This Budget Day Special of Atlas Tax Lawyers outlines the most relevant proposals in the 2021 Tax Plan and additional legislative proposals. In this special the following topics will be covered:

- measures COVID-19
- measures for businesses;
- measures for employers;
- measures for international situations;
- measures on immovable property
- measures for individuals;
- other measures.

The proposed measures will enter into force on 1 January 2021, unless stated otherwise.

COVID-19

Corona reserve

In order to offset a possible tax loss for 2020 at an earlier date, it has already been agreed that taxpayers who are subject to corporate income tax can, under certain conditions, create a tax reserve (corona reserve) for the 2019 financial year. Taxpayers who are subject to corporate income tax can create this corona reserve for the corona-related loss expected to occur in the 2020 financial year. The corona reserve reduces profits over 2019 and therefore, in the short term, the tax paid or some of the tax paid over 2019 can be (partially) recovered or no longer needs to be paid. This proposal allows the already existing legislation adoption to be transposed.

The corona reserve may not exceed the profit of 2019 and neither may it exceed the total expected loss in 2020.

COMPANIES

Study on the introduction of a deduction on equity

In order to make the tax treatment of equity and debt financing more balanced, a study will be carried out into a budget-neutral introduction of a deduction on equity. An earnings-stripping rule that limits the deduction of interest to prevent companies from being excessively financed with loans already exists. A further limitation of the interest relief for loans will also be taken into account in the study.

Settlement of withholding taxes with corporate income tax

The intention is to limit the settlement of withholding taxes, such as the dividend tax and gaming tax, with the corporate income tax due in one year as of 1 January 2022. Withholding taxes not settled, may be carried forward to a later year.

Amendment of interest deduction limitation

Based on article 10a CITA, interest expenses (including costs and foreign exchange results) of related party debts are under circumstances, not tax deductible This provision will be amended such that the negative interest and foreign exchange gains cannot exceed the amount of positive interest, costs and foreign exchange losses, which, on balance, would result in an exemption. For each qualifying debt, the specific interest deduction limitation, on balance, can no longer lead to a lower profit.

High corporate income tax rate not being reduced

The lower corporate income tax bracket will be increased in two increments from next year to €245,000 in 2021 and €395,000 in 2022. However, the previously announced reduction of the tax rate in the second tax bracket, from 25% to 21.7%, is not going happen. For small businesses (with a profit of up to €245,000 in 2021), this tax rate has been reduced from 16.5% to 15%.

Companies in a fiscal unity may consider dissolving the fiscal unity so that the reduced tax bracket can be used for each company.

Innovation box is less profitable
If businesses make a profit with innovative activities, they pay less corporate income tax on this part of the profit. The so-called innovation box applies to these innovative profits. As of 1 January 2021, the effective rate of the innovation box will increase from 7% to 9%.

Adjustment of minimum capital rule and bank tax
As a result of a judgment by the Supreme Court, the minimum capital rule for banks and insurance companies has been adjusted. The minimum capital rule is intended to limit the tax incentive for loan financing to banks and insurance companies. The current scheme limits the tax deduction of interest due, to the extent that the own funds are less than 8% of the balance sheet total. As of 1 January 2021, this percentage increases to 9%. In addition, the bank tax rate will be temporarily increased to 0.066% respectively 0.033% in 2021.

Accelerated scale down of self-employed deduction
The previously planned scale down of the self-employed deduction has been accelerated. In 2021, the self-employed deduction reduces from €7,030 to €6,670. Until 2028, the annual reduction amounts to €360, in 2028 this is €390 and thereafter €110 annually until 2036.

Ultimately, the self-employed deduction will only amount to €3,240 in 2036.

Clear calculation method for KIA
The calculation method of the Small Projects Investment Credit (KIA) is further clarified for taxpayers with several companies and taxpayers forming a partnership. An entrepreneur is entitled to the Small Projects Investment Credit in proportion to the investment in relation to the total investments of the partnership and the entrepreneur's non-partnership investments.
The amount of the KIA for each company, will in future be determined on the basis of the investment amount for each of the taxpayer's companies.

Job-related Investment Allowance
In the Memorandum of Amendment to the 2021 Tax Plan, the government proposes a Job-related Investment Allowance (in Dutch: "BIK") as of 1 January 2021. This Job-related Investment Discount will allow entrepreneurs to deduct a percentage of the investments made from the wage tax and social security contributions. The government wants to introduce this discount on a temporary basis as a crisis measure as of 2021. When the Job-related Investment Allowance lapses, this room for budgetary manoeuvre will be used for a measure with the same scope (reducing employers' costs).

Restriction of loss setoff
In the Memorandum of Amendment to the 2021 Tax Plan, the government further proposes a carry forward period unlimited in time as of 1 January 2022 (whereas the loss carry forward period is currently six years). In addition, the tax losses (both carry back and carry forward) can only be setoff up to an amount of €1 million in taxable profits. For higher profits, tax losses can only be setoff up to 50% of such higher taxable profit in a particular year.

EMPLOYER

An increased 2020 discretionary margin
For 2020, the discretionary margin for the Work-related Expenses Scheme (in Dutch: "WKR") will be extended retroactively from 1.7% to 3% for the first €400,000 taxable wage sum. This allows employers to additionally help their employees, for example by issuing a gift card.

As from 1 January 2021, the discretionary margin on the wage sum above €400,000 will be reduced from 1.2% to 1.18%.

Ex-employee training costs are also exempt
As from 1 January 2021, an employer may, in principle, reimburse the training costs of an ex-employee without that employee having to pay income tax on it. It is then no longer relevant whether there is any current or prior employment. The training or study must be followed for a future occupation and may not apply to maintaining and improving knowledge and skills to fulfil the employment, nor for personal reasons such as a hobby.

This training or study cost allowance may not be more than 30% higher than the training allowance granted by the employer in similar cases.

Pension adjustments
In 2021, the statutory retirement age (in Dutch: "AOW") will remain at 66 years and 4 months. Thereafter, the statutory retirement age increases annually up to 67 years in 2024.

In the context of the elaboration of the Pension Agreement, the government will present legislative proposals in 2021 to clarify:

- what premium people will pay for their pension;
- what they accrue in capital;
- how much their pension will be later.

It is also the intention that pensions keep up with the fast pace of the economy. In other words, it rises when things are going well with the economy and reduces when the economy worsens. Ultimately, the Netherlands should transition to the new pension scheme by 2026.

The aim is to have the new pension scheme enter into force at the latest by 2026. The amendments still need to be laid down in legislative proposals.

INTERNATIONAL

Restriction of liquidation and discontinuation losses
There is a tightening up of the liquidation loss scheme. This scheme is an exception to the participation exemption: losses related to the liquidation of qualifying participations can under circumstances be deducted. A similar exception applies to the object exemption of foreign permanent establishments, the discontinuation loss scheme.

There will be three new conditions for becoming eligible for taking a liquidation or discontinuation loss:

1. Temporary condition: the loss will be eligible in the event of liquidation within three years after the year of discontinuation (decision to discontinue).
2. Territorial condition: only deduction of losses in the Netherlands, the EU, the EEA and third countries with whom the EU has concluded a double tax treaty.
3. Quantitative condition: only deduction of liquidation loss if there is a decisive control.

To make the scheme viable, it has been proposed that the restriction, in principle, should only be applied insofar as the loss exceeds €5 million.

Transitional law has been proposed for situations in which the companies of participations have been liquidated or discontinued before 1 January 2021. If settlement is completed by the end of 2023, the new conditions will not apply.

Concurrence of Anti-Tax Avoidance Directive 2 (ATAD2) and Earnings Stripping Rule
Attention should be paid to situations where the year in which payments are disallowed or included as part of the profit does not coincide with of the year of dual-inclusion income. In such a case, the specific exception applies, which makes the dual-inclusion income deductible in the subsequent year. Due to the proposed expansion of the interest concept in the earnings stripping rule and the minimum capital rule, it means that the amount of dual-inclusion income allowed for deduction under the specific exception, will fall within the interest concept of the earnings stripping rule and the minimum capital rule in a subsequent year. The deduction of this amount may therefore possibly be restricted in a subsequent year.

The proposal concerns situations in which an allowance or payment does not coincide with dual-inclusion income. In a subsequent year, the deduction of such an allowance or payment may still be restricted.

Adjustment to the 'at arm's length principle'
The at arm's length principle means that related parties transactions be based on fair market conditions.. In the spring of 2021, the government will publish a separate legislative proposal to limit a downward adjustment of Dutch taxable profits according to the 'at arm's length principle', if there is no corresponding adjustment the other country. This will have impact on e.g. informal capital structures..

PROPERTY

Real estate transfer tax exemption for starters
Those who are starting out in the housing market are exempt of real estate transfer tax under certain conditions. To be eligible for this, they must be 18 to 35 years old, have a right to obtain a house and use the house as a main residence, other than as a temporary accommodation. The benefit of the tax exemption may not have been applied before. Compliance with the conditions is assessed at the time of purchase (execution of the deed). If the house is purchased jointly, then the exemption must be applied per person. It is possible that the share of the one buyer may be exempt and the share of the other buyer is not.

A transitional arrangement applies for buyers who bought a house before 1 January 2021. If they meet all the conditions, they may apply the exemption to a subsequent purchase.

Restriction reduces rate
The reduced real estate transfer tax rate of 2% applies only to natural persons who will use a house as a main residence other than as a temporary accommodation. Immediately prior to the purchase, the purchaser must declare in writing that this is the intention. The Tax and Customs Administration will retrospectively check whether the purchaser actually uses the house as main residence for a long time. The tax authorities could reverse applying the reduced rate (imposing tax interest and a fine). The Tax and Customs Administration has to take unforeseen circumstances into account, such as a divorce or death.

Fictitious property and economic ownership
Two matters are excluded from the scope of the exemption for those home owners starting out and the reduced transfer tax rate. Firstly, the acquisition of only the economic ownership of a house without the legal ownership being transferred too, is excluded. In addition, the acquisition of shares in a legal entity which mainly owns property, is excluded.

The acquisition of a specific right of membership of an association or cooperative, including the right to use at least 90% of a house, may fall under the exemption or the reduced rate.

Real estate transfer tax increased to 8%
The general rate of the real estate transfer tax will increase from 6% to 8%. This rate applies to all non-residential property and to housing that is not used by the purchaser as a main residence or is only used temporarily as such. For example, holiday homes, houses that parents buy for their child, business premises, and housing purchases by non-natural persons such as legal entities (e.g. a private limited company or housing corporation).

Pay attention to the fact that real estate transfer tax will increase to 8% as from 2021. If possible, ensure the transfer is done by 2020; this saves transfer tax.

Tax return in case of exemption from real estate transfer tax
The law states that if an exemption is applied for the real estate transfer tax, a tax return must be filed for such acquisition. If the acquisition does not take place through the civil-law notary, the purchaser must first request an invitation to file a return. This must be done within one month after acquisition. The tax inspector then determines when the return must be received. This term is at least one month. If a notarial deed is drawn up, the civil-law notary will file the return.

Ensure that a return is filed in the event of an exemption from real estate transfer tax. If a notarial deed is drawn up, the civil-law notary will take care of that return.

Rates of appurtenances
Appurtenances are property items belonging to a house, such as a shed, garage, etc. The exemption or the reduced rate (2%) for the transfer tax can only be applied as from 1 January 2021 if these appurtenances are acquired at the same time as the house. Of course, the exemption or reduced rate must also apply to the house. Appurtenances acquired subsequently are always subject to the general 8% rate.

As from 2021, ensure that appurtenances are acquired at the same time as the house.

INDIVIDUALS

Changes for box 3, savings and investments
To reduce the tax burden on smaller assets, it is proposed to increase the tax-free assets in box 3 from €30,846 to €50,000 (for partners jointly from €61,692 to €100,000). The income tax brackets have also been re-established, in which the 2nd tax bracket starts at assets worth €100,000 and the 3rd tax bracket at €1,000,000. To partially cover this, the income tax rate in box 3 is increased from 30% to 31%.

As the taxable income in box 3 declines for everyone, this has a downward effect on the tax base. To prevent this resulting in more claims being made for a (higher) allowance, it is proposed to base the assets test in future on the capital yield tax base in box 3.

2021 income tax rates
Taxpayerswho have not reached the statutory retirement age (AOW) at the beginning of 2021, are expected to have the following rates applied in 2021.

Box 1 rate 2021	Tax income (€)	2021 rate (%)
Low rate bracket	0 – 68,507	37.10%
High rate bracket	68,507 or more	49.50%

These percentages include national social insurance contributions. A different rate structure applies for those who qualify for other national insurance contributions.

Changed tax credits
This only includes the changes in tax credits as mentioned in the Explanatory Memorandum of the 2021 Tax Plan. These relate to taxpayers who are under the statutory retirement age (AOW). A lower maximum applies to persons entitled to an old-age pension (AOW).

Tax credits	2020 (€)	2021 (€)
General tax credit maximum	2,711	2,837
Employed person's tax credit max.	3,819	4,205
Income-dependent combination tax credit max.	2,881	2,815
Young disabled person's credit	749	761

Changed elderly person's tax credit
Elderly person's tax credit for (AOW) pensioners will be increased further. The single elderly person's tax credit will only have an inflation correction applied.

Tax credits	2020 (€)	2021 (€)
Maximum elderly person's tax credit	1,622	1,703
Single elderly person's tax credit	436	443

Country estates
As of 1 January 2021, other conditions will apply for eligibility for real estate such as a country estate (NSW country estate). This is already subject to transitional law on the basis of which the current conditions still apply to this real estate for a maximum of 10 years. The proposed amendment relates to the recovery or non-recovery of tax claims relating to inheritance and gift tax and transfer tax for real estate that is designated as NSW country estate as at 31 December 2020.

Life-course, obligation to withhold
The transitional law for life-course savings schemes ends as of 1 January 2022. If a claim to a life-course entitlement still exists at the end of 2021, the value of that claim will be taxed. This applies to those participants who have not had the value of the life-course entitlement paid out before 1 January 2022 and for which no levy has taken place either. To ensure that transitional law of the life-course savings scheme is properly settled, the institution (bank, insurance company, etc.) has an obligation to withhold wage tax and social security contributions. This is for the notional moment when paid, on the value of the life-course entitlement. The institution can recover the wage tax and social security contributions directly from the (ex)employee. By virtue of the levy in box 3, the notional moment when paid has been brought forward to 1 November 2021.

The life-course leave tax credit and the other tax credits can be claimed by the (ex) employee in the income tax return.

The notional moment when paid will be November 2021. In this way, the employee can pay his/her tax debt before 1 January 2022. Thus the box 3 assets are reduced.

OTHER MEASURES

Introducing a CO2 levy
A CO2 levy is being introduced for industry. This mainly relates to greenhouse gas emissions at and for industrial production and waste incineration. The levy will be applied primarily to installations covered by the European Emissions Trading Scheme (EU ETS). In addition, waste incineration plants and installations with substantial nitrous oxide emissions are subject to levies. Some of the emissions are exempted, but this exemption will undergo a linear phase-out.

Landlord levy rate reduction
The government wants to oblige housing corporations to reduce the rents of tenants with an income below the income threshold for rent allowance. They will receive compensation for this in the form of a reduction in the landlord levy. The rate will be reduced by 0,036 percentage points.

Some very small housing corporations do not owe a landlord levy and will therefore not be compensated either.