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Dutch Budget Day 2024: proposed changes for 2025

On 17 September 2024 (*Budget Day 2024*), the Dutch Ministry of Finance submitted the 2025 Dutch Budget to parliament. This budget contains various tax proposals for the coming year (*Tax Plans 2025*).

A couple of days earlier, on 13 September 2024, the government published its coalition program recognising that a strong business climate is indispensable to preserve a stable Dutch economy and healthy companies. The government promotes a solid and predictable (fiscal) policy, for example when it comes to corporate tax rates and the innovation box.

The most relevant proposals for corporate taxpayers relate to the deductibility of interest payments, a new group definition in the Withholding Tax Act 2021 (*WTA 2021*), an extension of the related-party definition in the Corporate Income Tax Act (*CITA*), the incorporation of the latest OECD Pillar Two Guidance in the Minimum Tax Act 2024 (*MTA 2024*), and the interaction of the Pillar Two rules with the 'subject-to-tax rules' in the CITA.

In addition, some previously adopted changes were reversed or relieved, such as changes to the tax-free repurchase facility for listed entities and certain personal income tax rates. It is furthermore announced that the expatriate regime will become more attractive again.

The proposed measures will, if adopted, enter into force as of 1 January 2025, unless indicated otherwise.

Apart from these proposed measures, some significant changes in tax law that were already adopted in 2023 as part of the Tax Plans 2024, will enter into force as of 1 January 2025. These measures include the changes in the classification rules for Dutch limited partnerships, comparable foreign entities, and Dutch funds for joint account.

Below key measures in the Tax Plans 2025 and some of the already adopted changes are described in more detail.

Corporate income taxes

The proposed changes to the CITA inter alia relate to the earnings stripping rule, the related-party definition, the debt relief exemption, the deductibility of donations and the codification of the GAAR. In addition, the Tax Plans 2025 contain some specific technical changes which will not be addressed in this tax flash.

Earnings stripping rule

Under the earnings stripping rule the deductibility of net interest expenses, i.e. the balance of interest expenses and interest income, including foreign exchange results on loans, is currently limited to the highest of: (i) 20% of the fiscal EBITDA and (ii) a threshold of EUR 1 million. The ratio is applied at taxpayer level and no distinction is made between intra-group and third-party interest and costs.

In the Tax Plans 2025 two changes are proposed:

- **The increase of the fiscal EBITDA cap from 20% to 25%**
  This change aims to bring the Dutch implementation of the rule as embodied in the EU Anti-Tax Avoidance Directive (**ATAD**) more in line with the implementation in other EU Member States.
- **Tightening of the earning stripping rule for certain real estate companies**
  As announced on Budget Day 2023, the deductibility of interest under the earnings stripping rule will be tightened for real estate investment companies. To prevent the spreading of real estate assets over several entities for the purpose of using the EUR 1 million threshold at the level of each taxpayer, the EUR 1 million threshold will no longer apply at all for those real estate investment companies, whose adjusted assets - for at least half of the year - consist for 70% or more of immovable property to the extent that such immovable property is made available to non-related persons. Such taxpayers can, as of 1 January 2025, only rely on the (proposed) 25% EBITDA threshold.

Extension related-party definition following changed entity classification rules

The CITA applies for certain provisions a ‘related-party’ definition, which is especially relevant to the interest deduction limitation that restricts the deduction of intragroup financing costs in certain ‘abusive’ situations (article 10a CITA).
Since Dutch partnerships, foreign equivalent entities, and foreign tax-transparent entities qualifying for the symmetrical approach will be classified as transparent for Dutch tax purposes as of 1 January 2025 (see also below), this related-party definition would no longer apply to such partnerships and entities. It is therefore proposed to extend the related-party definition, including the cooperating group definition, with aforementioned partnerships and entities.

Concurrence of the tax loss settlement rules and the debt relief exemption

The concurrence of the current tax loss settlement rules and the debt relief exemption may result in undesired outcomes. A waiver of an uncollectible debt is treated as a gain for Dutch tax purposes, but an exemption applies for the amount exceeding available tax losses. As from 2022 loss relief is restricted to 50% of the current year profit, exceeding EUR 1 million. This means that upon a waiver tax can be due on half of the amount of the waiver exceeding the EUR 1 million threshold. This makes it more difficult for a loss-making company to restructure because corporate tax must be paid on such profit.

In order prevent this undesired outcome, it is proposed to amend the debt relief exemption in such a way that in case of available tax losses in excess of EUR 1 million, the gain as a result of a waiver will be tax exempt to the extent that such gain exceeds these losses. This means that no tax is due in case of a debt waiver.

Implementation general anti-abuse rule (GAAR) as embodied in ATAD

The GAAR embodied in ATAD combats artificial constructions designed to improperly avoid taxation. The GAAR had to be implemented in the Members States before 1 January 2019. At that time, the GAAR was not codified, based on the view that the abuse of law doctrine as developed in Dutch case law (‘*fraus legis*’) achieves the same result. Nevertheless, following remarks made by the European Commission, it is now proposed to codify the GAAR, but it is explicitly mentioned that this should not materially change the application of the concept of *fraus legis* in the Netherlands.

Abolishment of the deductibility of certain donations

It is proposed to no longer allow corporate tax deductibility for donations driven by personal motives of shareholders and to treat them as a distribution to the shareholders for dividend withholding tax and personal income tax purposes. The proposed amendment should not affect the deduction of gifts that are business driven, for instance sponsoring.

Pillar Two

The Minimum Tax Act 2024 (**MTA 2024**) has been enacted as of 31 December 2023. The Tax Plans 2025 contains (1) helpful amendments to ‘subject-to-tax rules’ in the CITA to recognise the Pillar Two levy as ‘tax paid’, and (2) amendments to the MTA 2024 (**Proposed MTA Changes**).

Ad 1 - Interaction Pillar Two with the ‘subject-to-tax rules’ in the CITA

The CITA includes subject-to-tax rules in relation to various (anti-abuse) measures. These subject-to-tax rules provide for an escape for (anti-abuse) measure in case of a reasonable level of taxation of the relevant asset, transaction or participation. The Tax Plans 2025 amendments to the CITA clarify that for certain of these subject-to-tax rules, Qualifying Pillar Two Top-up Taxes should count as tax paid. These proposed amendments should enter into force per 1 January 2025 and cover:

- The *anti-base erosion provision* which denies the deduction of interest on an intra-group loan under specific circumstances (Article 10a CITA). If the interest income is subject to a reasonable level of tax on profit (generally: 10%), generally the interest is deductible for Dutch CIT purposes anyway. The Tax Plans 2025 clarify that a tax on profit in this sense also includes Top-up Taxes under a QDMTT, (Qualified) UTPR and (Qualified) IIR.
- The *participation exemption* (Article 13 CITA) and the *object exemption* for foreign permanent establishment income (Article 15e CITA). One of the access tickets tothese exemptions is a reasonable level of tax on profit (generally: 10%) of the participation or permanent establishment. The Proposal clarifies that ‘tax on profit’ in this sense also includes tax based on a QDMTT (the UTPR and IIR are not mentioned). Various other provisions related to the participation exemption and object exemption contain similar subject-to-tax rules. The proposal confirms a QDMTT is also part of the respective profit tax definitions in these subject-to-tax rules.

The proposed amendments to the subject-to-tax rules do **not** cover (anti-abuse) rules in relation to differences between corporate tax systems, such as the transfer pricing mismatch rules or entity classification mismatches (ATAD2).
For determining whether a transaction or asset is included in a tax on profit for these anti-abuse rules, the explanatory memorandum to the Tax Plans 2025 mentions that only regular profit taxes in the relevant state are considered.
The explanatory memorandum however states that a taxpayer nevertheless meets these subject-to-tax rules if it can show that a Qualified Pillar Two Top-up Tax results in a Top-up Tax percentage of 15% specifically in relation to the transaction or asset. The subject-to-tax rule related to CFC measures (ATAD) is met if the taxpayer can show that a Qualified Pillar Two Top-up tax results in a Top-up Tax percentage of 15% specifically in relation to the relevant entity.

Ad 2 – Proposed MTA Changes

The Proposed MTA Changes implement certain elements of the OECD Administrative Guidance released after the MTA 2024 entered into force and various technical adjustments. Based on the proposal, a part of the Proposed MTA Changes has retroactive effect until 31 December 2023.

Implementation of additional OECD Guidance

The MTA 2024 was adopted at the end of 2023. According to the MTA 2024 explanatory memorandum, the OECD Model Rules and related Commentary of 11 March 2022 and the OECD Administrative Guidance of February 2023 (**February 2023 AG**) serve as interpretation of the MTA 2024 to the extent the MTA 2024 aligns with the Administrative Guidance on the global minimum taxation rules (**OECD Model Rules**, which form part of the OECD's Pillar Two solution).

Since the February 2023 AG, the OECD published new Administrative Guidance in July 2023 (**July 2023 AG**), December 2023 (**December 2023 AG**) and June 2024 (**June 2024 AG**). The July 2023 AG introduced the QDMTT Safe Harbour. Fortunately, the QDMTT Safe Harbour (for the most part) and the UTPR Safe Harbour had already been incorporated in the MTA 2024. Most of the other additional Administrative Guidance was not yet considered in the MTA 2024.

The Proposed MTA Changes implement the additional parts of the Administrative Guidance and specifically contain the following elements:

- **February 2023 AG**:
  - the guidance on the *Carry-forward of Excess Negative Tax Expense*.

- **July 2023 AG**:
  - the definition of a *Qualifying Ownership Interest*,
  - the additional guidance on the GloBE treatment of new categories of tax credits, being *Marketable Transferable Tax Credits (MTTCs)* and *Non-Marketable Transferable Tax Credits (non-MTTCs)*,
  - the additional guidance on *currency conversions*, and
  - the additional guidance on the *Substance-based Income Exclusion* (**SBIE**), including, among others, for situations in which the relevant employees or material tangible assets are not 100% of the time located in the jurisdiction of the relevant Constituent Entity and the reduction of the SBIE in case the UPE is subject to a Deductible Dividend Regime.

  For more information on these elements, we refer to our Tax Flash on the July 2023 AG.

- **December 2023 AG**:
  - the additional guidance on the *Transitional Country-by-Country Reporting Safe Harbour*,
  - the additional guidance on *Hybrid Arbitrage Arrangements entered into after December 15, 2022*,
  - the guidance on the transitional relief to file (i) the GloBE Information Return, and (ii) notifications for MNE Groups that have short Reporting Fiscal Years.

  For more information on these elements, we refer to our Tax Flash on the December 2023 AG.

The explanatory memorandum to the Proposed MTA Changes reiterates that it will be reviewed on a case-by-case basis whether administrative guidance to the OECD GloBE Rules requires changes to the MTA 2024 or whether it is merely interpretation of existing rules for which no amendment is required. With this proposal, the legislator considers that it has implemented all remaining items from the February 2023 AG and July 2023 AG that require amendment to the MTA 2024. It is further stated that the implementation of the remaining items from the December 2023 AG as well as the June 2024 AG is currently under review. The Proposed MTA Changes do not mention timing for these elements.

Technical amendments to existing MTA 2024

In addition to the changes implementing sections from February 2023 AG, July 2023 AG, and December 2023 AG, the Proposed MTA Changes contain various technical amendments to the existing MTA 2024. Notably, these include the following changes:

- *Application of the QDMTT to Joint Ventures*: From the MTA 2024, it was not fully clear whether the QDMTT applies to Joint Ventures as well and if so, which Constituent Entity would have to pay any Top-up Tax due. This has been amended in this Proposal and consequently, Joint Ventures and JV Subsidiaries are subject to the Dutch QDMTT.
- *Accounting standard used for QDMTT Safe Harbour and application of QDMTT Safe Harbour*: The proposal released today secures that the Dutch QDMTT qualifies for the QDMTT Safe Harbour. It includes a tie-breaker for the Local Financial Accounting Rule in case all Dutch Constituent Entities of a Group have financial accounts based on multiple Local Financial Accounting Standards (i.e., both IFRS and Dutch GAAP accounts). In such cases, the Dutch GAAP accounts are leading.

The other amendments are minor and should, according to the Proposed MTA Changes, not lead to substantive changes.

Timing of Proposed MTA Changes

The legislator intends that the amendments to the MTA 2024 have retroactive effect until 31 December 2023 as much as possible and therefore apply to the current year. The legislator considers this acceptable insofar the measures are not burdensome for taxpayers. For four of the measures, the legislator does not consider this acceptable, and these therefore it is proposed that these changes only apply for financial years starting on or after 31 December 2024:

- The tie-breaker between IFRS and Dutch GAAP under the Local Financial Accounting Rule for the QDMTT;
- The application of the Excess Negative Tax expense administrative procedure in cases the Top-up Tax percentage is higher than 15%;
- The reduction of the SBIE in case the UPE is subject to a Deductible Dividend Regime; and
- The Hybrid Arbitrage Arrangement Rules (but once effective, these rules still apply to arrangements that have been entered into after 15 December 2022).

Withholding taxes

The main change relates to the introduction of the new group definition replacing the currently applicable cooperating group definition. Another important change is the reversion of the abolishment of the tax-free share buyback facility for listed entities.

New group concept in the Withholding Tax Act 2021 (WTA 2021)

The Netherlands levies a withholding tax on interest payments, royalty payments and dividend payments (**IRD Payments**) to affiliated entities in low-tax jurisdictions (**LTJ**) or in jurisdictions that are EU blacklisted, to certain hybrid entities and in abusive situations.

Mainly for structures involving a hybrid entity, the currently applicable cooperating group definition creates uncertainty, especially since the Dutch tax authorities do not provide certainty in advance regarding the presence or absence of a cooperating group. Additionally, the current definition may lead to withholding tax being imposed in cases where it is not intended resulting in overkill.

To combat this negative impact on the Dutch investment climate the Tax Plans 2025 propose a new group definition in in the WTA 2021. The proposed new group definition is referred to as a ‘qualifying unity’. This concept should apply to situations where entities:

- are ‘acting together’;
- with the main purpose, or one of the main purposes, to avoid withholding tax being levied at one of those entities (**Motive Test**).

The burden of proof regarding the existence of a qualifying unity lies with the tax inspector.

Given the very welcome introduction of the Motive Test in the qualification of a qualifying unity, the given examples in the Tax Plans 2025 and the possibility to obtain certainty in advance regarding qualifying unity, it is expected that only structures that are (partially) set-up to avoid withholding tax will be targeted.

Dividend stripping - registration date of dividends of listed shares

Article 1a of the Dutch dividend withholding tax act 1965, is part of the measures introduced to combat dividend stripping and stipulates the registration date ('record date') of dividends of listed shares. As the scope of this provision seemed to be unclear in practice, the Tax Plans 2025 aim to provide more clarity on this provision by stipulating that the registration date solely aims to determine the moment at which the beneficiary of the proceeds of listed shares needs to be identified.

Tax-free share buyback facility for listed entities

Following an amendment during the parliamentary process of the tax plans 2024, a proposal from parliament was adopted to abolish the tax-free share buyback facility for listed companies as of 1 January 2025. At that time concerns were expressed by the Senate and the business sector, which were acknowledged by the former caretaker government. That government held the view that the expected revenue might also be substantial lower as companies most likely would end their share buyback programs or even relocate out of the Netherlands. Based on the Tax Plans 2025 the abolishment of the tax-free share buyback facility will be reversed, and the facility will thus continue to be available.

Changing the dividend withholding tax exemption into a mandatory exemption

It is proposed to make application of the dividend withholding tax exemption mandatory if dividends are distributed within a fiscal unity or to a qualifying domestic shareholder. This change ensures that the recipients of these dividends can effectively object when a distributing company fails to apply the withholding exemption.

Personal income taxes

Tax rates in Box 2

Last year, the top tax rate in Box 2 (substantial interest) was increased from 31% (2023) to 33% (2024). Based on the Tax Plans 2025 the rate increase will be reversed and will thus be 31% as from 2025.

Tax rates in Box 3

Last year, the tax rate in Box 3 (net wealth) was increased from 32% (2023) to 36% (2024). Despite earlier announcements, this rate will not be lowered and will remain 36% in 2025.

Indirect taxes

Real estate transfer tax (RETT)

As per 1 January 2026 the default RETT rate of 10.4% will no longer apply to the acquisition of residential real estate. For the acquisition of residential real estate, a new RETT rate of 8% is proposed as per 1 January 2026. The 8% RETT rate for residential real estate is expected to only apply if at the time of acquisition, the acquired real estate is 'in its nature fit for residential purposes'. The 8% RETT rate is therefore not expected to apply to the acquisition of existing non-residential real estate that – after acquisition – will be redeveloped / transformed to residential real estate. Typically, the execution of the deed of transfer constitutes the RETT taxable event and the date of execution is decisive for the applicable RETT rate. Remarkably, the change in legislation is not included in the tax proposals, rather, it is stated that this RETT rate reduction will be included in a to be published amendment to the Tax Plans 2025.

For more information on RETT measures in the 2025 Tax Plans, we refer to our website post of 17 September 2024.

Abolished activities from reduced VAT rate

The reduced 9% Dutch VAT rate for the following activities will be abolished per 1 January 2026:

- supplies of newspapers, magazines and (e-)books;
- short-stays in hotels, guest houses and other vacation businesses;
- the admission to museums, theatres, stage and music performances;
- the admission to sporting events and the supply of sports season tickets;
- the admission to sports facilities and baths; and
- supplies of art works, collection objects and antiques.

From that date, the standard 21% Dutch VAT rate will apply to these activities. Measures will be introduced to ensure that the 21% VAT rate will also apply to pre-payments made in 2025 for activities that will effectively take place in 2026 and beyond. The proposed amendments fit a trend towards a more uniform VAT rate without that much of reduced rates.

Wage taxation

30%-ruling

As of 1 January 2024, the 30%-ruling for new applications was gradually scaled back to a 10%-ruling. The Dutch government earlier announced to reverse this scaling back of the 30%-ruling. It is now announced that, for the years 2025 and 2026, a 30% rate will apply for all employees. As of 1 January 2027, the 30%-ruling will be decreased to a 27%-ruling. In addition, the salary criterion to apply the 30%-ruling will be increased. For employees who applied the 30%-ruling before 2024, transitional rules will apply.

For more information on the proposed changes of the wage taxes we refer to our website post of 17 September 2024.

Other legislation to come into effect as per 2025

In addition to the proposals described above, the following legislative proposals were already fully adopted in 2023 and will come into effect as of 1 January 2025.

New Dutch entity tax classification rules

As of 1 January 2025, Dutch partnerships and equivalent foreign partnerships will be classified as transparent for Dutch tax purposes, except when the partnership would also classify as non-transparent FGR (i.e., in such case the FGR classification prevails). This includes existing non-transparent Dutch limited partnerships (CVs), which will cease to be Dutch corporate taxpayers immediately preceding 1 January 2025, due to the transition into a tax transparent classification. In addition, the tax classification rules applicable to Dutch funds for joint account (FGRs) are amended as of 1 January 2025. In short, an FGR may only be non-transparent, if it is: (i) regulated and (ii) the participations in the FGR are freely tradeable.

The Dutch tax entity classification rules for entities formed under foreign law will also change. As a starting point, they will still be classified in accordance with the classification of an equivalent entity governed by Dutch law (the similarity approach). However, and this is new, if no clear Dutch equivalent entity can be identified, the classification for foreign tax purposes would generally be followed also for Dutch tax purposes, if the foreign entity is based outside the Netherlands (the symmetrical approach). Foreign entities with no clear Dutch equivalent that are based in the Netherlands will always be classified as non-transparent for Dutch tax purposes and will thus be Dutch domestic taxpayers. As the new entity tax classification rules could result in tax being due (dry tax charge) as a result of the transition from a non-transparent to a tax transparent classification, during 2024 transitional law provides, subject to certain conditions, for several facilities to mitigate this exposure for both the entities concerned as well as their participants.

The new classification rules and the transitional law are described in detail in our Quoted of June 2024.

Changes to VBI-regime

Subject to certain strict conditions, certain investment entities can apply the so-called VBI-regime which results in a tax-exempt position for corporation tax and dividend withholding tax. In line with the proposed changes to the FGR classification rules, the VBI-regime will be amended in such a way that only entities regulated pursuant to the Dutch Financial Supervision Act can apply for the VBI-status. Generally, this means that the VBI-regime will no longer be available to family-owned investment vehicles as of 1 January 2025.

Abolishment of direct real estate as qualified investment for fiscal investment institutions

A company can, under conditions, qualify for the fiscal investment institution regime (*FBI-regime*) resulting in a 0% corporate income tax rate and a mandatory annual distribution of profits subject to generally 15% Dutch dividend withholding tax. As of 1 January 2025, a fiscal investment institution may no longer hold direct investments in Dutch real estate. It, inter alia, remains possible to hold direct investments in non-Dutch real estate and indirect investments in Dutch real estate owned by a regular taxpayer.

Cancellation of the RETT (Real Estate Transaction Tax) concurrence exemption for certain share deals

Newly built real estate can be acquired without VAT (Value Added Tax) or RETT by acquiring all the shares in the relevant real estate company, as the transfer of such shares is out of scope of VAT and exempt from RETT. A direct transfer of newly built real estate is subject to VAT and benefits from the RETT concurrence exemption. The Dutch government considered the difference in taxation between asset deals and share deals a disturbance of the level playing field and resolved it by levying RETT on certain share deals. As of 1 January 2025, 4% RETT will be due on share deals of real estate companies owning building land or newly built real estate that is (partly) used for VAT exempt purposes. A transitional regime applies for certain ongoing development projects.

Public CbC reporting

Public CbC reporting obligations apply to (i) EU headquartered MNEs and (ii) non-EU headquartered MNEs that have medium- or large sized subsidiaries or branches in the EU. The scope is limited to MNEs with consolidated annual revenues exceeding EUR 750 million in the last two consecutive financial years. Public CbC reporting applies to financial years starting on or after 22 June 2024. Most in-scope MNEs must therefore publish their first CbC Report by 31 December 2026, in relation to financial year 2025.

The financial data to be provided in the Public CbC Report should be presented on a jurisdictional basis for each EU Member State, including Liechtenstein, Norway, and Iceland, and separately for each tax jurisdiction that qualifies as a non-cooperative tax jurisdiction. Information regarding all other jurisdictions can be presented on an aggregated basis. The information will need to be made publicly available on the website of the MNE and filed with the local trade register, using a common template and in a machine-readable format.

Abolishment of the partial foreign tax regime for individuals

The Tax Plans 2024 contained a provision based on which the partial foreign taxpayer status will be abolished as of 1 January 2025. This entails that employees who are residents of the Netherlands can no longer opt for this status under which they were considered foreign taxpayers for purposes of Box 2 and Box 3 despite being resident in the Netherlands.

Final remark

We will keep you informed on any relevant changes during the parliamentary process. All updates will be posted on our dedicated Budget Day 2024 webpage.

Should you have any questions with respect to the above, please contact your trusted adviser.

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