It has been proposed canceling as of January 1, 2025 the reduced VAT rate for supplies of certain agricultural goods. This change is related to the VAT agricultural scheme (exemption with no recovery of input VAT) that was withdrawn on January 1, 2018. To avoid the cumulation of VAT in sectors and industries, a reduced VAT rate was introduced for supplies of goods and the provision of services that were generally mainly purchased by agricultural businesses. Since this cumulation no longer occurs, there is no longer any reason for maintaining a reduced rate for such products. This concerns legumes and cereals that do not qualify as food, propagating material, cattle, beets, agricultural and horticultural seeds, roundwood, straw, animal feed, flax and wool, both coarse and unwashed. Simultaneously with the proposal to end the reduced VAT rate on supplies of these agricultural goods, a Memorandum of Amendment to the bill on the Tax Miscellaneous Provisions Act 2024 will be presented to the Lower House of Parliament. This Memorandum of Amendment will undo the codification of current implementation policy contained in that bill. Current policy covers the application of the reduced rate for services consisting of animal husbandry and plant breeding. The change proposed in the 2024 Tax Plan makes this codification irrelevant. If the 2024 Tax Plan is adopted, the current implementation policy will also be withdrawn on January 1, 2025.

6.2 CESOP: as of 2024 cross-border payments must be reported for VAT purposes (not part of the 2024 Tax Plan package)

In order to detect and combat VAT fraud in cross-border internet sales of goods and services (e-commerce), the EU has decided to introduce a centralized European system for collecting and exchanging information: the Central Electronic System of Payment Information, CESOP. Payment service providers will have to transmit information about cross-border payments to CESOP. This should make it easier for tax authorities to detect potential VAT fraud. The rules apply to sellers established in and outside the EU. The envisaged implementation date for the system is January 1, 2024. On October 24, 2022 the Deputy Minister of Finance presented a bill (EU Directive on Administrative Cooperation in the Field of Taxation

(Implementation) Act) to implement the CESOP in the Dutch VAT Act 1968. The Lower House of Parliament adopted the bill on March 16, 2023 and the Upper House on April 4, 2023.

7 Procedural law amendments

7.1 Hardship clause enshrined in the Tax Collection Act

It has been proposed to include a hardship clause in the Tax Collection Act 1990 similar to the hardship clause that has long been a part of the General Taxes Act. The proposed introduction of a hardship clause in the Tax Collection Act 1990 will give the Deputy Minister of Finance the power to grant a concession in certain cases or groups of cases where the application of legislation on the collection of tax debts leads to predominant inequities. The proposed hardship clause concerns situations where the application of the Tax Collection Act 1990 results in a consequence that the legislator would have prevented if it had been foreseen when drafting the legislation. A taxpayer who believes that in their situation the implementation of the legislation leads to unforeseen predominant inequities, can submit a request to the Minister of Finance for application of the hardship clause.

7.2 Tackling ‘no cure no pay’ issues in the BPM and WOZ

On March 23, 2023 in a letter to the Lower House of Parliament the Deputy Minister of Finance referred to the ‘no cure no pay’ issues in the WOZ (valuation of immovable property) and BPM (private motor vehicle and motorcycle tax). An increasing number of professional legal aid providers use ‘no cure no pay’ as the remuneration basis for notice of objection procedures and appeal proceedings involving the WOZ and BPM. They are dependent on the order for costs awarded by the courts and the compensation for non-material damages in the event the deadline for dealing with legal procedures is missed. This encourages an approach and earnings model in which as many procedural actions as possible are carried out that are eligible for payment. The bill is aimed at removing the financial incentive. The following has therefore been proposed for the WOZ and BPM:

1) reducing the payment to compensate for the costs of legal aid provided by a professional third party;
2) laying down in law the amount of non-material compensation that may be paid; and
3) arranging for payments arising from a decision on a notice of objection or a judgment rendered in appeal proceedings to only be transferred to a bank account held by the taxpayer.

It is expected that a more well-considered decision will be made about whether to initiate objection or appeal proceedings and that the (material) interests of the taxpayer will weigh more heavily.

7.3 Extension of sunset clause tax penalty provision with regard to infringer concept

The sunset clause for the penalty provisions in the General Taxes Act and the General Income-Dependent Schemes Act under which the perpetrator, instigator and accomplice can be fined, will end on January 1, 2014. This sunset clause will be extended for a second five-year period to January 1, 2029.

7.4 Creation of legal basis for deformalized manner of working Dutch Tax and Customs Administration

As announced by the Deputy Minister of Finance in a letter to the Lower House of Parliament on April 19, 2023, the current deformalized manner of working by the Dutch Tax and Customs Administration will be given a legal basis. Under this deformalized approach, taxpayers can rectify omissions in their taxes, in cases where there is no substantive dispute between the taxpayer and the Dutch Tax and Customs Administration. This can be done by filing a revised digital tax return after a personal income tax assessment has been imposed. The revised digital tax return will then show the correct tax payable/refundable according to the taxpayer. Under the proposed legislation, (digital) tax returns that are filed after the final tax assessment has been imposed will no longer be regarded as a notice of objection but as a request for an ex officio reduction and treated accordingly. Taxpayers can therefore rectify omissions in taxation without having to deal with a formal notice of objection procedure.

According to the Deputy Minister, the proposed legislation is not intended to interfere with the right to submit a notice of objection or initiate appeal proceedings. The proposed measure therefore does not, for example, concern the situation where a taxpayer also sends a cover letter to accompany the revised (digital) tax return, showing that the taxpayer does not agree with the tax assessment and their reasons for this. In that case, they will in principle have submitted a notice of objection. The conditions that normally apply to a request for an ex officio reduction will not apply to a (digital) tax return filed before the deadline set for filing notices of objection.

Although the current approach of regarding a (digital) tax return as a notice of objection or as a request for an ex officio reduction is also used in payroll tax and VAT, the proposed legislation will for the time being only apply to personal income tax.

7.5 Legal protection with regard to decisions on interest on tax due accompanying the provisional PIT or CIT assessment (not part of the 2024 Tax Plan package)

The Tax Miscellaneous Provisions Act 2024 contains a proposal to change the deadline for submitting a notice of objection against the rejection of a request to revise a decision on interest on tax due accompanying the provisional PIT or CIT tax assessment. Under the current rules, if the final assessment is imposed very soon after the provisional tax assessment this could mean that a taxpayer effectively has less than six weeks to submit a notice of objection against the decision on interest on tax due accompanying the provisional assessment. The government considers this undesirable. It has therefore been decided to maintain a deadline for both personal income tax and corporate income tax purposes of at least six weeks for submitting a notice of objection against a decision open to objection, whereby a request to revise the decision on interest on tax due has been partly or wholly rejected. A request for a revised decision can be submitted until six weeks after the date of the final tax assessment against which the provisional assessment is set off.

7.6 Changes to right of non-disclosure for tax purposes (not part of the 2024 Tax Plan package)

It is not sufficiently clear in the current legislative text which data and information fall under the right of non-disclosure. In practice, this can lead to unnecessary disputes and thus to, for example, unnecessary delays in the exchange of information with other countries or to incomplete information being exchanged. The government wants to codify Dutch Supreme Court case law that serves as guidance on the interpretation of the right of non-disclosure. This makes clear beyond doubt that the government has no other interpretation of the right of non-disclosure in mind than that of the Supreme Court. The Tax Miscellaneous Provisions Act 2024 contains a proposal to have the legislative text explicitly state that the involvement of persons with legal professional privilege does not discharge the taxpayer from complying with information obligations they have toward the tax inspector even without the confidential involvement of the person with legal professional privilege. According to the government, not interfering with the right of non-disclosure of persons with legal professional privilege while at the same time clarifying the scope of a taxpayer's right of refusal is more in line with the principle that it is the taxpayer who must provide the relevant information and not a third party, such as a person with legal professional privilege.

7.7 Changes to rates for interest on tax due and late payment interest

By letter to the Lower House of Parliament dated September 19, 2023 proposed changes to the rates for interest on tax due and late payment interest were announced. The interest on tax due and late payment interest rates are linked to the interest rate for the main refinancing operations of the European Central Bank ('ECB interest rate'). The sharp rise in ECB interest rates was reason for the government to revise the methodology for interest on tax due and late payment interest. A first step is to reduce the differences between the rates compared to the current methodology. A next step will be to revise the interest on tax due system.

The following table lists the interest on tax due and late payment interest rates as these now apply and as they are expected to apply as of January 1, 2024.

Rate	Current rate	Expected rate January 1, 2024
Interest on tax due corporate income tax, withholding tax and solidarity contribution	8%	10%*
Interest on tax due other taxes	6%	7.5%*
Late payment interest (payable)	3%	4%
Late payment interest (reimbursable)	6%	4%

*: calculated using the current ECB interest rate of 4,50%.

7.8 Legal basis for the exchange of information by energy suppliers

The Netherlands is obliged to provide information to the European Commission so that the European Commission can check whether the Netherlands is compliant with approved State aid measures. In order to comply with this information obligation, a legal basis will be explicitly included, which regulates the provision of information by energy taxpayers and energy users.

8 Business succession schemes

Business successions qualify for tax relief for personal income tax purposes (a transfer facility) and for the purposes of the Inheritance Tax Act (a 100%/83% exemption). In the 2023 Spring Memorandum dated April 28, 2023 and in the Second Tax Policy and Implementation Agenda dated May 8, 2023 the government announced that it was proposing changes to the business succession schemes for tax purposes. In a letter sent to the Lower House of Parliament on June 29, 2023 the government further specified the proposed changes. The 2024 Tax Plan package includes some of these changes.

8.1 Changes as of January 1, 2024

The government has proposed that, for the purposes of the business succession schemes and the transfer facility (*doorschuifregeling*; DSR ab), immovable property leased to third parties should always be regarded as invested equity capital. As a result, such leased immovable property no longer qualifies for business succession tax relief. Whether there is immovable property leased to third parties will be assessed on the basis of a double test, an actual use test and an intention test. Immovable property that at the time it was gifted or inherited was actually made available to third parties (or was intended to be made available to third parties) will be regarded as invested equity capital. The intention test ('intended to') is only relevant if the immovable property was not being leased out at the time it was acquired as either a gift or inheritance. This double test is necessary because if only an intention test is introduced disputes may still arise about how the person continuing with the property will use the acquired immovable property in future.

Immovable property that is made available for short periods of time in the services sector is not regarded as the leasing of immovable property to third parties. For example, hotel rooms, cafés, restaurants, indoor tennis courts, bowling alleys and squash courts that are leased out. Short-term cultivation lease agreements also do not fall under the limitation and therefore can continue to qualify as business assets for the purposes of the business succession schemes. Immovable property that is not leased out but is used for own business operations, does not fall under the proposed measure.

8.2 Changes as of January 01, 2025

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

- The 5% efficiency margin will be discontinued. This margin means that the invested equity capital in a company of up to 5% of the business assets will also be regarded as business assets. Although it would be simpler for both businesses and the Dutch Tax and Customs Administration if the transfer facility and the business succession schemes were discontinued at the same time, it is proposed that the business succession schemes be discontinued on January 1, 2025, because discontinuing them contributes to tackling tax avoidance arrangements. Due to the consequences for the way in which the Dutch Tax and Customs Administration operates, it is only possible to discontinue the transfer facility at a later date. The transfer facility will take effect on a date to be determined in a Royal Decree.

- Operating assets that are used partly in the company and partly for private purposes (optional assets) will only qualify for the business succession schemes insofar as they are actually used within the company. In order to avoid excessive implementation and administrative expenses, this will only apply to assets with a value of at least EUR 100,000 (inflation-adjusted) at the time they were acquired and which are used for at least 10% for non-business activities. This threshold means that in practice it will mainly be immovable property, aircraft, cars and vessels that are also used privately that will fall under the measure.

- The employment requirement in the business succession scheme for personal income tax purposes will be canceled, because this condition appears to be ineffective. The legislation does not provide any quantitative or qualitative interpretation of the concept of employment. This makes it relatively easy to meet the requirement, for example by performing only a limited number of activities. As such, the employment requirement has little effect. At the same time, the employment requirement sometimes rules out real business transfers because someone has not been formally employed long enough. The employment requirement will be replaced by an age requirement. For the purposes of the personal income tax transfer facility and the gift tax facility, gifts can only be used if the recipient is 21 years or older. Exceptions are possible.

- The exemption in the Inheritance Tax Act will, on the one hand, be expanded and, on the other, scaled back. Up to EUR 1.5 million in business assets: the exemption will be increased to 100% (currently approximately EUR 1.2 million). For everything above that: 70% will be exempted (currently 83%).

8.3 Changes as of January 1, 2026 (not part of the 2024 Tax Plan package)

Several measures are too complex and require more time to be worked out properly. For that reason they will be included in the 2025 Tax Plan package, with January 1, 2026 as the envisaged date on which they will take effect:

- For substantial interest holders, access to business succession schemes will be limited with effect from January 01, 2026 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, tracking stocks, options, profit-sharing certificates or who hold a notional substantial interest will have to re-examine their position. However, the dilution arrangement (interests between 0.5%-5% arising from dilution as a result of an inheritance or marriage) will continue intact. The same applies to the arrangement for preference shares issued as part of a phased business succession.

- 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 basic principle applying as of 2026 is that if there is no change in the entitlement to the business, there will be no new ownership period nor will the continuance requirement have been breached. With regard to the running of a business during the ownership period before the gift or the inheritance, the government intends relaxing the rules in cases where the business ceases operating due to government intervention. If there is reinvestment in a new company within three years, the ownership period will not have been interrupted. This is in accordance with the facility in the event of government intervention after the acquisition of the company/shares. The government also intends to shorten the five-year period in the ownership and continuance requirement. It is still not known by how much. However, it has been announced that the business succession schemes in neighboring countries, in particular Flanders, will be looked at.

- 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 (so-called 'walking frame' investments). Under consideration is whether to combat this form of investment by requiring an (increasingly) longer period of ownership for state pension beneficiaries.

- Another form of undesirable use is using business succession tax relief more than once (double business succession scheme arrangements). For example, 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 this alleged arrangement, an anti-abuse measure will be worked out that, in short, amounts to if the same company is gifted twice, business succession tax relief may only be applied once.

9 Inheritance and gift tax

9.1 Gift tax exemption for owner-occupied home to come to an end (not part of the 2024 Tax Plan package)

The gift tax exemption for an owner-occupied home i.e. a tax-free lump sum, will come to an end on January 1, 2024. As of January 1, 2023 the exemption was reduced to the amount of the one-off increased exemption for gifts from parents to their children (2023: EUR 28,947). For gifts from parents to children this means that the gift exemption for an owner-occupied home had effectively already come to an end on January 1, 2023. After all, unlike the gift tax exemption for an owner-occupied home, the 'standard' one-off increased gift tax exemption is not subject to spending conditions. However, the gift tax exemption for an owner-occupied home is still relevant in 2023 for gifts made to children who are 40 years or older and to 'non-children'.

Together with the reduction as of January 1, 2023 and the discontinuation as of January 1, 2024, the spreading option – the unutilized portion of the tax-free lump sum can still be used in the following two years – has been discontinued for gifts to be put toward an owner-occupied home that are first made in 2023 and has been limited to two years for gifts to be put toward an owner-occupied home that were made in 2022. Specifically, this means that any unutilized portion of the exemption of EUR 106,671 for a gift made in 2022 can still be utilized for a gift made in 2023, but not for a gift made in 2024.

10 Real estate transfer tax

10.1 Treatment of property share transactions (2025)

VAT is normally payable on the supply of – in short – new Dutch immovable property. Such transactions are exempt from real estate transfer tax (concurrence exemption). No VAT is payable on the acquisition of shares in legal entities that own such new Dutch immovable property (real estate entities). In some cases, no real estate transfer tax is payable either. This is the consequence of case law of the Dutch Supreme Court from 2010, in which it was ruled that the concurrence exemption can also apply to share transactions. The government no longer considers this desirable and has proposed the following:

1. As of January 1, 2025 the concurrence exemption will, in principle, no longer apply to the acquisition of shares in a real estate entity.
2. The scope of the proposal is however limited to new immovable property and/or building land that is **not** used for more than 90% for VAT-taxed purposes for two years after the acquisition of (> 1/3 of) the shares of the real estate entity. This means that:
   - the acquisition of (> 1/3 of the) shares in the real estate entity is exempt from real estate transfer tax if 90% or more of the underlying property is used for VAT-taxed purposes during the aforementioned two-year period (e.g. in the case of VAT-taxed leasing of commercial property);
   - the acquisition of (> 1/3 of the) shares in the real estate entity is not exempt from real estate transfer tax if less than 90% of the underlying property is used for VAT-taxed purposes during the aforementioned two-year period (e.g. in the case of VAT-exempt housing rental).
3. If the acquisition of the shares in the real estate entity is nevertheless taxed, the real estate transfer tax payable is 4% instead of 10.4%.
4. Transitional rules are provided for with regard to projects already underway at the time the bill is introduced. The new Act will, upon request, not apply to projects where the acquirer and the vendor agreed the acquisition in writing before the bill was presented on September 19, 2023 at 3:15 p.m., the request is made within three months of January 1, 2024, it is plausible that the agreement was not concluded for the main purpose of becoming eligible for the concurrence exemption and the shares are acquired before January 1, 2030.

11 Environmental taxes

The government remains committed to reaching the agreed climate targets, i.e. 55% less CO_2 emissions in 2030 compared to 1990. The 2024 Tax Plan package is being used to take steps to make the tax system even greener. The pricing of CO_2 emissions for tax purposes in the electricity, industrial, transport and property sectors will increase significantly as we approach 2030. The government expects the revenue from environmental taxes to increase by 40% in the coming years.

11.1 Scaling back of new first energy tax bracket for gas

During the parliamentary debates on the 2023 Tax Plan bill, amendments were adopted that regulate that the first energy tax bracket for gas and electricity will be split as of January 1, 2024. Currently, the first bracket for gas runs from 0 - 170,000 m^3. In the amendment, the new first bracket will end at 1.200 m^3, after which the new second bracket will begin. This bracket limit is in line with that of the temporary energy price cap. The government now proposes setting the bracket limit at 1,000 m^3 instead of 1,200 m^3, but will not yet adjust the rates in the brackets. This means that the rates in the new first and second brackets will remain the same on January 1, 2024.

11.2 Additional changes to the new first energy tax bracket for gas

In light of the scaling back of the new first energy bracket for gas (see §11.1), additional amendments and changes in the implementation by the Dutch Tax and Customs Administration and energy suppliers are necessary in order to be able to differentiate the rates in the new first and second brackets. The most important change is the introduction of a flat-rate refund scheme for block heating.

11.3 Sustainable heat sources to be updated

The government proposes updating the list of sustainable heat sources in the district heating scheme for energy tax purposes by supplementing it with installations that largely use aquathermal energy, an air-water-heat pump, gaseous biomass or an electric boiler. As with the sustainable heat sources appearing in the current list, these installations can contribute to a more sustainable heat supply. These new inclusions will prevent the natural gas used in auxiliary boilers for these sustainable heat sources being taxed.

11.4 Bill on the Climate Tax Measures Electricity and Industry Act

This bill contains three measures:

- Ending the exemptions for metallurgical and mineralogical processes
- Ending the exemptions for the dual and non-energy use of coal
- A minimum CO_2 price for the industrial and electricity sectors

The government has proposed ending the exemptions for metallurgical and mineralogical processes on January 1, 2025. This mainly concerns electricity and natural gas that is used for, among other things, the production of iron, steel, aluminum and building materials such as glass and bricks. Such energy use will therefore no longer be exempt from energy tax.

The government proposes ending the exemptions for the dual use of coal and the non-energy use of coal as of 2028. Coal use in coke production and in iron and steel production in blast furnaces is now fully exempt under these two exemptions.

The government has proposed increasing the pricing of the minimum price for CO_2 emissions for both the electricity and industrial sectors from EUR 18 to more than EUR 51 as of 2024. The minimum CO_2 price mainly applies to large industries and waste incineration installations.

11.5 Bill on the Climate Tax Measures for Greenhouse Horticulture Act

This bill contains the following measures:

- Energy tax: ending the reduced energy tax rates for the greenhouse horticulture sector
- Energy tax: limiting the exemption for electricity generation
- A new CO_2 tax for greenhouse horticulture

This bill includes two changes to energy tax, effective as of January 1, 2025. Firstly, it has been proposed to gradually end the reduced rates for gas for the greenhouse horticulture sector between 2025 and 2030. Secondly, it has been proposed to gradually limit the exemption for electricity generation between 2025 and 2030. Limiting the exemption means that natural gas used as input in electricity-generating installations will be taxed. The lower the return of the plant, the higher the natural gas portion on which energy tax must be paid. Also, the electricity - as output by the plant - generated and used by the plant itself, will be subject to energy tax.

The government has also proposed a new CO_2 tax for greenhouse horticulture, effective as of January 1, 2025. A CO_2 tax that will tax the emissions of every greenhouse nursery, in addition to the current CO_2 tax on industry and the minimum prices discussed above. The rate will start at EUR 1.35 per ton as of January 1, 2025 and increase thereafter.

11.6 Reduced rate for public charging stations (not part of the 2024 Tax Plan package)

Until the end of 2024, a reduced energy tax rate will apply to electricity supplied to charging stations for electric vehicles with a standalone connection. In practice, this concerns public charging stations.

11.7 Lowering of maximum take-off weight for air passenger tax purposes (2025, not part of the 2024 Tax Plan package)

The government wants passengers who use private jets to pay air passenger tax. To this end, the maximum take-off weight (MTOW) of aircraft falling under the air passenger tax will be reduced from 8,616 to 5,700 kilograms. This is in line with the maximum take-off weight used in the EU Emissions Trading System (ETS). The measure will take effect on January 1, 2025 and will be included in the 2025 Tax Plan package.

12 2024 Tax Plan package - miscellaneous

12.1 Motor vehicle tax (BPM and MRB)

- As of 2025 the flat rate for BPM purposes will be increased by EUR 200 (price level at 2023). The revenue from this will be used to cover the extra budget for the purchase subsidy.

- Tightened measures were introduced in 2014 for foreign license plates that should have been subject to motor vehicle tax but mistakenly were not. The tightened measures may lead to supplementary tax assessments being imposed over a five-year period, whereby not only obviously fraudulent cases are detected, but also cases where people were not aware they were obliged to register foreign vehicles in the Netherlands in the Dutch vehicle registration register, despite information about this being freely available. To be more flexible, the period for imposing supplementary tax assessments will be shortened to 12 months, so that extreme situations resulting in hardship can be avoided.

- The Motor Vehicle Tax Act 1994 regulates that supplementary MRB tax assessments may be imposed due to a change in the motor vehicle, for example if a van is converted to a passenger car. It has been clarified that it does not matter whether the change was made by the current or previous owner of the motor vehicle, or that the motor vehicle had always been in that specific condition. This lack of clarity in the legislation is sometimes used in legal proceedings for the purposes of disputing the supplementary tax assessment.

- The penalty for improper use of a commercial vehicle registration document can be disproportionately high. If the omission is limited to only not being able to provide a commercial vehicle registration document, it is proposed to base the supplementary tax assessment on three months instead of 12. The supplementary tax assessment will then amount to EUR 113. This is exclusive of any tax penalty; the maximum tax penalty being 100% of the unpaid motor vehicle tax.

- It has been clarified that the MRB exemption for the regular technical inspection of motor vehicles (in Dutch: *APK-keuring*) only applies to the day the technical inspection took place.

- The BPM refund for security vans will end on January 1, 2026 so that there will be an incentive for owners of these motor vehicles to opt for a more CO_2 efficient alternative when purchasing a motor vehicle.

- The MRB exemption for a bus used mainly for public transport and that is primarily intended to be powered by liquefied petroleum gas or natural gas will end on January 1, 2030.

- As of January 1, 2026 the lower fuel surcharge for passenger cars and vans owned by individuals will end if the fuel type CNG, LNG or LPG is listed in the vehicle registration register as ex-factory, G3 or R115-installation.

- The MRB quarter rate for camper vans owned by individuals will be aligned with the half rate for camper vans that are rented out commercially; this to take effect as of January 1, 2026.

- The MRB quarter rate for a vehicle equipped to transport horses for equestrian events and which is solely used for non-professional purposes, will end as of January 1, 2026.

- The government has proposed scaling back the vintage car exemption as of January 1, 2028 to only apply to motor vehicles produced before 1988.

12.2 Customs: normal deadline for imposing additional tax assessments and re-evaluation of sanction regime

Under the current regulation, filing an incorrect customs declaration is considered a criminal offense. The same applies to not providing information, data or instructions or providing inaccurate information, data or instructions. Because in all these cases one can speak of a criminal offense, there is also a criminally prosecutable act within the meaning of the UCC. This means that in all cases the deadline for rectifying a customs declaration is extended from three to five years (the extended deadline for imposing additional tax assessments).

Partly to ensure that the normal three-year deadline for imposing additional tax assessments can be applied if there is no willful act, the sanction regime in the General Customs Act will be amended. As of July 1, 2024 the unintentional filing of an incorrect customs declaration or the unintentional failure to provide information, data or instructions or the unintentional provision of inaccurate information, data or instructions will result in an administrative default penalty. This means there will no longer be a criminally prosecutable act within the meaning of the UCC in these situations and the extended deadline for imposing additional tax assessments can no longer be applied.

This proposal is a first step in the re-evaluation of the current Customs sanctions regime. At present, this sanction regime is almost entirely made up of criminal provisions. The aim is to ultimately arrive at a proper balance between administrative penalties and criminal penalties.

There are transitional rules for these measures. The current, i.e. applying through to June 30, 2024, regime of criminal law and criminal prosecution will continue to apply to criminal offenses committed before July 1, 2021 (thus outside the three-year deadline). With regard to declarations filed or acts committed on or after July 1, 2021, insofar as these do not involve deliberate intent, there will no longer be a criminally prosecutable act and the new criteria will be used.

12.3 Excise duties

- *Excise duty rates for alcoholic products* It has been proposed increasing the excise duty on alcohol by 16.2% as of January 1, 2024. Alcoholic products are beer, wine, beverages that contain some alcohol and other alcoholic products. As of January 1, 2024 the excise duty on beer will move from an excise duty based on degrees Plato to one based on alcohol percentage. Under that legislation, as of January 1, 2024 the excise duty for beer will be EUR 7.49 per hectoliter per percentage of alcohol by volume. The government has therefore proposed increasing the excise duty rate for beer from EUR 7,49 to EUR 8.70. For beer brewed by small breweries, the government has proposed increasing the rate from EUR 6.93 to EUR 8.05.

- *Increase in excise duty on diesel replacement fuel oil* The government proposes bringing the excise duty rate for heavy fuel oil in line with the excise duty rate for gas oil so that they are the same; this to take effect as of January 1, 2024. The legally payable tax on stock on which excise duty has already been paid will be excluded from the increased rate applying as of January 1, 2024.

- *Increase in excise duty on tobacco* The 2023 Tax Plan provided for an increase in the excise duty on tobacco as of April 1, 2023 and April 1, 2024. The government has proposed further increasing the excise duty on cigarettes and smoking tobacco as of April 1, 2024. The increase will be EUR 0.60 per packet of 20 cigarettes and EUR 3.60 per 50 gram packet of rolling tobacco.

13 Other tax developments

There are a number of other relevant tax-related developments that are not part of the 2024 Tax Plan package. We will address some of these briefly below.

13.1 Pillar 2

On December 20, 2021 the OECD published the Global Anti-Base Erosion (GloBE) Model Rules. These model rules, which are also known as Pillar 2, are part of the BEPS 2.0 project and offer governments a template for implementing the Pillar 2 agreement that was reached in October 2021 by 137 jurisdictions in the OECD/G20 BEPS Inclusive Framework. The GloBE rules aim to impose a global minimum tax rate of 15% on multinational enterprises with revenues above EUR 750 million. On December 12, 2022 the EU Member States adopted a directive incorporating Pillar 2 into EU legislation and which the Member States must implement by 2024. The directive generally mirrors the OECD model rules, but it is broader in scope to include large groups that are based in just one EU Member State (large-scale purely domestic groups). In order to implement the directive in the Netherlands, the government launched a draft bill for public consultation on October 24, 2022, which served as the basis for the bill that was presented to the Lower House of Parliament on May 31, 2023. On September 11, 2023 the Memorandum in response to the Report was released, in which the Deputy Minister of Finance answered questions the Lower House had raised about the bill. The 2024 Tax Plan package also stipulates, in short, that the bill will also apply to the BES islands.

13.2 Directive to prevent misuse of shell entities

On December 22, 2021 the European Commission published a proposal for a directive laying down rules to prevent the misuse of shell entities and arrangements for tax purposes. The proposal stems from the Communication on Business Taxation for the 21st century that was released on May 18, 2021. The directive provides for the Anti-Tax Avoidance Directive (ATAD) and the Directive on Administrative Cooperation to be amended. The directive, also referred to as ATAD3, contains a list of features ('gateways') for identifying entities that lack minimum substance. Entities that meet all three gateways and that cannot make use of a carve-out or exemption, are regarded as high-risk entities and must report on their substance in their annual tax return. Entities that do not meet all the substance requirements referred to in the directive are presumed to be shell entities (also known as conduit companies). These types of entities will be denied a number of tax benefits available under directives and tax treaties, unless they are able to refute this presumption. The data reported by entities falling under the scope of the directive will automatically be exchanged between Member States and may be subject to tax audits. The final text of the directive that Member States will ultimately have to implement still has to be adopted.

13.3 New guidelines on Mandatory Disclosure Rules (DAC6)

As of July 1, 2020 the Mandatory Disclosure Rules (EU DAC6 Directive) took effect in the Netherlands. During the drafting of DAC6 it was acknowledged that it can be difficult in practice to establish whether or not specific arrangements are reportable. On April 28, 2023 new Guidelines on Reportable Cross-border Arrangements were released to replace an earlier version from 2020. The updated Guidelines include several substantive changes compared to the earlier version. The hallmarks are discussed using 32 examples.

13.4 EU Directive on Information Exchange in the Digital Platform Economy (Implementation) Act (DAC7)

On March 23, 2022 Deputy Minister of Finance Mr. Van Rij presented the bill on the EU Directive on Information Exchange in the Digital Platform Economy (Implementation) Act to the Lower House of

Parliament. This bill regulates, among other things, the introduction of a reporting obligation for digital platform operators to provide the Dutch Tax and Customs Administration with information about certain users ('sellers') on their platform. This obligation stems from Council Directive (EU) 2021/514 (DAC7) and will apply for the first time to financial years commencing on or after January 1, 2023, with January 31, 2024 as the first reporting deadline. The Lower House of Parliament adopted the bill on November 10, 2022 and the Upper House on December 20, 2022.

13.5 Implementation of Directive on Public Country-by-Country Reporting

On December 21, 2021 an EU directive came into force as regards the disclosure of income tax information by certain undertakings and branches. The EU Member States had until June 22, 2023 to implement this Directive. However, the Dutch implementation bill was only adopted by the Lower House of Parliament on July 6, 2023, in the form of an amendment to Book 2 of the Dutch Civil Code, and is currently pending before the Upper House. The domestic rules will then have to take effect no later than June 22, 2024 and will apply to financial years commencing on or after June 22, 2024. The rules oblige Dutch companies that are members of a multinational group with a consolidated turnover of at least EUR 750 million in the two preceding financial years to annually prepare and publish a separate report on profit tax.

KPMG Meijburg & Co
September 19, 2023

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.