Client Alert

September 2023

Netherlands: 2024 Budget day developments (and beyond)

In brief

Each year, the third Tuesday of September marks Budget Day ('Prinsjesdag') in The Netherlands. While the outgoing Dutch cabinet has to limit its activities only to matters deemed 'non-controversial', the 2024 Tax Plan still shows numerous changes (and some surprises) in the field of employment taxes.

This client alert describes the government's most notable plans from a Dutch wage / income tax and social security perspective. In addition to the plans themselves, the alert describes several other recent and relevant developments in this field.

In this issue

Wage tax

Work-related costs scheme amendments

The cabinet intends to make the following changes to the Dutch Work-related Costs Scheme (WKR) as per 1 January 2024:

Simplification of the tax-free provision of public transportation

The current regulation on tax-free provision of public transportation within the WKR is particularly difficult. Among other things, it requires employers to make complex calculations after the fact, to prove the business purpose of an employee's use of a public transport card. These calculations should ensure that the difference is taxed between (a) the costs incurred via the public transportation card and (b) the actual cost of the business travel.

Not only are these calculations complex, they also often lead to a higher amount of tax due (especially in case of teleworking). Therefore, the Dutch government has proposed a new specific tax exemption for 2024, concerning the reimbursement of a public transport card. This exemption applies in case the employees use the public transportation card for business purposes (including commuting) to any extent. The simplified rule also aims to encourage the use of public transport for both business and private purposes.

Increase of the tax-free travel allowance

The tax-free allowance for business travel (including commuting) will be increased from € 0.21 to € 0.23 per kilometre as of 1 January 2024.

Expiry of increased tax-free space for the first € 400,000 of the company's wage bill

For 2023, the tax-free space within the WKR had been expanded to 3% of the first € 400,000 of the company's wage bill. As from 2024, this increase will expire, and a percentage of only 1.92% will apply. For the remainder of the wage bill, the percentage remains at 1.18%.

As a result of these changes, amendments may well have to be made to your company's remuneration policies and payroll processes.

Limitation of the 30% facility

The taxable wages on which the 30% facility can be claimed, will be limited to € 233,000 (amount for 2024). For employees on whose wages the 30% facility was already lawfully applied in the final salary period of 2022, this limitation only takes effect as from 1 January 2026. The reimbursement of international school fees remains tax-free, and this exemption is unaffected by the proposed changes.

In case the employee's actual extraterritorial expenses (as defined in Dutch wage tax law) exceed the capped amount of the 30% facility, it can be preferable to reimburse those costs free of tax instead of the 30% amount. Such choice must be made annually through the payroll. This makes it advisable to review employee compensation packages for tax optimization opportunities.

Based on the parliamentary discussions following Budget Day, the current 30% facility benefits may be reduced further, e.g. by tightening the condition of 'specific expertise' that needs to met in order to qualify for the facility.

Assessment Of Work Relationships Act ('Wet DBA')

It appears there is finally some movement toward the suppression of false self-employment in The Netherlands. Several important developments have taken place over the last couple of months:

1. Publication of the comprehensive 'Plan for the enforcement of labour relations 2023' (in Dutch: *Handhavingsplan arbeidsrelaties* 2023);
2. Expiry of the Dutch tax authorities' free replacement model agreement (in Dutch: *modelovereenkomst vrije vervanging*) as of 1 January 2024;
3. Anticipated lifting of the suspension of enforcement (in Dutch: *handhavingsmoratorium*) as per 1 January 2025.

In addition to this, we understand that a new legislative proposal is considered. Under current Dutch wage tax law, an employment relationship has three characteristics:

1. The employer's authority;
2. The personal obligation to perform work; and
3. The payment of wages.

If all three characteristics are met, a (real) employment relationship is deemed to exist. An employment relationship may also exist in case of certain so-called 'deemed' employment relationships, which are specifically identified by law. It is important to assess whether an employment relationship exists. In such case, the employer must withhold, remit and pay wage tax and (if applicable) social security premiums.

However, it is expected that a new legislative proposal will be published soon. This may aim to change the legislative framework as we know it quite significantly. From the limited information available so far, it appears that the legislator seeks to implement the following three characteristics to determine whether an employment relationship exists:

1. Work-related instructions;
2. Organizational embedding; and
3. Working for own account and risk (within the assignment).

With this new legal framework, the Dutch legislator apparently wishes to make it easier to substantiate that the relationship with a self-employed person should be reclassified as an employment relationship. Employers may therefore expect more active scrutiny by the Dutch tax authorities on the suppression of false self-employment in The Netherlands going forward.

Income tax

Box 1

The 2024 income tax rates (for individuals falling below the pensionable age of the General Old Age Act, or 'AOW') will feature two brackets:

1. The first bracket (€ 0 - € 75,624) has a rate of 36.97% (including national insurance premiums of 27.65% up to an amount of € 38,139);

2. The second bracket (> € 75,624) remains at a rate of 49.5%. Tax credits such as the labour credit will be adjusted, aiming to reduce tax on employment income.

Based on the parliamentary discussions following Budget Day, the 36.97% rate above may be decreased to 36.93%.

Box 2

In 2024, Box 2 income tax will feature two brackets:

1. A base rate of 24.5% for the first € 67,000 of profit from a substantial shareholding (i.e., briefly stated: 5% or more of any class of shares in company);
2. A rate of 31% for profits exceeding € 67,000.

Based on the parliamentary discussions following Budget Day, the rates above may be increased further, possibly to a top rate of 33% instead of 31%.

Box 3

Current (modified) system

Until 1 January 2027, the current (modified) Box 3 system of taxation will remain in place. Under this system, there are 3 categories of assets, each with its own deemed yield percentage:

1. Savings (bank accounts): 2023 percentage of 0.36%;
2. Other investments (shares, real estate et cetera): estimated 2023 percentage of 6.17%;
3. Deductible debts: estimated 2023 percentage of 2.57%.

Please note that the current (modified) Box 3 system of taxation is, once again, under scrutiny of the Dutch Supreme Court at the moment, since the deemed yield on so-called 'other investments' is not tied to the actual yield.

Planned changes for 2024

The deemed yield percentage per category (i.e. savings, other investments and deductible debts) for the year 2024 will be published at the end of 2024. The reference date to determine the value of the capital continues to occur at 1 January of the year. The applicable Box 3 tax rate is to be increased to 34% as per 1 January 2024. The tax-free sum remains € 57,000. For partners, the tax-free sum is doubled to € 114,000. Also, some changes are proposed with a retrospective effect:

1. Shares in a reserve fund of an Owners' Association ('VVE') and claims to money deposited in a civil-law notary's clients' account are currently regarded as 'other assets', and therefore relatively heavily taxed. Effective 1 January 2023, they will both qualify as property rights under the 'savings' category of Box 3, and therefore a lower yield will be taken into account.
2. The cabinet proposes to de-fiscalise claims and debts between tax partners and between parents and minor children as per 1 January 2023. These do not have to be declared in the income tax return. This prevents such mutual claims and debts from leading to Box 3 taxation due to the difference in tax rates between debts and claims. In case of parents and minor children, this only applies to the situation where the income of the minor child is allocated to the parents, because only then the same tax declaration is involved.

Please note that ongoing discussions and court cases may impact further developments regarding Box 3 taxation. Based on the parliamentary discussions following Budget Day for example, the Box 3 rate may be increased further, possibly to a rate of 36% instead of 34%.

Planned changes for 2027

Earlier this year, the Dutch Box 3 tax reform was pushed forward to at least 2027. This means that taxpayers will need to navigate the existing system for several years more. However, the outgoing cabinet did publish draft legislation for a new Box 3 levy. Its key features include:

1. The introduction of a capital growth tax for liquid capital such as savings, shares and other listed investments. Under this system, tax is levied on the actual returns on the assets, which includes the taxation of annual (realized and unrealized) value changes. Actual costs should be deductible;
2. Taxes are to be levied based on a capital gains tax for real estate and other less liquid assets, such as a share in a family business or a start-up;

3. For certain second homes that are privately used, it is the intention to keep the existing deemed capital yield methodology in place;
4. An unlimited carry-forward of losses pertaining to Box 3 income, provided a certain threshold is exceeded;
5. The replacement of the tax-free sum with tax-free income, ensuring that most taxpayers with a capital below €57,000 (2023) will not be subject to Box 3 tax;
6. Assets and liabilities will be valued on the basis of their fair market value, with exceptions for loans between natural persons;
7. The implementation of a debt-forgiveness benefit exemption to prevent taxation when Box 3 debts are forgiven;
8. A proposal for a flat tax rate varying from 33% up to 37%. We wish to stress that this rate is based on parliamentary proposals only, and must therefore still be decided on.

Correction to the lucrative interest regime

As part of the Budget Day 2024 measures, the Dutch government introduced a correction to the lucrative interest regime. The correction ensures that so-called 'shareholder loans' will be included in the assessment of lucrative interests, with retroactive effect as from 26 June 2023.

Social security

As of July 2023, a new Framework Agreement has replaced the temporary COVID-19 provisions, which prevents employees' social security coverage from shifting to their country of residence, provided they work from home in their country of residence for less than 50% of their contractual working time.

Background

If employees work in multiple countries to which European Union (EU) Basic Regulation No. 883/2004 and Implementing Regulation No. 987/2009 apply (typically referred to as 'regulation countries'), they normally are socially insured in their country of residence, if they perform a 'substantial part' of their work in their country of residence. Such a substantial part is deemed to exist in any case, if they work in their country of residence for at least 25% of their contractual working time, or if they earn at least 25% of their wages in their country of residence.

Application of this 25% threshold may present employers with an (additional) administrative and financial burden in a cross-border employee's country of residence, which may cause these employers to disallow such employees to work from their home altogether. With the advent of the COVID-19 pandemic, the EU issued temporary rules for situations in which cross-border employees worked in their home country for more than 25%. In such cases, the employer could continue to pay the social security contributions in the work state, provided certain specific conditions were met. This rule applied up to and including 30 June 2023.

New Framework Agreement

However, in July of 2023 the EU introduced new rules regarding the social security coverage of teleworkers. A new Framework Agreement then replaced the temporary COVID-19 provisions, which prevents employees' social security coverage from shifting to their country of residence, provided they work from home in their country of residence for less than 50% of their contractual working time.

As specifics vary per Regulation Country and various (country-specific) details are emerging gradually, it is advisable to take proactive measures in case it is desirable to apply these new rules going forward. For more information, we refer to our Baker McKenzie news alert.

Finally

Please feel free to contact the authors of this client alert, if you require any assistance in this respect.

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