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2024 Tax plan

This Budget Day special from Atlas Tax Lawyers lists the most important proposals from the 2024 Tax Plan and additional bills for you

Many proposals have already been announced, for example in the Spring 2023 Budget. This special is divided into the following topics:

» measures for companies;
» measures in international situations;
» measures for employers;
» VAT & excise tax measures;
» real estate measures;
» measures for (wealthy) individuals;
» business succession schemes;
» other developments;
» update box 3.

The proposed measures, if approved in both Houses, will take effect on Jan. 1, 2024, unless otherwise stated. Click here for the Tax Plan documents.

COMPANIES

Investment facilities

To encourage energy investments and investments in environmentally friendly assets, various investment tax credits are available. The energy investment deduction (EIA), the environmental investment deduction and the random depreciation for environmental investments were to end on Jan. 1, 2024. However, these schemes will be extended through December 31, 2028. In the process, the rate of the EIA will be reduced from 45.5% to 40%.

Reduction in SME profit exemption

The government wants to reduce the 'small entrepreneurial profit exemption' from 14% to 12.7%.

BVs can no longer deduct donations

In 2023, limited liability companies (BVs) may deduct donations to qualifying charitable organizations up to a maximum of €100,000. This regulation will be dropped.

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Instead, it has been made possible for BVs with a director-major shareholder (DGA) to make donations directly to qualifying charitable organizations. There is no maximum amount for this. Such donations are income tax neutral for the DGA.

Broader HIR upon government intervention

Through the reinvestment reserve (HIR), taxation on a book profit can be deferred under certain conditions. After 2024, the conditions will be broadened in the case of a partial cessation of a business imposed by the government.

Less interest deduction for banks and insurers

Banks and insurers face a specific interest deduction limitation: the minimum capital rule. Roughly speaking, interest owed is not deductible to the extent that loan capital exceeds 91% of the balance sheet total. This limit is reduced to 89.4%.

Abolish €1 million threshold earnings stripping measure only in Tax Package 2025.

The 2023 Spring Memorandum included the government's intention to abolish the €1 million threshold in the earnings stripping measure for real estate entities with property leased (to third parties) as of Jan. 1, 2025.

The intention has also been expressed to include this proposal in the 2025 Tax Plan.

Protective assessment on excessive borrowing

The Excessive Borrowing Act is effective as of 2023. For some specific situations in the case of emigration, a "repair" is proposed for excessive borrowing by emigrants with a new company established abroad. Technically, this is via the box 2 protective (‘exit’) tax assessment.

New condition for fgr

Family funds are no longer classified as independently taxable mutual funds (fgr) for corporate income tax (CIT) purposes due to new conditions.

For an fgr to remain independently taxable for corporate income tax purposes, it must meet a new condition as of Jan. 1, 2025.

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It will then have to be a qualifying investment fund, or fund for collective investment in securities, under the Financial Supervision Act (Wft). Share ownership must be evidenced by negotiable certificates of participation.

A unanimous consent requirement does not prevent marketability.

Stricter conditions for vbi

As of January 1, 2025, the possibility to use the tax-exempt investment institution (vbi) regime when investing private assets will expire. Only "large" vbis (offered for example by financial institutions) can continue to use this exemption.

Transitional law on loss of fgr status

Fgrs that will no longer meet the conditions as a result of this measure, including family funds, will be deemed to have disposed of their assets to the unit-holders.

In order to avoid acute levy and payment of tax, three transitional measures are proposed, (1) a pass-through facility, (2) a share merger for certain shareholders and (3) staggered payment of the levy in up to 10 years. Under the second facility, relief for any transfer tax also applies.

However, the transition law only applies to fgrs that existed on Sept. 19, 2023, 3:15 p.m. and/or real estate that had already been contributed to the fgr at that time.

ATR remains partially intact

The introduction of the new definition of the mutual fund (fgr) on Jan. 1, 2025, may be grounds for the Internal Revenue Service to terminate a settlement agreement (ATR). An ATR often also covers other issues not affected by the new definition of the fgr. For those issues, the ATR remains in place. One does not have to request this in writing.

Qualification of legal forms

If legal forms are treated differently in the Netherlands than abroad, this can lead to undesirable situations such as double taxation or double deduction. To prevent these situations as much as possible, foreign legal forms will in principle be assessed on the basis of the legal form comparison method. This will now be laid down by law with an effective date of January 1, 2025.

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According to this method, certain civil law characteristics of foreign legal forms are compared with those of Dutch legal forms in order to subsequently treat those foreign legal forms in the same way for Dutch taxation. In a number of situations, the legal form comparison method does not provide a solution.

For this reason, the government proposes two additional methods for the purpose of qualifying foreign entities for which there is no comparable Dutch legal form based on the legal form comparison method. If such an entity is domiciled in the Netherlands, it will be classified as independently taxable (fixed method).

If such an entity is not established in the Netherlands, the qualification of the country of establishment is followed (symmetrical method). The entity is considered independently taxable if the assets and liabilities, as well as income and expenses, are allocated to the relevant entity according to the tax regulations of the country of establishment.

Expired tax liability open CV

A limited partnership (CV) can currently be ‘open’ or ‘closed’ for tax purposes. If all partners must give permission for a limited partner to join or replace a limited partner, it is a closed limited partnership and the result is taxed at the level of the partners (tax transparency). In all other cases, it is an open limited partnership and the result is subject to corporate income tax at the level of the limited partnership.

This distinction is often inconsistent with legislation in other countries and will therefore be eliminated: as of Jan. 1, 2025, open CVs are in principle no longer independently taxable, but the result will be taxed at the level of the partners of that CV. Foreign legal forms similar to a CV will also no longer be independently taxable as a result.

Please note! Transitional legislation has been announced to avoid unwanted tax consequences of this change. In addition to income and corporate income tax, the transitional law also covers any transfer tax. This transitional law does not apply to open CVs established after the announcement of this bill.

INTERNATIONAL SITUATIONS

State aid, data and transparency

State aid may be provided only under conditions. One of the conditions is the transparency obligation through the "Transparency Aid Module" (TAM). Various types of data must be included in the TAM. In order to collect and process this data, it is proposed to introduce an obligation to provide it.

The obligation consists of annual active data provision for energy taxpayers and passive data provision for beneficiaries. Consider, for example, data related to reduced rates for greenhouse horticulture, charging stations and shore power. An order under penalty may be imposed if the obligation is not met.

Tip! This is not an issue for the zip code scheme, as the benefits are below the threshold amounts.

Evidence position on dividend stripping

In order to credit, reclaim or reduce dividend tax, the recipient of the dividend must be the beneficial owner. A recipient is not considered the beneficial owner if there is dividend stripping.

Dividend stripping limits, or even prevents, dividend tax liability by having shareholders enter into a series of transactions. It is difficult for the Internal Revenue Service to determine whether this condition has been met.

In order to improve the tax authorities' evidentiary position, it has been proposed that a person claiming set-off, refund or reduction will no longer only have to state the facts or, in the event of a dispute with the inspector, make it plausible that he or she is entitled to such relief. He or she will now also have to state the facts or, if these are contested by the inspector, make it plausible that he or she is ultimately entitled. An efficiency margin of €1,000 of dividend tax levied on an annual basis applies here.

This efficiency margin does not apply when applying the withholding exemption and dividend tax remittance reduction for fiscal investment institutions (fbis).

With respect to the concept of "combination of transactions" in dividend stripping, it has also been proposed that transactions of entities affiliated with the taxpayer or person entitled to revenue should be allocated to the taxpayer or person entitled to revenue. This will determine at group level whether there is a combination of transactions.

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Finally, it is proposed to enshrine in law that the proceeds creditor with respect to shares traded on a regulated market is the person who holds the shares on the record date.

Please note! There is ongoing research on alternative measures for dividend stripping, also addressing dividend stripping in participation dividends.

Post-recovery period for import duties

Under current law, import duties can be reclaimed up to 5 years later if there is an incorrect or incomplete customs declaration.

It is proposed to reduce this post-clearance recovery period to 3 years in the absence of intent. This retrospective period of 3 years applies to the incorrect and incomplete filing of import duty returns, as well as the failure to provide information or data, or providing incorrect or incomplete data.

It is also proposed that as of July 1, 2024, the criminal penalty will be replaced by an administrative fine if there is no intent.

EMPLOYER

Free space working expenses scheme

In 2023, the free space for the work expense allowance is 3% of the fiscal wage bill up to €400,000 (and 1.18% of the wage bill above that).

As of Jan. 1, 2024, the percentage of the free space on the fiscal wage bill up to €400,000 will be reduced from 3% to 1.92%.

Public transport passes to employees

It has been proposed to specifically exempt the private use of public transport passes under the work-related costs scheme, regardless of whether this is a reimbursement or provision. Employers can then always offer public transport tax-free if it can be made plausible that the public transport is partly or wholly used for business travel, such as commuting. The proportion of business use is irrelevant in this proposal.

Employers would no longer have to keep records of private and business use to qualify for the exemption.

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Increase in untaxed travel reimbursement

In 2023, an employer may grant its employees an untaxed travel allowance of up to €0.21 per business kilometer (including commuting). This maximum untaxed allowance will be increased to €0.23 per kilometer as of January 1, 2024.

VAT & EXCISE DUTIES

VAT rate on agricultural goods and services

Certain agricultural goods are taxed at the reduced VAT rate, such as straw, seeds and seed stock. Due to the expiration of the agricultural scheme, the government proposes to apply the general rate to the supply of certain agricultural goods as well, as of Jan. 1, 2025.

Increase in excise tax on alcohol

The government proposes to increase excise tax rates on alcoholic products by 16.2%. This applies to beer, wine and other beverages. The aim is to generate additional revenue and encourage a reduction in alcohol consumption.

The increases will have the following effects:

- 1 bottle of 70 cl liquor becomes about €0.76 more expensive;
- 1 bottle of beer becomes about €0.02 more expensive;
- a bottle of wine becomes about €0.11 more expensive; and
- a bottle of port or sherry becomes about €0.18 more expensive.

Diesel replacement fuel oil

The government proposes to discourage the use of diesel replacement fuel oil and eliminate the tax advantage by making the excise tax rate equal to that of diesel. This involves increasing the excise tax rate from €41.31 to €516,25 per 1,000 liters of fuel oil as of January 1, 2024.

Tobacco tax increase

The government additionally proposes to increase tobacco excise tax on cigarettes and smoking tobacco as of April 1, 2024, by €0.60 per pack of 20-ounce cigarettes and €3.60 per pack of 50-gram tobacco.

Fuel becomes more expensive

On April 1, 2022, the government implemented a temporary excise tax reduction to compensate for sharply rising fuel prices. This compensation eventually continued until July 1, 2023.

As of that date, the excise tax changes were partially reversed. The plan is to also end the remaining part of the 2022 excise tax cut as of Jan. 1, 2024. This would then lead to an increase in fuel prices of €0.21 per liter (including VAT).

This increase is up for debate; many political parties do not want the increase to take effect from Jan. 1, 2024.

REAL ESTATE

Building depreciation limitation in income tax

For corporate income tax (CIT), the minimum value is the Valuation of Immovable Property Act (WOZ) value, both for buildings in own use and other buildings. For income tax (operating profit (WUO), income from other activities (ROW)), there is still a more generous depreciation possible for buildings in own use (up to 50% of the WOZ). This will be removed, so that on this point the income tax and CIT will become the same.

Concurrence exemption in equity transactions

In practice, real estate is regularly transferred via a share transaction. In the case of new real estate, no VAT and transfer tax are then due under the concurrence exemption.

The government proposes to amend this concurrence exemption in transfer tax as of January 1, 2025, in such a way that 4% transfer tax may become due.

The proposed legislative amendment ensures that the concurrence exemption does not apply in certain situations when acquiring a qualifying equity interest (>1/3) in a so-called real estate legal entity.

If the underlying (possibly new) immovable property at the time of acquisition and for 2 years after the time of acquisition is used wholly or almost wholly (i.e., at least 90%) for VAT-taxed services, the concurrency exemption will apply without prejudice.

If less than 90% of the underlying (possibly new) immovable property is used for VAT-taxed services during the aforementioned period, the concurrence exemption does not apply and 4% transfer tax is due on the acquisition of the qualifying equity interest in an immovable property legal entity.

The proposed change will take effect on January 1, 2025. The current operation of the concurrency exemption will remain in force until then.

Joint purchase of own home

Under current legislation, if partners decide to first purchase a home jointly and only then sell the home of one of the two partners, this may result in a limitation to the deduction of interest. It is proposed to amend the law with retroactive effect to Jan. 1, 2022, to prevent this unwanted interest deduction limitation.

Fbi regime when investing in real estate

As of January 1, 2025, an entity that invests directly in real estate will no longer be eligible to apply the regime for fiscal investment institutions (fbi) (0% corporate income tax). As a result, the profits of such an entity will be taxed at the regular corporate tax rate.

Temporary exemption OVB

There will be a conditional transfer tax (OVB) exemption related to the fact that the fbi regime no longer applies to entities that invest directly in real estate.

The conditional exemption applies from Jan. 1, 2024, to Jan. 1, 2025, and only in the case of a prescribed restructuring for the acquisition of beneficial ownership of real estate.

Please note! The exemption only applies if the fbi establishes a transparent entity, acquires the securities therein, contributes the beneficial ownership of the property therein and then transfers the securities to the shareholders.

(HIGH NET WORTH) INDIVIDUALS

Income tax rate for 2024

Income tax rate for 2024			
Box 1 rate	Taxable income over (€)	but no more than (€)	Rate 2024 (%)
Disc low rate		75,624	36.97%
Disc high rate	75,624		49.50%

Increase in box 3 rate to 34%

The government is proposing to increase the rate in Box 3 by 2 percentage points to 34%. It was previously announced that this rate would only apply from 2025.

In addition, the tax-free wealth in box 3 will not be indexed, which means that tax-free wealth of €57,000 per person (€114,000 for tax partners) will also apply in 2024.

Some relaxations will be implemented within Box 3 with retroactive effect to January 1, 2023. These had been previously announced.

- Mutual claims and debts between tax partners and parents and minor children have been made tax-exempt These can therefore be ignored in Box 3;
- The share in an owners' association (VvE's) bank account falls into the lower yielding category of "bank assets". Previously, this was an "other property";
- Deposits in a notary's or bailiff's third-party account fall into the category of "bank deposits" (instead of "other assets").

Abolition of income tax payment discount

For certain provisional income tax assessments, the Tax Administration grants a payment discount if the entire assessment minus the payment discount is paid no later than the first due date. This arrangement will be abolished.

Lucrative interest

Property rights acquired (in full or in part) as remuneration for work may constitute a lucrative interest. Income from this is taxed in box 1 (maximum 49.5% in 2023). This is the case if the capital rights are economically comparable to subordinated shares of a type that in total represent less than 10% of total issued capital in the company. This includes share premium and informal capital. With effect from June 26, 2023, the government proposes that shareholder loans that do not constitute informal capital, but which do contribute to remuneration for work, should also be counted for this assessment. This is in response to Supreme Court case law and had already been announced in a letter on June 26, 2023.

Please note! This proposal is retroactive to June 26, 2023.

BUSINESS SUCCESSION SCHEMES

Business Succession Plan

If business assets are transferred by gift or inheritance, this may result in the imposition of gift or inheritance tax.

In addition, there may be a Box 2 income tax liability. If the conditions of the business succession plan (BOR) are met:

- Apply a full or partial exemption to the inheritance or gift tax due, and
- The box 2 income tax claim is passed on (no settlement) to the transferee.
- Some changes are proposed to the BOR regulations. The proposed changes should take effect at different times, as follows:

2024

- Real estate is fictitiously equated with passive investing and no longer qualifies for the BOR.
- However, real estate used in one's own business can continue to be classified as business assets.

2025

- Business assets will be 100% exempt from inheritance and gift tax up to an amount of €1,500,000. An exemption of 70% (instead of currently 83%) will then apply to the excess.
- The employment requirement for the box 2 facility for gifts will be eliminated. In its place comes the condition that the donee must be 21 years or older at the time of the gift.
- This age requirement of 21 also applies to the gift tax exemption.
- The 5% efficiency margin in the gift and inheritance tax will expire. For the box 2 facility, it will also expire, but at a later time, yet to be determined. As a result of this change, fewer assets qualify for the BOR facilities.
- The rules for allocation of assets to the business assets for the BOR will be relaxed. Assets with a value of more than €100,000 (per asset) that are used both privately and for business purposes (> 10% private) will no longer be included in the business assets.

Still to be worked out in more detail, the following changes are proposed as of 2026:

- In principle, the BOR will be limited to "normal" (full-profit) equity interests of at least 5%.

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- Bottlenecks in possession and continuation requirements in gift and inheritance tax are addressed, relaxed.
- Alleged inappropriate use of the BOR is addressed ("walker BOR", double BOR use).

OTHER DEVELOPMENTS

Hardship clause in the Tax Collection Act

In the collection of taxes, there is currently no possibility to deviate from the rules as stated in the law in case of unforeseen and very unreasonable consequences. For this reason, a hardship clause will be introduced in the Tax Collection Act. This gives the Minister of Finance the authority to accommodate taxpayers in cases where the Collection Act leads to "unreasonable consequences".

A taxpayer should file a request for application of the hardship clause in that case.

The hardship clause is intended only for special cases or groups of cases in which application of the law leads to very unreasonable consequences that were not foreseen when the statutory provision was created.

Litigation expenses

Many WOZ and private motor vehicle and motorcycle tax (BPM) objections are filed by “no cure no pay” attorneys. To reduce the resulting workload, three measures have been proposed.

Allowances to meet the costs of legal assistance provided by a third party professional will be reduced. The amount of compensation for immaterial damages for exceeding a reasonable period of time is also laid down by law. Finally, it is regulated that disbursements resulting from a decision on an objection or a ruling in appeal proceedings will only be made to a bank account in the name of the interested party.

Previously submitted legislation, including:

- Change to rate structure box 2: income up to and including €67,000 at 24.5% and higher at 31%.
- Maximum salary for 30% rule up to Balkenende norm (€223,000 in 2023). There is a transitional arrangement for situations existing as of end-2022.
- Complete elimination of the gift tax exemption for home ownership.

- Increasing the home value to which the low transfer tax rate applies (subject to conditions) to €510,000.
- Stricter requirements for gift deduction: as of Jan. 1, 2024, all gifts in kind of €10,000 or more will require an appraisal report to receive a deduction. This applies to both income tax and corporate income tax.
- Registration obligation for payment service providers in cross-border payments: obligation to collect and transmit payment data to tax authorities of relevant member states.
- Introduction of additional withholding tax: dividends to countries with profit tax rates below 9% and to countries on the European list of non-cooperative jurisdictions for tax purposes will be subject to withholding tax.
- Change for foreign corporate taxpayers with a substantial interest: the deduction exclusion of withholding tax now also applies to foreign corporate taxpayers with a substantial interest in the Netherlands.

UPDATE BOX 3

Aside from the aforementioned technical adjustments to box 3, no specific proposals were made on Budget Day regarding the current box 3 rules and/or a new system for box 3. The current state of affairs is as follows.

New system (not before 2027)

On Sept. 8, 2023, the caretaker government published the draft bill introducing the “Box 3 Actual Return Act” for internet consultation.

This proposal provides for a change to Box 3, namely from the current system based on flat-rate returns to taxation on the actual returns achieved.

If the draft bill is passed into law unchanged, savings and investment income will be taxed based on the new system from January 1, 2027. It will be up to a new government (after the parliamentary elections on Nov. 22, 2023) to determine whether and to what extent this proposal will go forward.

Previous years (before 2022 and from 2023 until new regime)

On Sept. 18, 2023, a conclusion of the Solicitor General (counsel to the Supreme Court) was released, in which the Solicitor General assessed the Box 3 rules introduced by the government in response to the 2021 "Christmas Judgment" as largely inadequate.

The Supreme Court is expected to decide within 6 months whether to follow this advice. This may have far-reaching consequences for outstanding assessments of box 3 assets. It is recommended that assessments be kept open as much as possible through appeals.

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