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Dutch Tax Plan 2024

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20 September 2023, version 2.0

On 19 September 2023, the Dutch outgoing government presented its Tax Plan 2024 and other important tax proposals for the coming years. In this tax alert we will highlight the most important proposals and their potential impact on businesses and high-net worth individuals. We will also address other Dutch tax measures that have already been adopted as well as some proposals that were announced earlier.

Introduction

On 19 September 2023, Budget Day 2023 (known as *Prinsjesdag* in Dutch), the Dutch outgoing government presented its budget for 2024 as well as tax measures and plans for the coming years (Tax Plan 2024). The government published in total 15 Bills containing various tax related measures. Most of the announced tax measures are expected to enter into force as of 1 January 2024. The most relevant tax measures for businesses and high-net worth individuals will be summarized in this tax alert.

The Tax Plan 2024 does not contain surprising measures as the Dutch State Secretary for Tax Affairs and the Tax Administration has announced most of the published measures in its Spring Memorandum earlier this year. The presented measures do not deviate significantly from the earlier made announcement. Also, the current government has the status of 'outgoing government' which typically does not address any controversial issues or present new policies which have not been previously discussed. The outgoing government continues to govern until a new government is appointed after the elections on 22 November 2023. Any tax measures therefore still have to be adopted before the new government is formed if they should be implemented before 1 January 2024.

The Tax Plan 2024 will be discussed in parliament. This parliamentary review can still lead to changes to the Tax Plan 2024. Considering the upcoming election, political parties may want to propose changes to the announced tax measures to put emphasis on their political agenda. The next government will be faced with difficult decisions as a public advisory board has prognosed that an additional EUR 18 billion will be needed annually from 2028 onwards to prevent the budget deficit from growing further. The next government has the difficult task to raise additional taxes or cut spending to restore current budgetary course in a fragmented challenging political landscape. It does not seem political opportunistic to propose beneficial tax measures for business and high-net worth individuals with the prognosed budget deficit. We therefore do not expect that any proposals published will be (significantly) amended in the favour of the taxpayer.

Corporate income tax

Fiscal investment institution regime – no direct investments in Dutch real estate

On basis of the current Dutch FII-regime (also referred to as 'REIT'-regime), the taxable income of the Dutch taxpayer is subject to a tax rate of 0% (instead of 25.8%), provided certain conditions are met, such as the distribution of that taxable income to its shareholders. That distribution is subject to 15% dividend withholding tax, unless reduced on basis of domestic law or a tax treaty, or unless it concerns dividends paid by an FBI not resident in the Netherlands. The Dutch government has concluded that not paying Dutch corporate income tax as well as no (or modest) Dutch dividend withholding tax is no longer acceptable when it concerns investments in Dutch real estate and proposes that a FII can no longer directly invest in Dutch real estate, effective as from 1 January 2025.

For clarity sake, the FII-regime will not be amended for investments not being Dutch real estate.

Holding structures

The FII can still invest in Dutch real estate by transferring it prior to 2025 to a subsidiary that is regularly subject to Dutch corporate income tax. If that subsidiary is owned for 90% or more by the FII, such transfer can be made free of Dutch real estate transfer tax (RETT), provided certain conditions are met. Within the context of normal portfolio management, the FII may charge an arm's length management fee, and if it grants a loan or a guarantee, the FII may charge an arm's length interest and a guarantee fee. Dividends paid by the Dutch subsidiary to a Dutch FII are subject to 15% Dutch dividend tax, but upon the mandatory distribution by the FII, the latter may be entitled to a remittance reduction to avoid double Dutch dividend tax.

Tax transparent structures

In order to mitigate the above Dutch dividend tax exposure on dividends paid by the FII, participants may prefer to invest via a tax transparent entity in the Dutch real estate going forward. Such restructuring may however trigger 10.4% RETT on the market value of the transferred Dutch real estate. Therefore, a specific temporary restructuring exemption is available

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from 1 January 2024 up to and including 31 December 2024 under the following conditions:

1. The economic ownership of Dutch real estate is acquired from a FII; and
2. The economic ownership of Dutch real estate is acquired in the form of a participation in a tax transparent entity (such as a tax transparent limited partnership or mutual investment fund) in which the FII contributed its economic ownership of the Dutch real estate; and
3. The participant in the tax transparent entity is entitled to the assets in the same proportion as it was via its shareholding in the FII.

Following the above restructuring, foreign participants may become subject to Dutch income tax themselves with respect to their share in the Dutch real estate and may therefore need to file a Dutch income tax return.

Main take away

FII's which own Dutch real estate must restructure these assets prior to year-end 2024 to mitigate adverse Dutch tax consequences such as losing the benefits of the FII regime. These restructurings must be carefully analyzed and implemented, especially if foreign participants are involved.

Change of Dutch tax classification rules for Dutch and foreign legal entities

Part of the published tax package is a legislative proposal that overhauls the current Dutch tax classification rules for Dutch and foreign legal entities. The Dutch classification rules are quite unique and deviate from international standards. Under the current tax rules, a Dutch or foreign limited partnership is considered non-transparent for Dutch tax purposes if the accession or substitution of a partner does not require unanimous consent of all (general and limited) partners. As a result, foreign limited partnerships are quite often treated as non-transparent from a Dutch tax perspective. Meanwhile, other jurisdictions treat such limited partnership as transparent for tax purposes, resulting in hybrid entities. With the proposed new rules, the Dutch government aims to align the Dutch tax treatment of limited partnerships with the international tax standards and thereby reduce the hybrid outcomes due to mismatches in entity classification between the Netherlands and foreign jurisdictions.

The legislative proposal introduces new classification rules for Dutch and foreign entities for corporate income tax, personal income tax, dividend withholding tax and the conditional withholding tax purposes. Under the new rules, the concept of a non-transparent Dutch limited partnership (*commanditaire vennootschap*, CV) ceases to exist, and all CVs will be treated as transparent entities for Dutch tax purposes.

As for foreign entities, the current similarity approach (also known as the legal comparison method) to classify foreign entities for Dutch tax purposes remains the primary classification rule. Foreign entities which can be classified as partnerships will therefore also by default be treated as transparent for Dutch tax purposes. For situations in which the similarity approach does not provide a solution, two new rules will be introduced. First, foreign entities with no clear Dutch equivalent will be classified on the basis of the 'symmetry approach'. The symmetry approach means that the Netherlands will follow the classification of the foreign entity's jurisdiction. Consequently, their foreign tax treatment will also determine the Dutch tax treatment. Foreign entities with no clear Dutch equivalent, which are based in the Netherlands, will be treated as non-transparent entities for Dutch tax purposes. This means that these foreign entities will be treated as a Dutch domestic taxpayer.

The new Dutch tax classification rules, if enacted, should enter into as per 1 January 2025. As a result, any non-transparent partnerships or similar foreign entities are deemed to have transferred their assets to their shareholders against fair market value. The partners are also deemed to have sold their participation in the partnership against fair market value. Consequently, a potential capital gain would be realized. Transition rules will also be introduced to provide the possibility for Dutch and foreign legal entities to restructure without adverse tax consequences.

The transitional rules provide for several tax facilities such as (i) a rollover facility: the tax claim related to the untaxed gains, reserves and goodwill related to the business of the non-transparent limited partnership is deferred by transferring the tax claim to the limited partners that are subject to corporate income tax; (ii) a share merger facility: limited partners can defer their tax claim related to their interest in the open limited partnership by contributing their share in the non-transparent limited partnership to an existing or new holding company; (iii) a rollover facility for situations of

making assets available: limited partners can defer the tax claim related to assets made available to the non-transparent limited partnership if the asset remains made available to the business from which the limited partners enjoy profit; and (iv) a payment facility allowing for paying the tax due in installments over 10 years. The transitional rules will be effective as from 1 January 2024, providing a one-year period to restructure in a tax-friendly manner.

Main take away

The changes of the classification rules may impact any structure which includes partnerships. Depending on their place and importance in the structure, the changes in the Netherlands may impact the tax position of the structure. The impact should therefore be reviewed.

Changes tax treatment funds for joint account (FGR)

As of 1 January 2025, the conditions under which a fund for joint account (*fonds voor gemene rekening*, FGR) qualifies as non-transparent will change. The Dutch government will align the rules with the definition of investment institutions under the Dutch Financial Supervision Act (*Wet op het financieel toezicht, Wft*). This means that the current consent requirement (similar to the consent requirement for partnerships, see above), which serves as the distinguishing criterion for the independent tax liability of the FGR, will be eliminated. Under these new conditions, a fund can only qualify as a non-transparent FGR if it is regarded as an investment institution or a UCITS as referred to in the Financial Supervision Act and the certificates of participation are tradable.

FGRs that no longer meet the definition of a non-transparent FGR as of 1 January 2025 will be deemed to have transferred all their assets to the participants at fair market value and therefore potentially realize taxable gains on as of 1 January 2025. They will then be subject to (corporate) taxation at the regular rates. However, transitional rules allow for deferring acute taxation under certain conditions. The transitional law consists of four facilities:

1. A rollover facility for the deferred tax claim on deferred profits, tax reserves, and goodwill.
2. A share merger facility for participants subject to income tax, allowing them to transfer participation rights to a Dutch company in exchange for shares.
3. A temporary exemption from transfer tax related to the merger for participation holders subject to income tax.
4. A payment facility allowing for paying the tax due in installments over 10 years will be introduced.

The legislative proposal refers to the general requirements applicable for other restructuring facilities. It therefore might be possible that available losses can be transferred to the participants.

Main take away

FGR's are commonly used in family structures or by funds. The new legal amendments significantly impacts their business model and legal structure. The restructuring options should be analysed as soon as possible to ensure that they can be finalized before year-end 2024.

Changes tax exempt investment institution (VBI) regime

It is proposed that as of 1 January 2025, the Exempt Investment Institution (*VBI*) regime will be restricted to only investment vehicles regulated under the Dutch Financial Supervision Act (*Wet Financieel Toezicht*). The proposed adjustment will mean that VBIs owned by (a limited group of) family members will become subject to normal corporate tax with effect from 1 January 2025.

Main take away

Structures which make use of the VBI regime should be reviewed.

Introduction of measures against dividend stripping

The Tax Plan 2024 includes two measures to combat dividend stripping: (i) the inclusion of the record date of listed shares the Dividend Tax Act 1965, and (ii) the requirement for taxpayers to demonstrate that they are the beneficial owner of the dividends when seeking an offset, a refund or an exemption of dividend withholding tax.

(i) Currently, the record date (i.e. the day before the dividend is distributed (shares cum dividend)) is determined by a provision in the Collective Decree on dividend withholding tax. To enhance legal certainty, the Tax Plan proposes incorporating the record date into the Dividend Withholding Tax Act 1965.

Therefore, there are no significant changes in this aspect. The record date should help with determining which party is the recipient of the dividends and should therefore prevent multiple dividend withholding tax refund requests with respect to the same dividend.

(ii) Taxpayers can currently offset dividend withholding tax withheld against their personal or corporate income tax, request a refund, or apply for a dividend withholding tax exemption without the need to prove their beneficial ownership of the dividends. However, under the proposed changes, taxpayers will be required to provide evidence of their status as the beneficial owner. In addition, taxpayers must make it plausible that they are the beneficial owner if their claim is disputed by the tax inspector.

This burden of proof will only apply to offsetting dividend withholding tax against personal or corporate income tax and refund requests exceeding EUR 1,000 (efficiency margin) in a given year. If the dividend withholding tax withheld is below this threshold, the burden of proof will not shift to the taxpayer and the current allocation of the burden of proof remains.

The efficiency margin does not apply to the application of the dividend withholding tax exemption and the dividend withholding tax reduction (for fiscal investment institutions). In these situations, taxpayers must always provide evidence of their status as the beneficial owner of the dividend in order to apply for the withholding tax exemption or the dividend withholding tax reduction.

Personal income tax

Box 1: Income from work and primary residency

The top rate of the personal income tax will remain at 49.5% for income exceeding EUR 75,624 in 2024. The basis rate for income up to EUR 75,624 will be slightly increased from 36.93% to 36.97%.

Box 1: Reparation of Supreme Court decision on lucrative interest regime

Following a decision by the Dutch Supreme Court in April this year, in which the Supreme Court clarified the scope of the Dutch lucrative interest regime, the Dutch state secretary for Tax Affairs and the Tax Administration announced to retroactively amend the lucrative interest regime. The decision confirmed the general practice that in situations in which incentives using leverage are implemented in an equity structure a 10% criterion has to be adhered to. This is regularly the case for management participating in the equity of a company.

In these situations, a so-called lucrative interest only exists if, simply put, the leverage instruments (such as cumulative preference shares) make up 90% or more of the capital (both nominal and share premium as well as “informal capital”) and the subordinated capital (generally ordinary shares) make up less than 10 percent of the capital (both nominal and share premium as well as ‘informal capital’). In its decision the Supreme Court ruled that in the application of the 10% criterion loans must only be taken into account if and insofar they are considered informal capital for Dutch tax purposes. The State Secretary considers this decision an unfavorable limitation to the lucrative interest rules and that it creates uncertainty about existing positions and agreements involving the use of loans that do not qualify as informal capital.

The proposed change in the law means that when assessing whether there is a lucrative interest, a loan that does not qualify as informal capital is also taken into account for the 10% criterion. The change applies with retroactive effect as from the day of the announcement, 26 June 2023.

Box 2: Income from substantial interest

As of 2024, a two-rate bracket system will be introduced for Box 2 income (substantial interest). A top rate of 31% will apply to income higher than EUR 67,000 and a base rate of 24.5% will apply for the first EUR 67,000 of income.

Box 2: Business succession scheme

In the event of the transfer of business assets through a gift or inheritance, the personal income tax act includes a rollover provision (**DSR**). When the DSR is applied, the grantor or decedent is not liable for personal income tax. The tax liability is transferred to

the recipient(s) of the business assets.
The gift and inheritance tax act includes a business succession relief scheme (**BOR**). Under the BOR, a recipient of business assets may be exempt from or subject to a relatively low tax rate of gift or inheritance tax.

The following amendments to the DSR and BOR have been proposed:

(i) As announced during Budget Day 2023, real estate assets rented to third parties no longer qualify as business assets and the BOR and DSR no longer apply in relation to real estate assets rented to third parties as per 1 January 2024.

(ii) Currently, the exemption of the BOR is applicable to 100% of the going concern value up to EUR 1.205.871. The excess of the going concern value is exempted for 83%. As of 1 January 2025, the going concern value up to EUR 1.500.000 will be exempted under the BOR and the excess of the going concern value is exempted for 70%.

(iii) The efficiency margin in the BOR and DSR means that investments assets up to 5% of the total value of the business assets could qualify as business assets for the application of the BOR and DSR. It is proposed that the efficiency margin will be abolished per 1 January 2025.

(iv) Assets that have the characteristics of both business assets and private assets (free choice assets) will only qualify for the BOR and DSR to the extent that the assets are actually used within the business. The proposed amendment is only applicable to (i) assets with a fair market value of over EUR 100,000 and (ii) assets that are used for more than 10% other purposes than business objectives. It is proposed that the measure will be introduced per 1 January 2025.

(v) As of 1 January 2025, the 36 month employment requirement for the application of DSR in situations of gifts will be repealed. In return, a minimum age of 21 years will be introduced for the beneficiary in relation to the application of the DSR in situations of gifts.

(vi) It is proposed that the application of the BOR and DSR will be limited to ordinary shares with a minimum ownership of 5% that participate in profit-sharing and liquidation proceeds as of 1 January 2026. Nevertheless, the BOR and DSR will continue to apply to preferred shares issued as part of a business succession in stages.

(vii) It is announced that the government has the intention to ease the ownership and continuation requirements for the application of both the BOR and DSR as of 1 January 2025 toch?. The ownership and continuation requirements should be more aligned with the economic reality of the businesses.

Main take away

While the amendments concerning the application of the BOR and the DSR will continue to allow for tax-neutral business succession, the business to be transferred will have to be assessed in a stricter manner. Depending on the assets it might therefore be recommended to already transfer the business this year. Measures promised to align the facility more with economic reality have been postponed and as such the current package only diminishes the facility.

Box 3: Income from savings and investments

The Dutch Box 3 regime taxes (deemed) income from privately owned assets and serves as the relevant income category for all income which cannot be categorized as income in Box 1 and Box 2.
The tax-free allowance for the taxable base for calculating the deemed income from savings and investments will remain at EUR 57,000. No inflation correction will be provided. The tax rate for Box 3 will be increased to 34% (from 32% in 2023).

Changes in Box 3 regime

In December 2021, the Dutch Supreme Court decided that the taxation of savings and investments in Box 3 violated the fundamental rights of taxpayers. On 8 September 2023, an internet consultation on a draft bill for the new “Box 3” (wealth tax) regime to replace the current regime was launched. Interested parties can respond to the draft bill until October 20, 2023. The new Box 3 taxation should enter into effect in 2027. While this draft bill is therefore not part of the legal

proposals published; it forms part of the future tax climate in the Netherlands.

Main characteristics

Different to the current system, the new Box 3 taxation will tax the actual return and certain unrealized value gains on investment from savings and invest from 1 January 2027. The total benefit will for example include rental income from investment properties, interest income, and any profit distributions received from investments. In addition, unrealized value increases from a certain year will also be included.

In principle, the total benefit has to be calculated based on market conditions – i.e. favorable conditions will be negated for tax purposes. In addition, costs directly linked to a certain asset are deductible. Debt is in principle a negative asset and therefore reduces the taxable base for the unrealized value increase.

So far, the tax rate has not been specified but it is expected to be between 33% - 37%. An unlimited loss carry forward provision will be provided.

Exceptions

A number of exceptions are provided. Immovable property, shares in family-owned businesses and in innovative start-ups or scale-ups will only be subject to tax upon realization of the capital gains. In addition, the income of one immovable property in use by the taxpayer is taxed on a deemed yield, provided that the property value (as determined for municipal taxes) does not exceed EUR 1.200.000. Consequently, neither the actual income nor the unrealized value increase will be taxed. Certain goods such as cars for daily use will also be excluded from the taxable base. A tax-free allowance for the taxable total benefit will be implemented.
Also, an exemption for a debt waiver will be included to avoid situations in which a taxpayer having only debt in Box 3 would realize taxable income, although he is in a difficult financial position.

Main take away

The current Box 3 rules have to be amended to ensure that they are in line with case-law. The current proposal will tax a combination of realized income, unrealized capital gain in a taxable year and deemed yields of certain assets. However, as these rules concern a draft bill which will not enter into effect before 2027, it remains to be seen how the final legislative proposal will look like.

VAT

Adjustment place of supply rules virtual services

From 1 January 2025, cross-border virtual services will now be subject to VAT in the Member State of establishment of the customer (Member State of consumption). This adjustment is applicable to cultural, artistic, sporting, scientific, educational or entertainment services.

Implementation Directive Payment Service Providers

As of 1 January 2024, Payment Service Providers must collect and submit specific data to the Dutch tax authorities (such as VAT-number, IBAN, date and time of the payment and currency and amount). The Directive provides for more extensive control possibilities for the tax authorities by using data from cross-border payments. These are payments made by a consumer to a supplier in another Member State or outside the Union. The European Union is developing a central system for the collection and exchange of payment data from and by EU member states (CESOP). The payment data will be analyzed by experts and findings will be exchanged with Member States, only to the extent that this can be helpful in the fight against VAT fraud.

Real Estate Transfer Tax

Concurrence exemption on share deals

Earlier this year draft legislation was published with regard to the abolishment of the RETT concurrence exemption on share deals, followed by consultations and a letter by the ministry of finance the draft legislation was amended. As of 1 January 2025, the concurrence exemption will not apply on the acquisition of shares in RETT companies when less than 90% of the property's use is subject to VAT for at least 2 years after the acquisition. The aforementioned transactions will be subject to a lowered RETT rate of 4%. Transitional law for current development projects will be introduced, allowing projects with a signed letter of intent between the seller and purchaser before Dutch Budget Day will still qualify for the exemption if

the shares are acquired before 1 January 2030. However, the letter of intent may not be just signed to profit from the transitional law.

Climate and Energy

Energy investment deduction (EIA), environmental investment deduction (MIA) and Arbitrary depreciation of environmental investments (VAMIL)

For investments in new energy-efficient assets or certain environmental improving assets meeting certain criteria made by entrepreneurs or companies, an additional deduction from the CIT tax base can be claimed. These deductions are the EIA, the MIA, and the VAMIL. The deductions are in principle only implemented for a certain amount of time and have to be regularly reevaluated. It has been decided to extend all deductions until 31 December 2028.

The underfunding of the budget for energy efficient assets in 2022 triggered an automatic reduction of the deductible percentage to 40% from 45.5%. Different than previously announced it is not intended to reduce the maximum deductible amount.

Earlier adopted tax measures

Pillar Two implementation

On 31 May of this year, the Dutch parliament was presented with the proposed 'Minimum Tax Act 2024'. This legislation seeks to implement the OECD's Pillar Two system in the Dutch tax system. The law applies to multinationals with a presence in the Netherlands with an annual turnover of at least EUR 750 million. The legislation includes various mechanisms to supplement taxation where a jurisdiction's effective tax rate falls below 15%.

In implementing the Pillar Two system, the Dutch government intends to closely align with the OECD's recommendations. Over the last months, changes have been proposed in the parliamentary proceedings to include the administrative guidance prepared by the OECD. Additionally, on 11 September, plans to include the OECD's safe harbor rules were announced by the Dutch state secretary of finance.

The Minimum Tax Act 2024 will likely enter effect on 31 December 2023, applying to fiscal years starting on or after that date.

30%-ruling: cap on salary

The 30%-ruling allows certain skilled expats to receive 30% of their gross salary tax-free. As of January 1, 2024, the application of the 30% ruling is limited to a maximum income of EUR 233,000 (2024 amount) for expats with a 30% ruling issued in and after 2023. For expats who already applied the 30% ruling in 2022, the salary cap limitation will apply as from 1 January 2026.

Increase tax-free travel allowance

The tax-free travel allowance allows employers to pay a tax-free allowance to employees who use their own means of transport to travel to work. As of 1 January, 2024, the maximum of tax-free travel allowance will be increased to EUR 0.23.

Conditional withholding tax on dividends to low tax jurisdictions

On 1 January 2021, a withholding tax was introduced on interest and royalty payments to related group companies in low-tax or non-cooperative jurisdictions. The tax rate of the Dutch withholding tax is equal to the highest Dutch corporate income tax rate, which is currently 25.8%. As from 1 January 2024, dividend distributions to related group companies in low-tax or non-cooperative jurisdictions will also be taxed under this withholding tax.

The withholding tax on dividends will be levied in addition to the already existing Dutch dividend tax (current rate of 15%). Other than the dividend tax, which must be remitted within 30 days following the profit distribution, the source tax will be levied annually. The 15% dividend tax is creditable against the conditional tax on dividends to avoid double taxation.

Closing remarks

Should you have any questions or need our assistance, please contact your trusted advisor at Dentons or one of the key contacts below.

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