

BUDGET DAY 2021

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On Tuesday 21 September 2021, Budget Day 2021, the Dutch Minister of Finance has published the Tax Plan 2022. Below the most important measures from an international perspective will be outlined.

Please note that the Tax Plan 2022 is subject to discussion in and approval by the Dutch Parliament.

We have divided the measures of the Tax Plan 2022 in the following topics:

[1. Corporate income tax](#)

[2. Dividend withholding tax / withholding tax on interest and royalties](#)

[3. Personal Income Tax & Wage Tax aspects for expats](#)

[4. Real estate transfer tax / Landlord Levy](#)

If you have any questions regarding one or more measures discussed below, or if you would like to receive more detailed information regarding the measures included in the Tax Plan 2022, please contact your regular contact person at Dirkwager. If you do not have a regular point of contact, please be referred to the contact details of our senior tax specialists on the last few pages of this document.

1. Corporate Income Tax (1)

Adjustment tax brackets corporate income tax

The corporate income tax rates remain unchanged for 2022. The lower tax bracket is extended from € 245,000 to € 395,000. Therefore, the following corporate income tax rates and bracket apply as of 1 January 2022:

Taxable profit	Tax rate
Up to € 395.000	15%
Excess of € 395.000	25%

A special tax rate of 9% applies for innovation box income.

Taxpayer-status reverse hybrid entities

As of 1 January 2022, reverse hybrid entities will become subject to Dutch corporate income tax. A reverse hybrid entity is defined as:

- a partnership located in the Netherlands or entered into under Dutch law, which the Netherlands considers to be tax transparent;
- of which at least 50% of the voting rights, capital interest or profit-sharing certificates are held by an affiliated entity;
- while the affiliated entity is resident of a State which considers the partnership to be tax opaque; and
- for Dutch tax purposes the income of the partnership is attributable to the affiliated entity.

A partnership, like a 'besloten-CV', or another entity that is tax transparent in the Netherlands, but tax opaque in another State could be a reverse hybrid entity and thus as of 2022 subject to Dutch CIT.

Arm's-length principle

As of 1 January 2022, certain downward adjustments resulting from the application of the arm's-length principle, will no longer be taken into account when determining the taxable profit for CIT-purposes.

Under the arm's-length principle, the conditions of transactions between affiliated entities (controlled transactions) should be the same as the conditions that would have applied in a comparable transaction between unrelated entities (uncontrolled transactions). Based on the principle, the taxable profit of a Dutch corporation is adjusted downwards if the price paid for a controlled transaction is lower than the arm's-length price or the remuneration received for a controlled transaction is higher than the arm's-length remuneration.

As of 1 January 2022, such downwards adjustments at the level of Dutch taxpayer are no longer allowed if the related entity's profit (the counterparty of the transaction) is not adjusted upwards correspondingly.

1. Corporate Income Tax (2)

The new legislation also aims to counter mismatches that may arise if a Dutch corporation acquires an asset from a related entity for a price that is lower than the arm's-length price of the asset. As of 1 January 2022, the Dutch corporation has to value the asset for tax purposes on the acquisition price, if the profit of the related entity that sells the asset is not adjusted upwards in line with the arm's-length principle. As a consequence, the (tax deductible) depreciation on the asset is determined based on the (lower) acquisition price of the asset and no longer based on the arm's-length price of the asset. Certain assets that were acquired after 30 June 2019, may also be affected by the new legislation.

If the Dutch taxpayer acquires a debt from an affiliated entity at a price higher than an arm's length price, then the lower arm's length price will only be applied to the extent that the difference between the agreed price and the (lower) arm's length price is subject to tax on profits at the level of the affiliated entity.

Finally, measures have also been introduced in the context of a mismatch when applying the arm's length principle upon the transfer of an asset or a debt by a means of a capital contribution, capital refund, profit distribution or liquidation distribution.

Refund of withholding tax for non-resident entities

Dividend withholding tax is generally credited against the corporate income tax of the dividend recipient. The withholding tax is however currently refunded only to resident entities, also if the corporate income tax due is lower than the withholding tax. This regime may be in conflict with EU-law. As of 1 January 2022, the Netherlands will no longer fully refund dividend withholding tax to resident companies in this situation. The credit is limited to the corporate income tax due before such credit is applied and can therefore no longer result in a refund if the corporate income tax due is lower than the withholding tax creditable. Excess credits can be carried forward to future years.

Measures have been proposed with respect to a number of reorganization facilities in the corporate income tax act and with respect to crediting withholding tax after an entity has joined or left a fiscal unity.

Environmental Investment reduction (MIA)

As of 1 January 2022, the percentages of the MIA will be increased from 13,5%, 27% en 36% to respectively 27%, 36% en 45%, which will further reduce taxable profit.

1. Corporate Income Tax (3)

Adjustment loss utilization rules

The adjustments of the loss utilization rules were already announced last year and have been enacted.

Starting from 1 January 2022, losses can be carried forward indefinitely. However, a restriction will apply if taxable profits exceed an amount of € 1 million. In respect of the excess amount, only 50% of available tax losses may be offset against such profits.

Until 1 January 2019, the Dutch corporate income tax contained a special rule for utilization of holding losses (losses incurred by holding/financing companies). These losses were only allowed to be offset against profits from similar activities. A transitional arrangement has been made with respect to changes in the loss relief rules in 2019. On losses incurred before the start of the first financial year commencing on or after 1 January 2019 on which the restriction on loss relief for holding losses applied, the old regime with a limitation on loss relief will continue to apply.

Recently, the Dutch Supreme Court ruled that a holding company loss can be offset against the profits of a newly incorporated subsidiary that becomes part of a fiscal unity as of its incorporation.

In view of the ruling, the Dutch legislator considers amendments to the loss compensation rules. The amendments were not included in the Tax Plan 2022 but will be included in a later phase (possibly with retroactive effect).

We have prepared an extensive memorandum which outlines the principles of the new loss utilization rules. Please contact one of our tax advisors in case you would like to receive a memorandum on the amended loss relief rules.

Early payment discount provisional CIT assessment

The early payment discount, which applies to corporate income taxpayers who pay the provisional corporate income tax assessment at once, continues to exist. The Dutch government is however expected to abolish this discount as of 2023.

2. Dividend withholding tax / withholding tax on interest and royalties

Taxpayer status for reverse hybrid entities

As of 1 January 2022, reverse hybrid entities may become liable to dividend withholding tax / withholding tax on interest and royalties. Furthermore, dividends, interest or royalties paid by a tax resident of the Netherlands to a reverse hybrid entity may also be subject to dividend withholding tax / withholding tax on interest and royalties. The definition of a reverse hybrid entity aligns with the definition that applies for corporate income tax purposes, as discussed earlier in this document.

Wider scope definition ‘permanent establishment’ with respect to withholding tax on interest and royalties

The definition of ‘permanent establishment’ for purposes of withholding tax on interest and royalties will be amended as of 1 January 2022. As a result, withholding tax on interest and royalties will also be levied on interest and royalty payments to entities in low-tax or non-cooperative jurisdictions, to the extent that such payments are attributable to specific Dutch sources, such as real estate located in the Netherlands.

In our view this amendment may specifically affect (foreign) real estate funds / investors which hold Dutch real estate assets via foreign entities,

whereby the Dutch real estate assets currently not qualify (by way of a fiction) as a permanent establishment in the Netherlands for the purposes of the Dutch withholding tax on interest and royalties.

Clarification applicability withholding tax on interest and royalties with respect to hybrid entities

A change is announced in rules applying to payments to hybrid entities with respect to withholding tax on interest and royalties. Payments to such hybrids should not be subject to the withholding tax in case all participants in that hybrid entity see the hybrid entity as tax transparent and would not be confronted with withholding tax in case of a direct payment. Apparently, the wording of that exception is unclear, and it is intended that this amendment will be introduced with retroactive effect up to and including 1 January 2021.

3. Personal Income Tax & Wage Tax aspects of expats (1)

Personal Income Tax

Box 1

As of 1 January 2022, the following tax rates apply for 2022:

Income	Rate
Up to € 69.398	37,07%*
Excess of € 69.398	49,50%

* Combined rate for income tax and social security contributions. For pensioners a separate table applies.

Box 2

The box 2 income tax rate remains at 26,9%.

Box 3

As of 1 January 2022, the tax free allowance for box 3 will be increased to € 50.650 (€ 101.300 for married couples and partners). For 2022, the box 3-income is determined based on the following notional yields:

Net value assets	Notional yield
Up to and including € 50.650	1,82%
€ 50.650 - € 962.350	4,37%
Excess of € 962.350	5,53%

The income tax rate in box 3 remains at 31%.

Wage Tax

Increase work-related costs scheme budget

To support employers and employees during the COVID-19 crisis, the work-related costs scheme budget for 2021 will be increased to 3% (instead of 1,7%) for the first € 400,000 taxable wage sum.

Wage tax exemption home office allowance

As of January 1, 2022 an employer can give the employees a tax-free allowance for working from home of € 2 per day.

To minimize the administrative burden, it will be possible to pay, under certain conditions, this home office allowance as a fixed costs allowance, similar to the fixed travel costs allowance. When working on one day subsequently in both home office and the “work” office, either the home office allowance or the travel allowance can be paid tax-free.

3. Personal Income Tax & Wage Tax aspects of expats (2)

Taxation date stock option right

Currently, stock option rights for employees become taxable when exercised. In some cases this may cause a cash flow problem when the stocks are non-tradable. For these cases, it will become possible to defer the taxation date on request until the shares can be traded/sold. The maximum period to postpone taxation is five years.

The fair market value of the shares at the time they become tradable, will be considered as taxable wage minus any contributions made by the employee for acquiring the stock option right. Any stock benefits between the moment the option rights are exercised and the actual taxation date, will therefore be included in the amount of taxable wage from the stock option rights.

4. Real estate transfer tax / Landlord Levy

Changes real estate transfer tax (RETT)

- Introduction of a RETT exemption for repurchase of residential property with a regulatory sales clause.
- Clarification and technical changes to the RETT following the introduction of the RETT exemption for first time buyers and the 2% RETT rate with respect to the acquisition of residential property.

Changes Landlord levy

- Reduction of the Landlord Levy rate from 0,527% to 0,485%.

Contact



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