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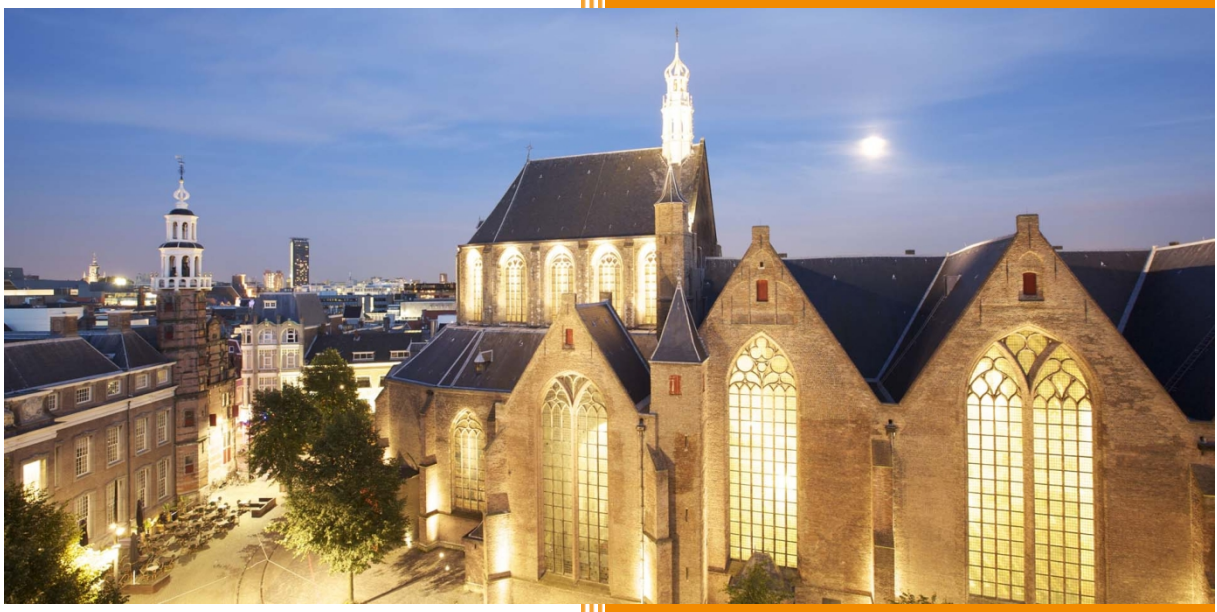
BUDGET DAY 2020



Grote or St. Jacobskerk, The Hague

15 September 2020

AEGIS Tax Lawyers

Content

This Budget Day Special contains the most important proposals from the Tax Plan 2021 and additional legislative proposals. The special is divided into the following topics:

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

MEASURES COVID-19

Corona reserve

In order to set off an expected loss for 2020 at an earlier point in time, it has already been approved, subject to conditions, that taxpayers can form a tax reserve (corona reserve) for corporate income tax purposes for the 2019 financial year. Taxpayers for corporate income tax purposes can set up this corona reserve for the corona-related loss that is expected to occur in the financial year 2020. The corona reserve reduces the profit for 2019 and, as a result, in the short term (part of) the tax paid for 2019 can be recovered or (part of) the tax for 2019 no longer has to be paid. This proposal transposes the existing approval into legislation.

NOTE

The corona reserve may not exceed the profit of the year 2019 nor the total expected loss in the year 2020.

Exemption Subsidy fixed charges

In mid-2020, the Cabinet replaced the TOGS with the Fixed Charge Subsidy Scheme for SMEs COVID-19. The Tax Plan 2021 regulates that this benefit is exempt from income and corporate income tax. The provision comes into effect retroactively on 1 January 2020.

NOTE

The Fixed Charges Subsidy Scheme (TVL) will continue after 1 October 2020. The Tax Plan does not pronounce on an exemption from this extension.

TOGS exemption

Entrepreneurs who suffered direct damage as a result of the coronary measures were able to benefit in part of 2020 from the 'Entrepreneurs Affected Sectors COVID-19' (TOGS) scheme. This benefit consisted of a one-off payment of € 4,000 to pay the fixed costs. The Tax Plan 2021 states that this benefit is untaxed.

NOTE

Any repayments of TOGS subsidies are therefore not deductible.

Untaxed bonus for healthcare professional

In their work, various healthcare professionals have (in)directly experienced the consequences of the outbreak of the corona crisis. The cabinet wants these healthcare professionals to receive a bonus of € 1,000 without having to pay income tax. Under certain conditions, employers can also provide this bonus untaxed to others than their own employees. Think of hired self-employed people and externally hired cleaning staff.

NOTE

The "employer" must, in principle, levy 75% final tax on the bonus to others than its own employees.

Tax qualification TOFA contribution

Flexible workers affected by the corona crisis could, under certain conditions, receive an allowance from the UWV for the months of March, April and/or May 2020. This follows from the Temporary bridging scheme for flexible workers (TOFA). The Tax Plan 2021 stipulates that the TOFA contribution counts as wages from previous employment. The UWV is the withholding agent and, in principle, applies the wage tax credit by default.

NOTE

The TOFA contribution is subject to the standard wage tax credit, even without a request. Even if the tax credit is already applied by another withholding agent.

Job-related Investment Discount

In a letter of amendment to the Tax Plan 2021, the Cabinet will propose a BIK (Bank Related Investment Discount) with effect from 1 January 2021. The BIK allows entrepreneurs to deduct a percentage of the investments made from the wage tax. The government wants to temporarily introduce this discount as of 2021 as a crisis measure. At the end of the BIK, this budgetary margin will be used for a measure to be determined with the same scope (reducing employer costs).

MEASURES COMPANIES (CIT)

Investigation into the introduction of a capital deduction

In order to make the tax treatment of equity and debt more balanced, a study will be carried out into a budget-neutral introduction of a capital deduction. We already have an earnings stripping measure. This rule limits the deduction of interest in order to prevent companies from being financed excessively with borrowed capital. The further limitation of the interest deduction for borrowed capital at companies will also be included in the investigation into a capital deduction.

Settlement of withholding taxes with CIT

For corporate income tax purposes, the intention is to limit the settlement of withholding taxes such as dividend tax and gambling tax as of 1 January 2022 to the corporate income tax payable in one year. The non-deductible withholding taxes can be carried forward to a later year.

Adjustment of interest deduction limitation

Under a new interest deduction limitation, interest (including costs and currency results) on debts to an affiliated entity or related natural person is excluded from deduction under certain circumstances. The purpose of this is to counteract tax base erosion through interest deduction within a group context. This refers to the situation in which negative interest and exchange gains exceed the amount of positive interest, costs and exchange losses, resulting on balance in an exemption. On balance, per qualifying debt, the specific interest deduction limitation can no longer lead to a lower profit.

High CIT rate does not go down

The lower corporate income tax rate bracket will be increased in two steps from next year to € 245,000 in 2021 and € 395,000 in 2022. But the previously announced reduction in corporate income tax on profits in the second bracket, from 25% to 21.7%, will not go ahead. For small businesses (with profits up to € 245,000 in 2021) this tax will be reduced from 16.5% to 15%.

NOTE

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

Innovation box less advantageous

If companies (e.g., NV's, BV's, etc.) make a profit from innovative activities, they have to pay less corporate income tax on this part of the profit. The so-called innovation box applies to these innovative profits. As of January 1, 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 ruling of the Supreme Court, the minimum capital rule for banks and insurers is adjusted. The purpose of the minimum capital rule is to limit the tax incentive for banks and insurers to finance with borrowed capital. The current rule limits the tax deduction of interest due insofar as the equity is less than 8% of the balance sheet total. This percentage will increase to 9% as of 1 January 2021. In addition, the bank tax rate will be temporarily raised to 0.066% and 0.033% respectively in 2021.

New fiscal unity regime

The Cabinet has indicated under the Emergency Repair of the Fiscal Unity Act that the current fiscal unity regime in corporate income tax will eventually have to be replaced. The new group scheme had to be future-proof from a technical and legal point of view. The Cabinet is now following this up by providing an outline of the envisaged future group scheme. This sketch shows that the Cabinet has in mind a loss or profit transfer scheme or a system of result pooling. In the coming period, the Cabinet will continue to exchange ideas with Parliament and with various organizations from the business community, interest groups and scientists. The decision to submit a legislative proposal will be left to the next cabinet.

Limitation of loss relief

In a letter of amendment to the Tax Plan 2021, the Cabinet will propose a time-unlimited loss carry-forward as of 1 January 2022 (whereas it is now six years forward). However, the losses (both forward and backward) will only be fully deductible up to an amount of € 1 million in taxable profit. In the event of a higher profit, the losses are only deductible up to 50% of that higher taxable profit in a year. This measure follows one of the recommendations of the Advisory Committee on the Taxation of Multinationals.

MEASURES ENTERPRISES (PIT)

Accelerated dismantling self-employment deduction

The previously planned phasing out of the self-employment deduction will be accelerated. In 2021 the self-employed persons deduction will drop from € 7,030 to € 6,670. Until 2028, the annual reduction is € 360, in 2028 € 390 and thereafter € 110 annually until 2036.

NOTE

In 2036 the self-employed persons deduction will only amount to € 3,240.

Unambiguous calculation method KIA

The method of calculating the small-scale investment allowance (KIA) is clarified for taxpayers with several enterprises and taxpayers who are part of a joint venture (e.g. Vof). An entrepreneur is entitled to KIA in proportion to his investment amount in relation to the total investments of the partnership and the investments of the entrepreneur outside the partnership. From now on, the amount of the KIA per enterprise will be determined on the basis of the investment amount per enterprise of the taxpayer.

NOTE

There is no room for exceptions.

MEASURES EMPLOYER

Free capacity goes up to 2020

For 2020, the free capacity for the work-related costs scheme (WKR) will be increased retroactively from 1.7% to 3% for

NOTE

From January 1, 2021, the free capacity over the wage bill above € 400,000 will be reduced from 1.2% to 1.18%.

the first €400,000 fiscal wage bill. As a result, employers will be able to offer their employees extra compensation, for example by providing them with a gift voucher.

Clarification remittance reduction

For research and development work (R&D), there is, under certain conditions, a right to a discount on the payroll taxes to be paid by private companies. The intention is that this discount only applies to private companies. In order to make this clear, the law has amended the concept of public knowledge institution. The words 'not-for-profit' in the legal definition of the concept of knowledge institution have been dropped.

NOTE

The remittance reduction for R&D work only applies to private companies.

Ex-employee training costs also exempt

From 1 January 2021, an employer may, in principle, reimburse the training costs of a former employee, without this employee having to pay income tax. It is then no longer important whether the work is current or past. The education or study must be followed for a future profession and must not include the maintenance and improvement of knowledge and skills to fulfill the employment or for personal reasons, such as a hobby.

NOTE

This training expense allowance may not exceed by more than 30% the training expense allowance granted by the employer in similar cases.

Pension adjustments

The AOW age will remain 66 years and 4 months in 2021. After that, the AOW age will increase annually, until 67 years in 2024.

As part of the elaboration of the Pension Agreement, the government will come up with legislative proposals in 2021 to make it clearer:

- what people contribute to their pension;
- what they build up in assets;
- how much their pension will be later.

It is also intended that the pension will move faster with the economy. That is to say, up when the economy is going well and down when the economy is going worse. The Netherlands should switch to the new pension system no later than 2026.

NOTE

The aim is that the new pension system will come into effect no later than 2026. The adjustments have yet to be laid down in legislative proposals.

MEASURES INTERNATIONAL SITUATIONS

Restriction of liquidation and termination loss rules

There will be a tightening of the liquidation loss settlement. This scheme is an exception to the participation exemption: losses related to the liquidation of participations can still be charged to the Dutch profit. A similar exception to the object exemption for foreign enterprise profits applies to permanent establishments, namely the termination loss scheme.

There will be three new conditions for taking a liquidation or termination loss into account:

1. Temporal condition: the loss is taken into account in the event of liquidation within three years of the year of (decision to) terminate.
2. Territorial condition: only losses from the Netherlands, the EU, the EER and third countries with which the EU has concluded a qualifying association agreement are taken into account.
3. Quantitative condition: only deduction of liquidation loss if there is decisive influence.
   In order to make the scheme enforceable, it has been proposed to apply the limitation in principle only to the extent that the loss exceeds € 5 million.

NOTE

Transitional rules have been proposed for situations in which the enterprises of participations have been liquidated or discontinued before January 1, 2021. If the liquidation is completed before the end of 2023, the new conditions will not apply.

Clarification of overlap between hybrid mismatch measures and interest deduction restrictions

As of January 1, 2020, the second European Anti Tax Avoidance Directive (ATAD 2) has been implemented in corporate income tax. This can lead to the refusal of deduction or the inclusion of payments or allowances in the profit in the case of certain hybrid mismatches. Hybrid mismatches are situations in which a tax benefit is obtained due to differences between tax systems. Some of the hybrid mismatches do not apply if income is taken into account twice.

The Cabinet now clarifies the overlap between the hybrid mismatch measures and other interest deduction restrictions. This is particularly relevant to the amount of interest deduction for the application of the earnings stripping provision and the minimum capital rule. In addition, interest income is also relevant to the earnings stripping provision. The proposed clarification means that first the hybrid mismatch measures are applied and then the other schemes. In this case, the rejected deduction and the double income taken into account is allocated to the interest income and interest expense. The Cabinet clarifies that this allocation is proportional to the relationship between the interest income and interest charges and the other interest income and charges. This allocation has an effect on the earnings stripping provision and the minimum capital rule.

Adjustment arm's-length principle

The arm's-length principle means that individual companies that trade with each other within a group of companies also pay market-based prices for this. This is particularly relevant in international situations. In the spring of 2021, the cabinet will present a separate bill to limit a downward adjustment of the Dutch fiscal profit according to the arm's-length principle if the remuneration in another country is not taxed as revenue from an affiliated party or is taxed for a lower amount. This measure is intended to prevent tax avoidance.

Participation exemption in an international context

In 2018, the Cabinet announced that it would investigate whether the participation exemption could be amended in such a way that it can no longer be applied if the presence of a group of companies in the Netherlands is limited to one or more virtually 'substandard' (intermediate) holding companies. In a separate letter accompanying the Tax Package 2021, the Cabinet announced that it would investigate whether it is possible to amend the participation exemption by 2022 specifically for 'substandard' holding companies.

The three options being examined are:

- Expanding the exchange of information;
- An abuse test in the participation exemption;
- Introduction of substance requirements in the purpose test for the participation exemption.

In view of the European law complications and the limited effectiveness of options 2 and 3, the Cabinet believes that the elaboration of option 1 is obvious. This option could provide for an exchange of information with other countries for holding companies that make use of the participation exemption and do not meet the substance requirements. A similar provision exists for through-flow companies that mainly pay and receive interest or royalties. The idea is that extending this provision to holding companies could make the Netherlands less attractive as a transit country for dividends.

MEASURES REAL ESTATE

Starter Transfer Tax Exemption

Starters on the housing market are exempt from transfer tax under certain conditions. They must be 18 to 35 years of age, obtain a (right to a) home and start using the home other than temporarily as their main residence. Also, the exemption may not have been used before. Whether the conditions are met will be assessed at the time of the acquisition (the execution of the deed). In case of a joint purchase of a home, the application of the exemption per person must be examined. It is possible that an exemption applies to the share of one buyer and not to the share of the other buyer.

NOTE

There is a transitional arrangement for buyers who have bought a home before January 1, 2021. If they meet all the conditions, they can apply the exemption on a subsequent purchase.

Reduced rate restriction

The reduced rate of the transfer tax of 2% only applies to natural persons who are going to use a residence other than temporarily as their main residence. The acquirer

must declare in writing immediately prior to the acquisition that this is the intention. The tax authorities will check afterwards whether the acquirer has indeed started to use the property as his main residence for a longer period of time. The tax authorities can therefore reverse the application of the reduced rate (with tax interest and possibly a fine). The tax authorities must take unforeseen circumstances into account, such as a divorce or death.

Fictitious real estate and economic ownership

Two cases are exempted from the starter exemption and the reduced rate of transfer tax. First of all, the acquisition of only the beneficial ownership of a dwelling is excluded, without the legal ownership also being supplied. In addition, the acquisition of shares in a legal entity that mainly owns real estate is excluded.

Transfer tax increased to 8%

The general transfer tax rate will be increased from 6% to 8%. This rate applies to all non-residential properties and to properties that are not or only temporarily used as main residence by the acquirer. So, for example, for vacation homes, homes that parents buy for their child, business premises, and acquisitions of homes by non-natural persons such as legal entities (e.g. a BV or housing corporation).

Filing a tax return in the event of transfer tax exemption

The law states that if a transfer tax exemption is applied, a transfer tax return must be submitted for that acquisition. If the acquisition does not take place through the notary, the acquirer must first request an invitation to file a tax return. This must be done within one month after the acquisition. The inspector then determines when the tax return must be filed. This period is at least one month. If a notarial deed is drawn up, the notary takes care of the declaration.

Tariff of appurtenances

Appurtenances are objects that belong to a property, such as a barn, garage, etc. From 1 January 2021 onwards, the exemption or reduced rate (2%) for transfer tax can only be applied if these appurtenances are obtained at the same time as the home. It goes without saying that the exemption or reduced rate must also apply to the home. Subsequent obtained appurtenances are always subject to the general rate of 8%.

Reduced landlord levy rate

The government wants to oblige housing corporations to lower the rents of tenants with an income below the income limits for the rent allowance. They will receive an allowance in the form of a reduction in the landlord levy. The rate will be reduced by 0.036 percentage points.

MEASURES CAR & MOBILITY

Faster taxable event BPM

The most important taxable event for the Passenger Car and Motorcycle Tax Act (Wet BPM) is currently the registration of a motor vehicle in the vehicle registration register. This registration includes both the registration and the ascription of a motor vehicle in the vehicle registration register. This can lead to undesirable situations because there can sometimes be a long time between the moment of registration and the moment of ascription. That is why it is proposed to bring forward the taxable event for the bpm from the ascription in the vehicle registration register to the registration in the vehicle registration register.

NOTE

The depreciation percentage of a used motor vehicle is determined by this amendment of the law at the moment of examination by the RDW, instead of at the moment of ascription.

Increase BPM rates

The CO2 bracket limits of the load on passenger cars and motorcycles (BPM) are reduced by 4.2%. In addition, the rates will be indexed, followed by an increase of 4.38%. All this in order to align the tax base with the (expected) technological developments.

NOTE

Driving a polluting diesel car will also become more expensive due to a tightening of the CO2 limit and an increase in the rate for the diesel surcharge.

Lower additional tax rate for solar cell cars

For new emission-free cars such as electric cars, the addition in 2020 will be 8% of the catalog value up to € 45,000. In 2021, the addition will be 12% over a maximum of € 40,000. Unlike electric cars, a hydrogen car is not subject to a maximum catalog price to which the lower addition applies, the lower addition applies over the full catalog value.

The Cabinet now proposes to introduce the same scheme for solar cell cars as for hydrogen cars. An addition of 12% in 2021 calculated over the full catalog value. A solar cell car is an electric car with integrated solar panels.

NOTE

For cars with a hydrogen engine, a reduced addition for private use already applies to the full catalog value. For solar cell cars this applies from 2021 onwards.

Energy tax public charging stations

In 2020, the energy tax will include a reduced rate for electricity supplied to public charging stations. Also, no rate has been set for the ODE (Storage of Renewable Energy) for electricity delivered to public charging stations. The cabinet wishes to extend these measures up to and including 2022. It is estimated that the European Commission and the Council of the European Union will agree to this.

MEASURES (WEALTHY) INDIVIDUALS

Adjustments for box 3, savings and investments

To alleviate the tax burden on smaller assets, it is proposed to increase the tax-exempt assets in box 3 from € 30,846 to € 50,000 (for partners together from € 61,692 to € 100,000). In addition, the bracket limits are redefined, with the 2nd bracket starting at € 100,000 and the 3rd at € 1,000,000. To partially cover this package, the tax rate in box 3 is increased from 30% to 31%.

Because the taxable income in box 3 decreases for everyone, this has a downward effect on the collective income. In order to prevent a greater claim to a (higher) surcharge, it is proposed to base the equity test from now on on the yield basis in box 3.

Income tax rates 2021

Taxpayers who have not yet reached the AOW entitlement age at the beginning of 2021 are expected to have to deal with the following tariff bands in 2021.

Box 1 rate	Tax income more than	But not more than	Tariff 2021
Disc low rate	-	68,507	37.10%
Disc high rate	68,507	-	49.50%

These percentages include national insurance premiums. A different rate structure applies to those for whom other national insurance premiums apply.

Changed tax credits

This includes only the changes in tax credits as mentioned in the Explanatory Memorandum to the Tax Plan 2021. These relate to taxpayers who are younger than the state pension age. Lower ceilings apply to those entitled to state pension.

Tax credits	2020 (€)	2021 (€)
General tax credit maximum	2,711	2,837
Labour discount maximum	3,819	4,205
Income-dependent combination discount	2,881	2,815
Young disabled discount	749	761

Changed elderly discount

The elderly discount for AOW pensioners will be increased. The single elderly discount only undergoes an inflation correction.

Tax credits	2020 (€)	2021 (€)
Elderly discount maximum	1,622	1,703

Single elderly discount	436	443

Estates

With effect from 1 January 2021, other conditions will apply to the designation of immovable property as natural heritage (NSW country estate). Transitional law already applies to this, on the basis of which these immovable properties will be subject to the current conditions for a maximum period of 10 years. The proposed amendment relates to whether or not to collect tax claims for inheritance, gift and transfer tax for immovable property designated as NSW country estate on 31 December 2020.

Life cycle, withholding obligation

The transitional law for life cycle savings schemes ends as of January 1, 2022. If at the end of 2021 a life cycle entitlement still exists, the value of that entitlement will be taxed. This applies to participants who have not had the value of the life cycle savings claim paid before January 1, 2022, and for which no tax has otherwise been levied. For a proper settlement of the transitional law of the life cycle savings scheme, the institution (bank, insurer, etc.) is obliged to withhold the wage tax. This for the notional benefit moment on the value of the life cycle entitlement. The institution can recover the wage tax directly from the (former) employee. Because of the levy in box 3, the notional benefit moment is brought forward to 1 November 2021.

NOTE

The life cycle leave credit and the other tax credits can be claimed by the (former) employee with the income tax return.

Proportionality child care allowance

If the costs of childcare have only been partially paid by the parent, the right to a surcharge will henceforth be determined in proportion to the amount of costs paid on time. The full amount of the surcharge will therefore no longer be reclaimed. This is a legal record of the decisions of the Council of State since October 2019. Also, the tax authorities/Surcharges will have the power to mitigate the recovery of childcare benefit in special circumstances. Furthermore, there will be more room for interested parties to make their views known when making a final decision. There will be more customization.

OTHER MEASURES

Increase ODE rates for the benefit of SDE++

In connection with the Climate Agreement, the subsidy scheme Stimulation of Sustainable Energy Production (SDE+) will be expanded with a climate transition module (SDE++). The related cash expenses of this scheme will be covered by an increased levy on the consumption of electricity and natural gas by companies. This levy is called the storage for sustainable energy and climate transition (ODE). The ODE is a surcharge on the energy tax. For households, the ODE contribution becomes more favorable with an additional increase in the tax reduction in 2021 (€ 5.40) and 2022 (€ 1.00).

Introduction of CO2 tax

A CO2 tax is being introduced for the industry. This mainly concerns the emission of greenhouse gas during and for industrial production and waste incineration. The levy will primarily be levied on installations covered by the EU ETS. In addition, the tax will be levied on waste incineration plants and plants with substantial laughing gas emissions. Part of the emissions will be exempted. This exemption will be phased out on a linear basis.

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