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Tax Plans 2024

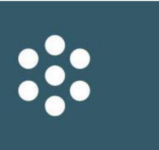
Key changes

Introduction

On Tuesday September 19, 2023, the Dutch Cabinet presented their Tax Plans for 2024. This presentation provides a high-level overview of key items of the Tax Plans.

Note that all matters are still proposals and subject to parliamentary discussions. Hence, these proposals may see some (material) changes. Final voting into law is expected early December 2023.

Update 2024 Tax Rates



- Corporate income tax rates: no changes.

Year	2023	2024
Step-up rate	19% for < € 200,000	19% for < € 200,000
Top rate	25.8% for > € 200,000	25.8% for > € 200,000

- Personal income tax rates: changes to Box 1 (income from work and residence), Box 2 (substantial interest taxation) and Box 3 (passive income).

Year	2023	2024
Box 1	• € 0 - 73,032: 36.93% • € 73,033 and up: 49.5%	• € 0 - 75,624: 36.97% • € 75,624 and up: 49.5%
Box 2	26.9%	31%, with 24.5% step-up rate for income < € 67,000
Box 3	32%	34%

Entity tax classification: overhaul

Proposed changes

- Per 2025, the Dutch limited partnership (CV) and foreign similar entities will classify as tax transparent by default. This will apply to the Dutch CV, and foreign similar LP entities like SCSp, LP and KG.

- The default classification as tax transparent implies that the current “unanimous consent” requirement on LP admissions and transfers (currently relevant to classify as tax transparent) will no longer be a requirement to qualify as tax transparent as of 2025.

- The Dutch tax classification of foreign entities incomparable to a Dutch legal entity (e.g. UK LLP, Irish ULC, German KgAA, French SCPI) will align with the entity’s tax treatment in the foreign jurisdiction (symmetry approach). An exception applies if the foreign entity is resident in the Netherlands, which will result in a non-transparent classification (fixed approach).

- A deemed disposal rule will apply to Dutch and foreign entities switching their Dutch entity tax classification from non-transparent to tax-transparent, both at entity and investor level. Certain transitional rules and roll-over relief will be available, subject to meeting certain conditions.

Takeaway

- After decades of lobbying, the Dutch partnership entity tax classification finally aligns with global standards. This should mitigate hybrid entity mismatches.

- At the same time, the switch in entity tax classification may have a serious negative impact on existing structures (notably Dutch tax planning on withholding taxes and the participation exemption regime).

- We strongly recommend to review international investment structures involving Dutch investors, holdings entities or investments, to anticipate on the upcoming overhaul.

Dutch FGR fund entity: overhaul entity tax classification

Proposed change

- Under current law, the Dutch entity tax classification of a Dutch FGR fund entity can either be tax transparent or non-transparent. The choice depends on the liquidity mechanism.
- As of 1 January 2025:
  - A Dutch FGR qualifies as a non-transparent entity, provided that:
    (i) it classifies as an AIF or UCITs under the Dutch Financial Supervision Act, and
    (ii) its units are tradeable.
  - In all other cases the FGR will be deemed tax transparent. In case units of an FGR can only be sold to the FGR (i.e. a redemption only mechanism) it is also considered non-tradeable even when it is regulated.

- Certain transitional rules apply during 2024 for FGR's switching tax classification as a result of this proposed change

Takeaway

- As a tax transparent version remains available, the FGR remains an attractive product for collective investments.
- Existing non-transparent FGR structures should be reviewed, to timely anticipate on the proposed overhaul. This requires assessing the impact of the transitional rules to determine whether dry income can be avoided.

Dutch FBI fund regime: exclusion for real estate

Proposed change

- As of 1 January 2025, Dutch funds benefiting from the FBI-regime (also: REIT regime) will be restricted from directly holding real estate in the Netherlands.
- An FBI can still hold real estate indirectly through e.g. a regularly taxed company.
- Transitional rules will apply during 2024, allowing a RETT-neutral conversion of existing FBI's into tax-transparent fund structures.
- The FBI-regime continues to be available for non-real estate investments.

Takeaway

- Whilst largely in line with previous announcements, the exclusion of Dutch real estate from the Dutch FBI-regime marks an apparent move knowing that the FBI-regime was initially introduced as the Dutch REIT.
- As existing REITs are considering restructuring options, we recommend investors to also review their Dutch tax position. This could dramatically change, if the REIT converts into a tax-transparent fund entity.

Dutch VBI fund regime: amendments

Proposed change

- The Dutch VBI regime resembles the Luxembourg SICAV regime, providing a full tax exemption to certain Dutch corporate fund entities subject to meeting a number of conditions.
- As per 1 January 2025, the Dutch VBI fund regime will only be available for AIFMD- or UCITS-licensed funds.
- The amendments comes with certain transitional rules, available per 1/1/2024.

Takeaway

- The amendment will restrict the use of the VBI fund regime to AIFMD and UCITS-licensed funds only.
- Careful review should be undertaken to existing VBI funds, to anticipate on the proposed amendments.

RETT concurrence exemption with VAT: amendments

Proposed change

- Currently, the transfer of newly built real estate and building plots by means of a share transfer is exempt from VAT (and RETT), whereas a direct transfer of newly built real estate and building plots is taxed with 21% VAT.
- As per 1 January 2025, the RETT exemption for concurrence with VAT (*samenloopvrijstelling*) will be limited to share deals in real estate companies that use the real estate for at least 90% VAT taxable activities. In other situations, RETT will be due against a newly introduced rate of 4%.
- The legislative proposal is included in the Tax Plans of 2024 but will not take effect until 1 January 2025. Transitional law is provided for ongoing transactions.

Takeaway

- Real estate projects subject to the transitional rules can still benefit from the current regime, under the condition that a LOI has been signed before 15:15 on 19 September 2023. Subsequently, parties must submit a request for application to the NL tax authorities before 1 April 2024.
- The transitional rules will expire on 1 January 2030. Transactions occurring after that date are by definition subject to the new regime.
- The limitation of the concurrence exemption can have significant impact on the commercial side of real estate projects. Eligibility of the transitional rules should be reviewed.

Global Mobility

Proposed changes 30% ruling

- As of January 1, 2024, the 30% ruling will be capped to the maximum wage under the Top Income Standardization Act. For 2024 this amount is € 233,000 per year.

- Based on the 2024 amount of € 233,000, the tax-free 30% ruling allowance is therefore capped at a maximum amount of € 69,900 per year. For wages above the 2024 amount of € 233,000, the 30% ruling can no longer be applied.

- If the 30% ruling has been applied for the last wage period of 2022, a transitional period of two year is applicable. For these situations, the salary cap will apply as of 1 January 2026.

- No changes have been proposed on the partial non-resident taxpayer status in the Tax Plan 2024, but it still has the attention of the government. A further evaluation of the 30% ruling and the partial non-resident taxpayer status is expected in 2024.

- As of January 1, 2024, based on the general 2024 indexation, the salary norm of the specific expertise test for the 30% ruling is expected to increase to:
  1. an estimated regular (taxable) salary threshold of approx. € 46,107; and
  2. an estimated reduced (taxable) salary threshold of approx. € 35,048.

Lucrative interests

Proposed change

- Following a Supreme Court case earlier this year, it is now proposed to adjust the lucrative interest regime.
- As a main rule, a class of shares qualifies as a lucrative interest if these shares constitute less than 10% of the total nominal issued share capital and are subordinated to the other class(es) of shares (typically fixed yield preference shares). Also, a shareholding that is 'economically comparable' to such shareholding qualifies as a lucrative interest. This resembles a 90%/10% leverage ratio between preference shares and ordinary shares.
- According to the recent Supreme Court case only related party/shareholder loans that are treated as informal capital should be taken into account for the assessment of the leverage ratio.
- Under the proposed legislation also (shareholder/related party) loans that are not treated as informal capital need to be taken into account for this assessment.
- As a result, an investment may qualify sooner as a lucrative interest. However, in practice, this approach was already applied.

Takeaway

- Assess whether your carried interest and/ or management incentive plan qualifies as a lucrative interest.

Other upcoming legislation

Conditional withholding tax on dividends

Change

- As of 1 January 2024, the existing conditional withholding tax on interest will be expanded to include dividend distributions. This can be levied in addition to regular dividend WHT whereby the 15% regular WHT can be credited against the amount of conditional WHT due.

- This could affect dividend distributions to controlling shareholders in the following situations:
    - Shareholders resident in designated low-tax and non-cooperative jurisdictions.
    - Hybrid entity structures.
    - Low-substance structures.

- The rate will be equal to the highest CIT rate, i.e. 25.8%

Takeaway

- The introduction of a new conditional withholding tax could have a material negative impact on existing fund and holding structures.

- Whilst limited to 'controlling' shareholders, the definition does include an 'acting together' provision which could result in individual fund investors considered to have controlling influence.

- As the proposed overhaul of entity tax classification rules will only take place one year later, per 2025, existing hybrid entity structures are likely to remain in place during 2024.

Other upcoming legislation, outside Tax Plans 2024

Item	Date
EBITDA rule: excluding real estate companies from € 1m threshold	Expected: 2025
Dividend WHT: relief at source for tax-exempt entities (including pension funds)	Expected: 2024
VAT revision period for capital expenditures (to combat short-stay structures)	Expected: 2025
RETT demerger exemption: tighten conditions for transfers to third parties	Expected: 2025
Expat regime: calculation base reduced per 1/1/2024 to a maximum € 216,000	Voted into law per 1/1/2024. Transitional rules for existing 30%-rulings
Pillar II implementation legislation	Expected per 1/1/2024
Individual income tax "box 3": capital growth tax for liquid investments and capital gains tax for illiquid investments (including real estate and shares in uisted companies <5%)	Expected: 2027

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