Corporate income tax

Changes to rate and first bracket

As of 1 January 2023, Dutch corporate income tax (**CIT**) is levied at 19% (was 15%) over the first EUR 200,000 of the annual taxable amount (was EUR 395,000) and 25.8% over the excess.

Temporary random depreciation

During 2023, the acquisition or production costs of newly designated business assets may be depreciated at random for up to 50 per cent. Certain types of assets are excluded, e.g. vessels, buildings and intangibles.

Fiscal investment institutions and real estate

Based on an announcement from the Dutch government, it is expected that fiscal investment institutions (*fiscale beleggingsinstelling*) can no longer invest directly in real estate as of 1 January 2025. This is to ensure that CIT is effectively levied over profits realised in connection with real estate. More information on this potential measure is expected in the course of 2023 (likely Budget Day in September).

Qualification of partnerships

Currently, the Dutch tax qualification of limited partnerships (i.e. transparent or opaque) depends on the transferability of their participations. More specifically, a limited partnership only qualifies as transparent if the prior written consent from <u>all</u> partners is required (and actually obtained, save for certain exceptions) for any change to the relative interests of the partners (e.g. as a result of the admittance of a new partner or the transfer of an existing partnership interest).

Given the complications involved with this rule (it is for instance also applied to determine the Dutch tax qualification of foreign limited partnerships, occasionally leading to hybrid mismatches), it has been subject of debate and criticism. The current expectation is that this 'consent requirement' shall be abolished per 1 January 2025, meaning that, as from that date, limited partnerships should by default qualify as transparent for Dutch tax purposes.

Dividend withholding tax

In May 2023, Attorney-General Wattel (the **A-G**) issued his opinion in two court cases, both relating to the denial of the dividend withholding tax (**DWT**) exemption that was applied to dividends to a Belgian personal holding entity. The opinions are issued in anticipation of (final) rulings from the Dutch Supreme Court, whom the A-G now advises to deny the application of the withholding exemption, in line with the earlier ruling from the Court of Appeal.

In the Netherlands, the DWT exemption can be applied (provided certain conditions are met) unless anti-abuse rules are triggered. This is the case if there is a tax avoidance motive (the direct shareholder is interposed to obtain a more favourable DWT position) <u>and</u> the structure should be considered artificial (not based on valid business reasons reflecting economic reality). According to the A-G, the relevant situation was properly assessed by the Court of Appeal, regardless of the fact that the Belgian shareholder of the Dutch distributing entity carried on a material enterprise. The Court of Appeal and A-G inter alia argue that such enterprise was not functional to the participation in the Dutch entity. The opinions have resulted in discussion and – to some extent – criticism, inter alia given that a tax advantage appears a (deemed) tax motive, seemingly without the possibility of providing counter evidence, while there is also a clear difference in treatment between domestic cases (where the anti-abuse rules are not applied) and cross-border situations. In addition, it has been argued that the application of the Dutch domestic anti-abuse rules is not entirely aligned with that of the EU anti-abuse rules.

The (final) verdict from the Dutch Supreme Court (including potential involvement of the EU Court of Justice) is highly anticipated as a ruling in line with the Court of Appeal and A-G would have substantial consequences, not only for personal holding entities but also for corporate structure and PE/VC investments.

Personal income tax

Box 1 adjustments

The applicable Dutch personal income tax (**PIT**) rate for box 1 income has been slightly lowered from 37.07% to 36.93%. In addition, the first bracket (to which the 36.93% rate applies) is increased from EUR 69,398 in 2022 to EUR 73,031.

Dutch director and majority shareholders (DGAs) may be required to pay Dutch PIT over a so-called ‘customary salary’ (to avoid the postponement of Dutch PIT through the retention of income). In calculating such customary salary, the DGA was previously allowed to apply an efficiency margin, potentially resulting in a reduced taxable salary. As of 2023, such efficiency margin is abolished, meaning that the customary salary now equals 100% (instead of 75%) of the salary paid to the highest-earning employee within the company or the salary paid for the most comparable employment outside the company.

Based on a decree from the Dutch State Secretary of Finance, (supervisory) board members earning a director remuneration from abroad were – under certain conditions – allowed to apply an exemption instead of a credit for foreign taxes paid. Such policy has been revoked as of 1 January 2023. As a result, where a credit method is prescribed in tax treaty situations, it will once again be applied and thus a ‘top-up’ of Dutch PIT may occur if and insofar the applicable Dutch tax exceeds the foreign tax.

Box 2 adjustments

Although these changes do not affect income earned in 2023, the applicable Dutch PIT rates for box 2 income will be changed as from 2024. Instead of the currently applicable 26.9% to the entire box 2 income, two brackets will be introduced. The first EUR 67,000 (per person, EUR 134,000 in case of fiscal partners) will be subject to 24.5% and the excess shall be subject to 31%.

As of 1 January 2023, individuals borrowing more than EUR 700,000 from one or more companies in which they hold a substantial interest are taxed on the excess amount (i.e. as income from substantial shareholding in box 2). The EUR 700,000 threshold applies to substantial interest holders and their partners jointly. Loans to relatives such as children or parents and also included in scope. Loans connected to the acquisition of a home are excluded.

Box 3 adjustments

Following a ruling from the Dutch Supreme Court in 2021, the Dutch government is currently working on a revision of box 3 which includes income from savings and investments. The intention is to move from a system of taxation over fixed notional returns to taxation of actual returns. The Dutch State Secretary of Finance has, however, indicated that this is unlikely to happen prior to 2027 and during the coming years, an interim regime shall apply.

As from 2023, income from savings and investments is still taxed based on a notional fixed return although it is now calculated using varying rates. For 2023, these rates of return are 0.36% for bank balances, savings and cash (although still provisional until early 2024), 6.17% for investments and other assets and 2.57% for debts. The taxable income from savings and investments is calculated as follows:

1. Using the above rates, the total return on assets is reduced with the return on debt (taking into account a threshold – in 2023 this is EUR 3,400 per person) to calculate the **taxable return**.
2. The total amount of assets is reduced with the amount of debt (again applying the threshold) to calculate the **capital yield tax base**.
3. This capital yield tax base is reduced with a tax-free allowance (in 2023 this is EUR 57,000 per person) to calculate the **basis for savings and investments**.
4. This basis for savings and investments is divided by the capital yield tax base (see 2 above) and then multiply by 100. The result is the **capital yield tax base share percentage**.
5. The **taxable income from savings and investments** is calculated by multiplying the taxable return (see 1 above) with the capital yield tax base share percentage (see 4 above). In 2023, this taxable income is subject to 32% taxation in box 3.

Wage tax

30% rulings capped

Although not taking effect during 2023, the application of a 30% ruling to salaries paid to expatriate employees and board members will be capped as of 1 January 2024. This cap will be equal to the standard under the Standards for Remuneration Act (*WNT-norm*). for 2023 this is EUR 223,000. In case a 30% ruling was already being applied in 2022, the cap will take effect as from 1 January 2026.

Stock options

The current regime whereby wage tax is levied upon exercising stock options has been changed to defer taxation until the moment on which the underlying security can be sold. This should resolve situations in which wage tax is due before liquidities are actually available (e.g. due to a lock-up).

EU law

Legislative proposal Pillar II

On 31 May 2023, a legislative bill for the proposed Minimum Tax Rate Act 2024 (*Wet minimumbelasting 2024*) was presented to the Dutch House of Representatives. The proposed legislation concerns the implementation of Pillar II, ensuring that multinationals and domestic companies with a turnover of EUR 750 million or more effectively pay at least 15% over their profits.

The Netherlands is the first EU Member State to submit a legislative proposal for the implementation of Pillar II, following the international agreement concluded in October 2021 among 138 countries. This lead to a directive from the EU Commission on the implementation of a minimum tax within the EU, which was unanimously adopted by the EU Member States on 15 December 2022.

The directive must be transposed into the domestic legislation of EU Members States ultimately by 31 December 2023, which is also the date on which the Dutch legislative bill is expected to enter into force.

DAC 7 (digital platform operators)

As per 31 December 2022, the Netherlands has implemented DAC7. As a result, certain digital platform operators must have a process in place as of 1 January 2023 to identify, trace and report revenues generated by sellers making use of their platforms.

DAC7 concerns an addition to the EU Directive 2011/16/EU on administrative cooperation in the field of taxation.

Misuse of shell entities (ATAD 3)

In January 2023, the European Parliament approved a draft on the Anti-Tax Avoidance Directive or '**ATAD**' 3 (an EU directive initially published by the European Commission to counter the misuse of so-called 'shell companies' for tax purposes). Although the European Parliament has proposed certain amendments to the text initially published by the European Commission, the European Council may still deviate from these changes in its final text (while it could even decide not to move forward with ATAD 3 at all).

If ATAD 3 is transposed into the domestic law of EU Member States, these may under certain conditions take action against shell companies, for instance by denying these a tax residence certificate and/or the (direct) granting of tax benefits pursuant to bilateral tax treaties and/or EU directives.

ATAD 3 should in principle be transposed into the domestic law of EU Member States, and thus apply, as from 1 January 2024. Nevertheless, given the short timeframe involved, it cannot be ruled out that the process shall be delayed. For completeness, the assessment whether an entity is a shell company is performed based on the two preceding years. As such, structures currently in place may already be affected by ATAD 3.