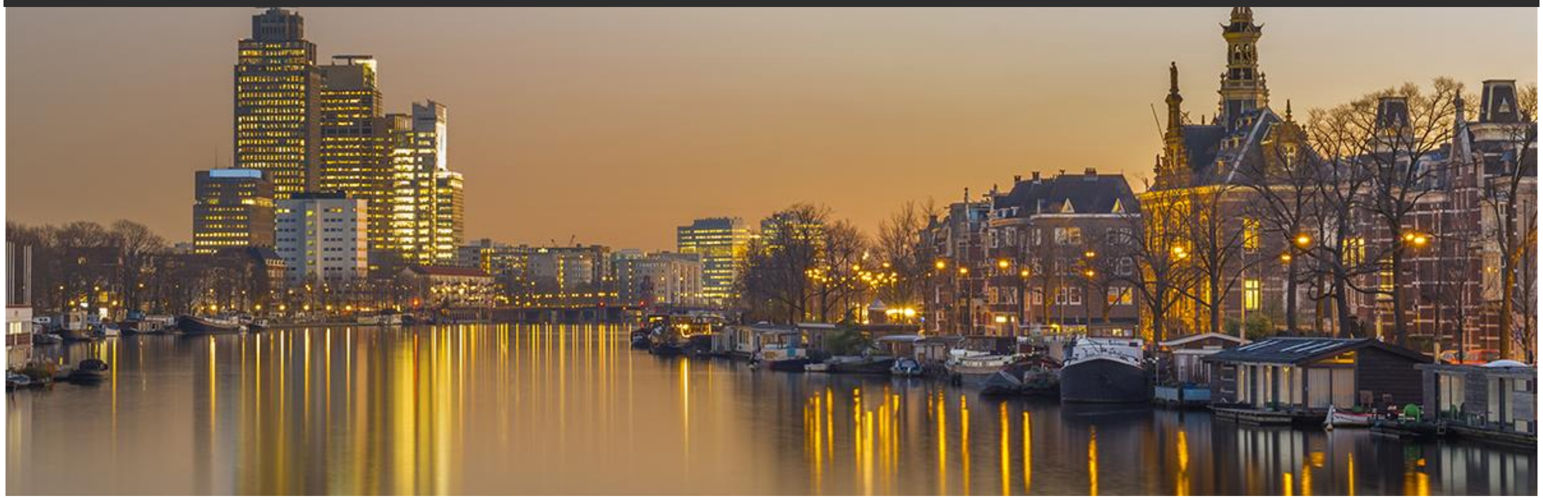
Alert | Tax



September 2021

Dutch Presented Tax Measures for 2022

On Budget Day, 21 September 2021 (*Prinsjesdag)*, the Dutch Ministry of Finance presented its 2022 tax plan. For the proposed bills in this plan to have effect, they first must be approved by Parliament. If approved later this year, many of the proposed measures will take effect on 1 January 2022. This GT Alert outlines the main tax measures presented, as well as a number of other proposals that will take effect on 1 January 2022.

Currently, the Dutch government has a caretaker status, which means it should limit its work to non-controversial decisions within the political landscape. As a result, the tax plan is less extensive than in previous years, and some (controversial) decisions will be delayed until a new government is in place.

CORPORATE INCOME TAX

Tax rates

The Dutch corporate income tax (**CIT**) rate applies a two-bracket system. The first bracket currently taxes profits up to €245,000 at 15%. The second bracket taxes the surplus profits at a rate of 25%. The first bracket is increased and will apply to taxable profits up to €395,000 as from 1 January 2022.

Adjustment of loss relief for corporate income tax purposes

Currently, CIT losses can be carried back one year and carried forward six years. As from 1 January 2022, CIT losses can be carried forward indefinitely. The carry back term of one year will remain.

However, a loss can then only be offset against the taxable profit of a year up to an amount of €1 million plus 50% of the taxable profit, to the extent that it exceeds €1 million. This restriction applies to both future and past CIT loss relief.

These amendments will take effect on 1 January 2022 and will then apply to CIT losses from financial years commencing on or after January 1, 2013.

This measure was included in the 2021 tax plan.

Deductibility of withholding taxes

As of 1 January 2022, the set-off of dividend withholding tax (**DWT**) and gaming tax levied on gaming prizes (domestic withholding taxes) against CIT will be limited. Entities established in the Netherlands that are liable for CIT can offset withholding taxes in full against the amount of CIT owed. As a result, entities established in the Netherlands that are in a loss situation in a year and therefore do not owe CIT can fully recover any DWT and/or gambling tax withheld in that year. Entities established abroad that are not liable for CIT, but otherwise find themselves in a similar (loss) situation as entities established in the Netherlands, do not have this option. They can therefore not recover the DWT and gaming tax withheld in the Netherlands through the CIT. This difference in treatment between taxable entities established in the Netherlands and foreign entities that are not subject to Dutch CIT may not be justified in view of a recent court ruling by the Court of Justice of the European Union (the so-called *Sofina* judgment, number C-575/17).

The proposal states that the crediting of withholding taxes is limited to the CIT owed in a year. The withholding taxes that have not been settled can be carried forward to a later year. This proposal would enter into force on 1 January 2022.

Countering mismatches in applying the arm's length principle

To eliminate mismatches resulting from the application of the Dutch arm's length principle, it was proposed that a downward adjustment of profits for tax purposes in line with the arm's length principle may only be taken into account in the Netherlands to the extent it is offset by a corresponding upwards adjustment at the level of the other (foreign) party that is liable to a CIT. A similar mechanism applies if an asset is acquired from an affiliated entity. If its value is higher than the agreed or imposed transfer price, that higher value may be capitalized only to the extent a corresponding upward adjustment is involved in a profit tax at the other party.

The rule will also apply to assets acquired in the period of five fiscal years preceding the fiscal year beginning on or after 1 January 2022, the proposed effective date. In that case, depreciation occurring as of fiscal year 2022 will be calculated as if the new rule were already in effect at the time of acquisition. However, the initial value and previous depreciations are left unaffected.

Reverse hybrid entities

As a result of the European Anti-Tax Avoidance Directive 2 (ATAD2), the tax liability measure for reverse hybrid entities will be implemented as of 1 January 2022. This tax liability measure will take the form of a subjective tax liability for Dutch partnerships and entities incorporated under foreign law that qualify as a reverse hybrid entity.

A reverse hybrid entity is a partnership entered into under Dutch law or a partnership established in the Netherlands that is considered transparent for tax purposes in the Netherlands, where at least 50% of the voting rights, capital interests or profit rights are held by an entity affiliated with that partnership and that is established in a state that considers the entity non-transparent.

If the entity falls under the scope of the measure, it becomes taxable and must independently calculate profits and file CIT returns. A withholding obligation may also arise for the DWT and withholding tax on interest and royalties.

Environmental investment allowance

As of 1 January 2022, the proposal would increase the support percentages of the Environmental Investment Allowance (*Milieu-investeringsaftrek, MIA*) from 13.5%, 27% and 36% (2021 rates) to 27%, 36% and 45%, respectively.

WAGE TAX

Employee stock options

Currently, taxation of employee stock options takes place when the stock options are exercised, while the acquired shares often cannot be sold at that time. It is proposed that employees can choose when to be taxed for the employee stock options. If the shares are not yet tradable, the employee can choose to be taxed at the moment the employee can trade the shares, or at the moment the employee exercises the options.

The option benefit is taxed no later than five years after the acquisition of the shares (for listed companies) or five years after the IPO of a company. The intended date of entry into force is 1 January 2022.

Work-related expenses scheme (*werkkostenregeling*)

With the work-related expenses scheme an employer can provide employees with certain remunerations free of wage tax. As a result of COVID-19, the higher fixed exemption that was retroactively introduced in 2020 has been extended.

Fixed exemption	**2020**	**2021**	**2022**
Wage sum ≤ 400.000	3%	3%	3%
Wage sum >400.000	1,2%	1,18%	1,18%

Specific exemption for the reimbursement of home office costs

The proposal would introduce a targeted exemption within the work-related expense scheme for allowances and benefits in kind related to employees working from home. This would allow employers to provide tax-free reimbursements to their staff for costs associated with working from home, such as gas, water, light and food. It concerns an exemption for a lump sum of up to €2 per day worked from home.

PERSONAL INCOME TAX

Box I

Tax rate

Taxable amount	**2021**	**2022**
< € 68.508	37,10%	37,07%
> € 68.508	49,5%	49,5%

Lowering of effective tax deduction

For a large number of tax deductions in Box I, the tax deduction will not be deductible against the highest rate of 49,5%, but to a lower rate that is gradually reduced.

	Tax deduction
2021	43%
2022	40%
2023	37,05%

This applies to, amongst others:

- Mortgage interest deduction (*hypotheekrenteaftrek)*;
- Entrepreneur's allowance (*ondernemersaftrek)*;
- SME profit exemption (*MKB-winstvrijstelling)*;
- The exemption in the regime for making assets available (*terbeschikkingstellingregeling*);
- Personal tax credit (partner alimony, healthcare costs, educational expenses, deductible donations, losses on investments in venture capital).

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