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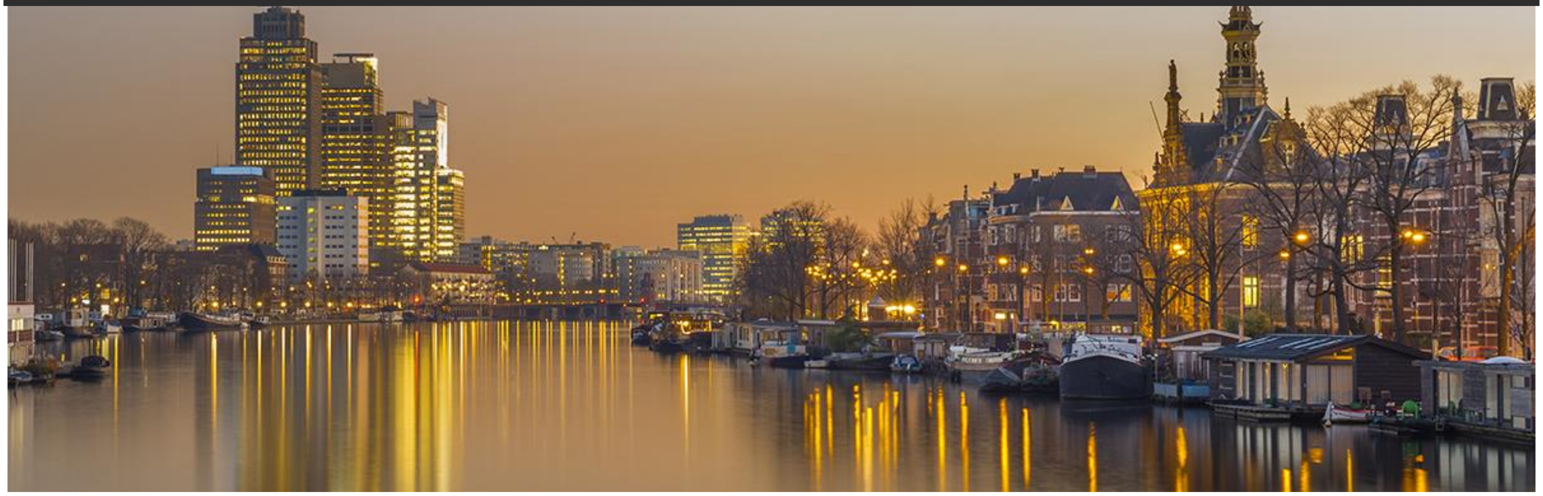

September 2022

Dutch Presented Tax Measures for 2023

Go-To Guide:

- Corporate income tax rates would increase under proposed 2023 plan
- Applicability of 30% ruling would be capped at EUR 216,000
- Various energy taxes would be adjusted as a result of global developments and increased prices
- Proposed introduction of a minimum CO_2 price for industry
- Real estate transfer tax for acquisition of non-residential properties would increase to 10.4%

On Budget Day, 20 September 2022 (*Prinsjesdag*), the Dutch Ministry of Finance presented its 2023 tax plan (**the Proposal**). For the proposed bills discussed in this GT Alert to have effect, Parliament first must approve them. If approved, many of the proposed measures would take effect 1 January 2023. This GT Alert outlines the main tax measures presented and several other proposals that would take effect 1 January 2023 (or possibly 1 January 2024 or 1 January 2025). The package of proposed bills is more substantial than last year's given global economic and geopolitical developments.

CORPORATE INCOME TAX

- *Tax rates*

The Dutch corporate income tax (**CIT**) rate applies a two-bracket system. The first bracket taxes income up to €395,000 at 15%. Under the Proposal, the first bracket would be reduced and therefore would apply to income up to € 200,000 as from 1 January 2023. Furthermore, the rate at which the first bracket is taxed would be raised to 19%, and the second bracket would remain taxed at 25.8%.

- *No change to fiscal unity scheme*

For CIT purposes, a Dutch taxable entity can form a so-called fiscal unity with one or more Dutch subsidiaries of which it owns at least 95% of shares. As a result, the subsidiaries are no longer independently subject to CIT, but the fiscal unity functions as one taxpayer. Following European case law in 2019, the fiscal unity scheme was adjusted to ensure it would comply with European case law. The adjustment has resulted in the need for certain legislation to be applied as if there were no fiscal unity (the 'per-element approach'). Practically, this has proved to be a difficult approach and has put the fiscal unity regime under pressure. Amending or replacing the system has been on the table, but the cabinet has not taken this any further under the Proposal.

- *DAC7*

Although DAC7 is not part of the Proposal, it will become relevant soon and we have therefore included it in this GT Alert. The Council of the European Union has adopted new rules revising the directive on administrative cooperation in the field of taxation (Council Directive 2011/16/EU or **DAC**). These new rules introduce additional reporting requirements that apply to digital platforms that make their platform available to reportable sellers (**DAC7**). EU member states must put DAC7 into effect as of 1 January 2023. Digital platforms will be required to report for the first time in 2024 for the calendar year 2023. Digital platforms must have implemented a process to identify reportable sellers as early as 1 January 2023.

- *Pillar 2*

Similar to DAC7, Pillar 2 is not part of the Proposal but is nevertheless relevant. The European Commission has released a proposed directive for an effective minimum tax rate for multinational companies. This proposed directive aims to introduce a 15% minimum tax rate in the EU. It is proposed to apply to EU-based group entities that are part of a multinational group or domestic group with annual income of €750 million+. A group entity located in an EU member state must file a return with information regarding the withholding tax with the tax authorities.

The European Commission has proposed an implementation date of 1 January 2023, but not all member states have agreed on the proposal yet.

- *Changes to the FBI regime*

The so-called FBI (*fiscale beleggingsinstelling*) regime allows certain taxpayers to be subject to 0% CIT. Under this facility, investors can jointly invest in a tax neutral manner (compared to if they had invested directly and individually). One of the conditions is that the FBI's profit is distributed annually (which is generally subject to tax). Even though not part of the Proposal, it has been announced that as per 1 January 2024, the FBI regime will change. As of that date, real estate investments can no longer benefit from the FBI regime. This may have a large impact on existing FBIs and, even though transitional law is expected, may require restructuring.

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 (for example, due to a lock-up period). Pursuant to the Proposal, employees could choose when to be taxed in relation to employee stock options. If the shares were not yet tradable, the employee could choose to be taxed at the moment he could trade the shares, or at the moment he exercised the options. The shares would be marketable at the time any restrictions on alienation were lifted. The option benefit would be 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 2023.

REAL ESTATE TRANSFER TAX

The real estate transfer tax for the acquisition of non-residential properties and for the acquisition of residential properties by legal entities and individuals who will not themselves live in the properties on a long-term basis would be increased from 8% to 10.4% as of 1 January 2023.

PERSONAL INCOME TAX

Box I

- *Tax brackets*

	2022	**2023**
1st Bracket	37,07% (up to € 69,398)	36,93% (up to € 73,013)
2nd Bracket	49,5% (above € 69,398)	49,5% (above € 73,013)

- *Changes to the 30% ruling*

The 30% ruling is an arrangement for employees with specific expertise who come from outside the Netherlands to work in the Netherlands. If the conditions to the 30% ruling are met, no tax has to be paid on up to 30% of the salary. This is intended as compensation for additional costs incurred by foreign employees when they come to work in the Netherlands (such as travel and housing costs).

Under the Proposal, the 30% ruling would be restricted to only apply to up to the amount of a legally determined standard setting the maximum remuneration for the highest government officials (*Balkenendenorm*), which in 2022 is € 216,000. This amount is indexed annually, so it could be higher when the restriction takes effect on 1 January 2024.

- *(Sham) self-employment*

The Cabinet wants to provide clear guidance on what qualifies as self-employment as of 2025 or earlier. Sham self-employment is a phenomenon where people appear to be self-employed but actually perform activities as if they are employees. This difference comes with multiple tax implications. The government considers this phenomenon undesirable for several reasons, but it is also difficult to monitor. Shortly after the introduction of the Deregulation of Assessment of Employment Relations Act (*Wet DBA*), the Cabinet, in order to give all parties involved some peace of mind, temporarily declared a so-called enforcement moratorium. In practice, this means that the Tax Authority only occasionally gets around to enforcement. The Cabinet now intends to lift the enforcement moratorium by 1 January 2025 (preferably earlier) and strengthen supervision by the tax authorities.

Box II

For substantial interest holders (shareholders with an interest of at least 5% in a Dutch company), income from that company (such as dividends or capital gains) is taxed in Box 2 for income tax purposes. The Box 2 rate is currently 26.9%. As of 2024, there will be two brackets in Box 2 with a progressive rate structure.

	2023	**2024**
Income sum ≤ € 67,000	26,9%	24,5%
Income sum > € 67,000	26,9%	31%

Box III

On 24 December 2021, the Supreme Court ruled that the Box III levy violates European law. This has forced the government to revise the Box 3 levy. The Cabinet has proved unable to do so before 2025. As of 1 January 2025, the government intends to introduce a new Box 3 system whereby taxation is based on the actual returns on wealth instead of a fixed return, as is now the case. The tax would be levied annually on regular income such as interest, dividends, and rent, reduced by the associated costs, and on the (un)realized value development of assets such as a price gain or price loss of shares and an increase or decrease in the value of real estate.

Awaiting an actual fix of Box III, the Cabinet has proposed to raise the tax rate from 31% (2022) to 32% (2023), while also raising the threshold for levy from € 50.650 to € 57.000 (and from € 101.300 to € 114.000 for fiscal partners).

ENVIRONMENTAL

- *CO2 levy for industry*

A CO2-levy was introduced on 1 January 2021. Under this legislation, the emission of one ton of CO2 would be levied at € 30,48. The levy would increase annually by € 10,73, resulting in a price of € 127 per ton CO2 in 2030. This would remain unchanged under the Proposal.

However, the Proposal's main environmental measure is a minimum CO_2 price for industry. As a result, a minimum price will also apply over the free base of the CO_2 levy. The level of this minimum price is linked to the minimum CO_2 price for electricity generation (increasing in a linear manner from € 16.40 in 2023 to € 31.90 in 2030).

- *Energy tax adjustments*

Given current geopolitical circumstances, many households and business are facing high gas and electricity prices. Therefore, the Cabinet has decided to:

- Lower energy taxes for gas (-6,31 cent/m3) and electricity (-7,06 cent/kWh); and
- Raise the threshold for energy taxes with € 284,39.

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