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Budget Day Special - Tax Plan 2023

This Budget Day Special from Atlas Tax Lawyers outlines important proposals in the Dutch 2023 Tax Plan and additional legislative proposals

The special is divided into the following topics:

- measures for companies;
- measures for employers;
- measures for VAT & excise duties;
- measures for real estate;
- measures for box 3;
- measures for (wealthy) individuals;
- measures for cars & mobility;
- other measures;
- other developments.

The proposed measures will take effect on 1 January 2023, unless otherwise noted. Click here for the Tax Plan documents (in Dutch).

COMPANIES

Step-up corporate income tax rate from 15% to 19%

The Cabinet wants to increase the corporate income tax rate in the first bracket from 15% to 19%. It also wants to bring down the range of the first bracket from €395,000 to €200,000. As a result, a taxable amount above €200.000 will be subject to the higher corporate income tax rate of 25.8%.

Two rate brackets in box 2

Box 2 taxes income from substantial interest, such as dividends a major shareholder receives from his private limited company (bv). This is currently (and still in 2023) subject to a single rate of 26.9%. Starting in 2024, there will be two tax brackets in box 2. The rate will be progressive (the more income, the higher the rate). The proposal is as follows:

Income tax rate box 2 2024			
Box 2 rate	Taxable income above (€)	but no more than (€)	Rate 2024 (%)
Low rate		67,000	24.5%
High rate	67,000		31%

For partners, the low rate of 24.5% applies up to double the amount (€134,000).

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Combined corporate income tax rate and box 2 rate

Combined with corporate income tax, this creates a final tax burden of 39% to 49%, making the difference with box 1 minimal.

Phasing out tax-deferred retirement reserve (FOR)

Because the FOR is not always used as intended, the FOR is being phased out. This means that from 2023 no more amounts can be added to the FOR. An existing FOR can still be settled in the usual way in the coming years.

Accelerated phaseout of the self-employed persons deduction

The self-employed persons deduction will be reduced at an accelerated rate of €1,280 per year (including the reduction announced earlier on the basis of the Tax Plan 2020 and the Tax Plan 2021). The self-employed persons deduction will be gradually reduced from €6,310 in 2022 to €900 in 2027. As of 2023, the self-employed persons deduction will be €5,030.

Tax entrepreneurial schemes, including the self-employed persons deduction and the start-up deduction, will be reviewed in 2023.

Increase in the environmental investment allowance and energy investment allowance

The Cabinet announced that the budgets for the Environmental Investment Allowance (MIA) and the Energy Investment Allowance (EIA) will be increased.

This is to give companies an extra boost and because of the growing number of applications. The budget for these investment schemes will be structurally increased by €100 million (MIA) and €50 million (EIA) per year from 2023.

No business succession scheme for leased property

The Cabinet wants to further tackle constructions and tax schemes. A subsequent proposal is for leased real estate to no longer be eligible for the business succession scheme (BOR) both for inheritance and gift tax and for the substantial interest levy (box 2). That activity is considered an investment by fiction. As a result, rented real estate can no longer be transferred in this way with a tax advantage. This proposal still requires further elaboration.

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EMPLOYERS

Increase in the work-related costs rules

Employers can use the discretionary margin under the work-related costs rules scheme to provide and reimburse their employees with respect to tax-free items. Currently, the discretionary margin for each employer is 1.7% of the first €400,000 of the wage bill and 1.18% of the excess. It has been proposed, due to inflation, to increase the discretionary margin (only) over the first €400,000 of the wage bill by 0.22% to 1.92%. This is a maximum of €880 additional discretionary margin per employer.

Efficiency margin for normative salary

Director and major shareholders are obliged to grant themselves a salary from their own private limited company. The minimum amount of that salary is determined on the basis of the normative salary rule, which among other things considers the salary of the most comparable position. The salary of the director and major shareholder may be no more than 25% lower than this salary. This 25% is the efficiency margin. It has now been proposed to abolish the efficiency margin so that directors and major shareholders may have to award themselves a higher wage. The proposed legislative text for 2023 still lacks this change. It is expected that this will still be added via a letter of amendment.

Higher director and major shareholder pay at innovative start-ups

For innovative start-ups, the taxable salary of the director and major shareholder may be set at the minimum wage for up to three years without consulting the Tax Administration. This rule for easing of the normative salary rule will be abolished for new cases by 2023.

Restriction of 30% ruling

As of 1 January 2024, the 30% ruling for incoming employees will be limited to the so-called “Balkenende norm” (remuneration standard for top civil servants, currently at €216,000). Capping of the 30% allowance will then come into play if the base exceeds this amount.

A transitional arrangement will be established for incoming employees for whom the 30% ruling was applied over the last pay period of 2022. For them, the capping will not apply until 1 January 2026. Furthermore, as of 2023, employers will have to make a choice for incoming and outgoing employees per calendar year (in the first payroll period) for the reimbursement of extra-territorial expenses based on the 30% ruling or on an expense claim basis.

It may be attractive to bring forward an employment and start as early as December 2022.

In that case, the transitional arrangement can be used for another two years.

Untaxed travel allowance

It is proposed to increase the maximum untaxed travel allowance, as of 1 January 2023, to a maximum of €0.21 and, as of 1 January 2024, to a maximum of €0.22 per kilometre. We refer to the further explanation under Cars & Mobility, where the changes to the electric car additional tax liability are also explained.

VAT & EXCISE DUTIES

Zero VAT on solar panels

Currently, the supply and installation of solar panels is taxed at 21% VAT.

The government wants to bring the supply and installation of solar panels at or on homes under the zero VAT rate from 1 January 2023. VAT will then no longer be imposed on the purchase of solar panels. If the annual turnover of power supplies remains below the so-called registration threshold of €1,800, private solar panel owners will henceforth no longer have to register with the tax authorities.

This will lead to a significant reduction in the administrative burden for both the private purchaser of the panels and the Tax Administration.

The zero VAT rate applies only to the supply and installation of solar panels at or on homes. The zero rate applies to solar panels that are installed "loose" on the roof, for example, as well as solar panels that themselves serve as roofing materials, such as roof tiles or roof panels into which photovoltaic cells are integrated.

In addition, the zero rate applies only to installation services that are directly necessary for the installation and functioning of the solar panels. This could include installing cables, modifying (and converting) the meter box and the so-called optimisers. Installing a battery pack or heat pump is not considered necessary and does not fall under the zero rate.

Nitrous oxide taxed at 21% VAT

The general VAT rate (21%) will be declared applicable to the supply of nitrous oxide (cartridges). The reduced VAT rate (9%) can still be applied only when nitrous oxide qualifies as a medicine.

Increase consumption tax on non-alcoholic beverages

The consumption tax on non-alcoholic beverages will be increased by €11.37 to €20.20 per 100 litres by 2023.

In 2024, this will be further increased to €22.67 per 100 litres. In addition, mineral water will be exempted from the consumption tax on non-alcoholic beverages as of 1 January 2024. To ensure that light beers remain at least under the same rate as soft drinks, the lowest excise duty tax rate on beer will be increased by the same amounts starting in 2023 and 2024.

Exempting mineral water from consumption tax makes this healthy alternative to soft drinks relatively cheaper.

Tobacco duty increase

Tobacco duty will be increased so that the average retail price for a 20 pack of cigarettes will reach around €10 by 2024. This will be done in two equal, successive steps on 1 April 2023 and 1 April 2024.

The excise duty on smoking tobacco and cigars will also be increased effective the same date. In addition to expected behavioural effects, an increase in tobacco excise duty will result in additional revenues.

Fuel excise duty reduction

Effective 1 April 2022, the government has sharply reduced excise duty rates on unleaded gasoline, diesel and LPG to cushion the rise in energy prices.

The measure applies until the end of 2022 and is being extended through to 30 June 2023. The legally prescribed annual indexation and the increase in the excise duty rate for diesel included in the Climate Agreement Tax Measures Act will be postponed until 1 July 2023.

REAL ESTATE

Value with vacant possession ratio

The value of rented properties with rent protection is determined by multiplying the value for the purposes of the Valuation of Immovable Property Act (WOZ value) by the value with vacant possession ratio. These figures are updated, which, on balance, results in the depreciation on the WOZ value being reduced. This is important for gift and inheritance tax and box 3 income tax. One change is the proposal to use a ratio of 100% as of 2023 for temporary leases and for rentals to affiliated parties. This effectively abolishes the value with vacant possession ratio in those situations.

Real estate transfer tax increased to 10.4%

The general real estate transfer tax rate is going up again. The real estate transfer tax rate for non-residences and for houses in which the acquirers will not live in themselves for a long period of time will be increased from 8% to 10.4%. For "owner-occupied housing" the 2% rate still applies.

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Real estate outside the FII regime

The government is announcing a corporation income tax measure under which Fiscal Investment Institutions (FIIs) will no longer be allowed to invest directly in real estate. This measure should ensure that profits earned from real estate can be taxed in all cases. This is because it has been found that in situations involving foreign investors and Dutch real estate held by FIIs, the Dutch levying of corporate income tax can be frustrated. The measure is expected to take effect on 1 January 2024.

CARS & MOBILITY

Untaxed travel expenses

An employer may pay its employees a tax-free travel allowance of up to €0.19 per kilometre for business travel (including commuting).

The maximum untaxed allowance will be increased as of 1 January 2023 to a maximum of €0.21 and as of 1 January 2024 to a maximum of €0.22 per kilometre.

The increases also apply to income tax, so entrepreneurs, recipients of income from other activities, etc. can also benefit.

It may not be possible to adjust the Tax Administration's systems in time to reflect the increase as of 1 January 2023. The final income tax assessment will include the correct amount.

Electric car additional tax liability

For the private use of a company car, 22% of the catalogue value is added to the employee's salary by default. For business owners, this 22% is deducted from deductible car expenses. For new emission-free cars, such as fully electric cars, a tax rate of only 16% applies in 2022 on an amount of up to €35,000. In 2023, as well as in 2024, this will be 16% on a maximum of €30,000. In 2025, the additional tax liability will be 17% on a maximum of €30,000, and from 2026 the tax benefit for electric cars will disappear. The additional tax liability will then equal the standard additional tax liability (22%). This was proposed in previous tax plans.

For hydrogen cars and electric cars with integrated solar panels, there is no maximum list price for the lower additional tax liability for the time being.

Exemption for private motor vehicles and motorcycles to expire

The exemption from private motor vehicle and motorcycle tax for entrepreneurs' vans will be abolished as of 1 January 2025.

This also shifts the tax liability from the registered party to the registrant of the van in the vehicle registration register. From 1 January 2025, the registrant, usually the importer or dealer, must pay the private motor vehicle and motorcycle tax. The exemption from private motor vehicle and motorcycle tax for emission-free vans will remain in place.

Until 31 December 2024, entrepreneurs can use the exemption from private motor vehicle and motorcycle tax for a van and continue to use the exemption as long as they meet the conditions.

Motor vehicle tax on vans up

The motor vehicle tax (MRB) rate vans used by entrepreneurs will be increased. This is a 15% increase in 2025, followed by a further 6.96% increase in 2026.

BOX 3

Box 3 - Christmas ruling

In December 2021, the Supreme Court ruled in the so called Christmas ruling that the box 3 system violates European law in certain cases. This must be remedied.

This distinguishes between the past (2017 through to 2022), the bridging period (2023 through to 2025) and the future (2026 and beyond).

Delineation of legal rehabilitation of box 3

The proposed box 3 Legal Rehabilitation Act applies to income tax/national insurance contributions assessments for the years 2017 through to 2022, provided that they are not irrevocably fixed, and the Christmas ruling ("fixed savings variant") leads to a more advantageous outcome.

Capital yield tax base

In the new calculation of the capital yield tax base in box 3, the benefit from savings and investments is based on the actual composition of the assets. Three asset categories are distinguished here: bank balances, debts and other assets.

For each asset class, a separate fixed rate of return is proposed that matches as closely as possible the return actually achieved.

Calculating new benefit from savings and investments

The rate of return is calculated by multiplying the applicable fixed rate of return by the value of assets in the relevant category (after deducting the debt threshold) on the reference date of 1 January.

The rates of return for the new calculation by category:

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	Bank balances (I)	Other assets (II)	Debts (III)
2017	0.25%	5.39%	3.43%
2018	0.12%	5.38%	3.20%
2019	0.08%	5.59%	3.00%
2020	0.04%	5.28%	2.74%
2021	0.01%	5.69%	2.46%
2022	-	5.53%	-

Category I and III percentages for 2022 are not yet known.

Joint base distribution - 2017 through to 2022

Since the amount of joint income components may have changed due to the legal rehabilitation and the method of distribution at the time of legal rehabilitation - by matching the distribution chosen by the tax partners - differs from the current law and this may potentially be detrimental to the taxpayer, the proposed legal text allows tax partners to still choose a different division with respect to the additional deduction.

To this end, they can submit a request for ex officio reduction to the tax inspector or - for the years 2021 and 2022 - submit a new return in which they state their joint choice.

Box 3 bridging law - 2023 through to 2025

In line with the legal rehabilitation for box 3, the actual composition of assets will be used for taxation in the years 2023 through to 2025. A separate fixed rate of return will apply to each asset category (bank balances, other assets and debts).

For the term bank deposit, you can look to the definition of deposit. An exception applies to cash, which also counts as a bank deposit.

Fixed rates for box 3 for 2023 through to 2025

In order to better reflect actual returns, the fixed rates of return for the asset categories of bank deposits and debts will now take place retrospectively. Taxpayers will therefore only know what the fixed rates of return are after the end of the year.

Reference date arbitration

Without further measures, the box 3 levy under the Box 3 Bridging Act is easily reduced by selling investments just before the reference date. One then temporarily deposits the proceeds into a bank account.

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Therefore, such a sale is ignored if it occurs in a consecutive three-month period beginning before and ending after the reference date.

The measure does not apply if the taxpayer demonstrates that they acted for business, non-tax reasons.

Rate increase

From 2023 through to 2025, the box 3 rate will increase by 1% point each year. So this will result in a rate of 32% in 2023, 33% in 2024 and 34% in 2025.

Increase in tax-free assets

The tax-free assets will be increased from € 50,650 to € 57,000. For partners, the tax-free wealth is thus increased from € 101,300 to € 114,000.

(Wealthy) INDIVIDUALS

Income tax rates 2023 for non-old-age pensioner

Taxpayers who have not reached state pension age at the beginning of 2023 are expected to face the following rates in 2023.

Income tax rate 2023			
Box 1 rate	Taxable income above (€)	but no more than (€)	Rate 2023 (%)
Bracket low rate		73,031	36.93%
Bracket high rate	73,031		49.50%

Income tax rate 2022			
Box 1 rate	Taxable income above (€)	but no more than (€)	Rate 2022 (%)
Bracket low rate		69,398	37.07%
Bracket high rate	69,398		49.50%

These rates include national insurance contributions. A different rate structure applies for those who are subject to other national insurance contributions.

Income tax rates 2023 state pensioner

Taxpayers who have reached state pension age at the beginning of 2023 and were born after 1946 are expected to face the following rate brackets in 2023.

Income tax rate 2023 (state pensioners)			
Box 1 rate	Taxable income above (€)	but no more than (€)	Rate 2023 (%)
Rate bracket 1		37,149	19.03%
Rate bracket 2	37,149	73,031	36.93%
Rate bracket 3	73,031		49.50%

Income tax rate 2022 (state pensioners)			
Box 1 rate	Taxable income above (€)	but no more than (€)	Rate 2022 (%)
Rate bracket 1		35,472	19.17%
Rate bracket 2	35,472	69,398	37.07%
Rate bracket 3	69,398		49.50%

These rates include national insurance contributions. For those subject to other national insurance contributions, a different rate structure applies.

Modified tax credits

Below are the changes to tax credits as stated in the Explanatory Memorandum of the 2023 Tax Plan. These concern taxpayers younger than the state pension age. In principle, lower maximums apply to state pension recipients.

Tax credits	2023 (€)	2022 (€)
General tax credit maximum	3,070	2,888
Labour discount maximum	5,052	4,260
Income-dependent combination discount maximum	2,694	2,534
Youth Disability Discount	820	771

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'Joyous' tax-free lump sum abolished

As previously announced, the extended gift exemption of €106,671 (2022), intended for the purchase of an owner-occupied home or repay an owner-occupied home debt, will expire as of 2024. In anticipation, this exemption will already be reduced to €28,947 in 2023. Also, as of 1 January 2024, the spreading possibility will disappear. Specifically, this means that any portion of the maximum exemption that remains unused in a gift in 2022 can only be used for a gift in 2023, but no longer for a gift in 2024.

Limit periodic gift deduction

Periodic gifts are those made annually for a minimum of five years.

Under conditions, such donations are currently fully income-tax deductible. It has been proposed to introduce a maximum deductible amount for periodic gifts as of 2023. Gifts of more than €250,000 (per household) may then no longer be offset against income.

Correction to multiplier gift deduction Cultural ANBIs for partners

The law will be amended to clarify that the maximum increase for tax partners together is €1,250 and cannot be doubled.

Averaging scheme abolished

It is proposed to abolish the averaging scheme. The 2022-2023-2024 period is the last period for which averaging can be done.

OTHER MEASURES

Customisation of recovery interest possible

If a taxpayer fails to pay his tax debt on time, he must also pay recovery interest. It has been proposed to expand the inspector's ability to not charge collection interest if the late payment is not due to the taxpayer.

This occurs, for example, if a provisional income tax assessment for 2022 does not take into account the developments surrounding box 3. The collection of this assessment is then halted. Despite the fact that no payment is required, the Tax Administration still charges collection interest in this case. Thanks to the extension, this is no longer necessary.

Compensation for high energy prices

The Cabinet plans to establish a maximum tariff for electricity and/or gas up to a certain usage. It also plans to help energy-intensive SMEs with liquidity strengthening and sustainability.

Measures due to high energy prices

The government is taking some incidental measures for 2023 due to high energy prices. A few (tariff) adjustments will dampen the increase in energy bills for households. These include an incidental reduction in the energy tax for natural gas and electricity and a temporary higher tax credit in the energy tax. In addition, some simplifications will be made to the energy tax levy. The Surcharge for Sustainable Energy tariffs will be set at zero as of 1 January 2023, and the energy tax will be increased by the same amount as of that date.

The Surcharge for Sustainable Energy costs will thus disappear from the energy bill.

Tightening of carbon tax on industry

The carbon tax on industry is being tightened. This mainly concerns dispensation rights. The rate remains unchanged for now.

Minimum carbon price for industry

The cabinet is introducing a minimum carbon price as part of the existing industry carbon tax for industrial plant operators.

Previously announced legislation and developments:

» The payment discount will be abolished only for provisional corporation tax assessments. The payment discount for provisional income tax assessments will remain.

» A provision has been proposed that would allow customisation by granting a reduction in tax interest in certain situations where the tax interest system is too harsh.

» The House of Representatives recently approved the "excessive borrowing" bill. This will discourage borrowing from a private limited company by a substantial interest holder.
If total debts owed to the private limited company (excluding owner-occupied housing debts) exceed €700,000, the excess will be taxed as a benefit in box 2 of income tax. This bill is expected to take effect on 1 January 2023, and the first reference date would be 31 December 2023.

» The possible adaptation of the open limited partnerships (cv)and mutual funds (fgr) will be further taken up by the Cabinet in 2023. The effective date would be 1 January 2024.

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- The substantive discussion of the box 3 system effective 2026 will not take place until 2023 at the earliest. Possibly, that adjustment may also involve further changes in box 1 and box 2, in order to ensure consistency between the boxes.

OTHER DEVELOPMENTS

Cabinet response to the Interdepartmental Policy Study wealth distribution report

In July 2022, the Interdepartmental Policy Study on wealth distribution in the Netherlands was published.

The Cabinet believes that the identified tax imbalances, notable tax constructions and negatively evaluated tax schemes have been overlooked for too long and need to be addressed.

- In November, the Cabinet will issue its response to the evaluation of the BOR (inheritance/ gift tax and income tax box 2). This is separate from the change already cited regarding leased property.
- Then, in spring 2023, the Cabinet will come up with an elaboration of the brief on constructions and negatively evaluated tax schemes. The desire is to achieve a structural tax revenue of €550 million with this.
- The Interdepartmental Policy Study report has already selected some possible schemes for this purpose, including:
  - Adjustment estates under the Estates Act;
  - Limitation of box 2 and 3 benefits for taxpayers with 30% schemes;
  - Box hopping between box 2 and 3;
  - Donation of assets to children through 'Baby private limited company'.
- The intention is to update and publish this list annually, and possibly formulate new regulations based on it.
- SEO Economisch Onderzoek's evaluation report on FIIs and tax-exempt investment institutions was published in July 2022. In the Tax Plan 2023, adjustments have been proposed for FIIs, but not (yet) for tax-exempt investment institutions. A substantive response can be expected later from the government regarding FIIs as well, including policy intentions for possible adjustments.

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