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Government presents tax measures for 2025 on Budget Day

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On Budget Day, September 17, 2024, the government presented the 2025 Tax Plan package to the Lower House of Parliament. It contains the following bills:

- 2025 Tax Plan
- 2025 Tax Plan BES islands
- Other Tax Measures 2025
- Business Succession Tax Relief (Amendment) Act 2025
- Minimum Taxation Act (Amendment) Act 2024
- Taxation Miscellaneous Provisions Act 2025
- Netting scheme (Termination) Act
- Amendment of the Child-related Budget Act to increase the child-related budget as a means of improving consumer purchasing power
- Amendment of the Surviving Dependents Act and the Participation Act in connection with the double general tax credit in the reference minimum wage not being phased out in 2025, 2026 and 2027
- Amendment of the Personal Rent Allowance Contribution (Reduction) Act, the Housing Allowance Act and several other Acts to improve purchasing power and simplify the scheme

Many of the proposed measures will take effect on January 1, 2025. This memorandum outlines the main features of the 2025 Tax Plan. Where possible and relevant, we have included in the individual topics other tax measures and developments related to those topics, but have indicated that these are not part of the 2025 Tax Plan package. Please refer to the last section for miscellaneous tax developments.

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1 Corporate income tax

1.1 Overlap loss set-off and exemption for debt relief income tax

Since 2022, only 50% of profits exceeding EUR 1 million are available for loss set-off for corporate income tax purposes (see our memorandum of June 1, 2021). This temporal loss set-off may lead to obstacles when restructuring loss-making entities, because it means that these entities – despite the exemption for debt relief income tax – face being taxed on the exempted debt relief/debt forgiveness. This can occur if there is more than EUR 1 million in carried-forward loss set-off. In the proposed scheme, this overlap is overcome by fully exempting the debt forgiveness – after taking the loss set-off in the relevant year – if the carried-forward losses exceed EUR 1 million. The amount in carried-forward losses from previous years is thereby reduced by the amount for which the debt forgiveness exemption was granted. The debt forgiveness is thus effectively no longer subject to the 50% threshold applying to the loss set-off.

1.2 Overlap subject-to-tax tests for corporate income tax purposes and Pillar 2

Corporate income tax includes subject-to-tests for various (anti-abuse) provisions. With regard to the application of several subject-to-tax tests, the proposed changes clarify in general terms that a profit tax is also understood to mean a qualifying Pillar 2 additional tax. This is, for example, relevant for the interest deduction limitation in the event of profit shifting (Section 10a CITA 1969), the subject-to-tax test for the purposes of the participation exemption, for the liquidation loss scheme and for the source exemption for foreign business profits.

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1.3 Implementation of the General Anti-Abuse Rule (GAAR) included in the ATAD1 Directive

ATAD1 requires EU Member States to implement a general anti-abuse provision (abbreviated as GAAR). In implementing ATAD1, the Netherlands has opted not to transpose GAAR into national law, because the GAAR in ATAD1 has already been implemented in Dutch tax law by means of the fraus legis (fraud of law) doctrine. With regard to the obligation for the Netherlands to implement the GAAR appearing in ATAD1, the European Commission has drawn attention to the statutory basis of the GAAR in corporate income tax. The introduction of a new Section 29i will provide for this. The text of the provision is in line with other previously implemented EU law anti-abuse provisions: this must involve artificial arrangements whose primary purpose is to obtain a tax benefit that undermines the objective of the law. No substantive amendment is envisaged with regard to the application of the doctrine of fraus legis (not even for the application of fraus legis in respect of other taxes).

1.4 Source exemption for disregarded permanent establishments

The implementation of ATAD2 regulated that the source exemption for foreign business profits is not applied to disregarded permanent establishments. Consequently, the profit of a foreign permanent establishment is subject to tax in the Netherlands, if the other state does not recognize that permanent establishment as such. The aim is to combat mismatches that may arise with regard to disregarded permanent establishments. In practice, this results in double taxation in some cases, i.e. if the profit of the disregarded permanent establishment is subject to a profit tax in the other state. To avoid that consequence, the scheme will be amended. The source exemption will apply insofar as the profit of the disregarded permanent establishment is subject to a profit tax in the other state. It should be borne in mind that under ATAD2 the Netherlands must in any case apply the source exemption in certain circumstances if the disregarded permanent establishment is located in a third country with which the Netherlands has concluded a treaty for the avoidance of double taxation.

1.5 Increase in percentage for generic interest deduction limitation (earnings stripping measure)

The generic interest deduction limitation (earnings stripping measure) stipulates that the net interest payable by a taxpayer may only be deducted up to 20% of the EBITDA for tax purposes, or up to EUR 1 million if that is higher. That percentage was originally 30%; the 2022 Tax Plan reduced it to 20%. The government has now proposed to partially reverse that tightening by increasing the percentage to 25%, so that it is more in line with the EU average.

1.6 Anti-fragmentation measure generic interest deduction limitation for real estate entities

In practice, activities are sometimes spread over several companies in order to make more frequent use of the threshold of EUR 1 million in the generic interest deduction limitation. This concerns, for example, situations in which property investors use a separate company for each building. The government wants to combat this 'splitting up' of real estate companies. As of January 1, 2025, the threshold of EUR 1 million in the earnings stripping measure will no longer apply to real estate entities with property leased to third parties if, in short, for at least half of the year the taxpayer's assets were primarily made up of immovable property that is leased/rented to third parties.

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1.7 Changes to liquidation loss scheme

The government has proposed to change two elements of the liquidation loss scheme for corporate income tax purposes:

1. In calculating the taxpayer's adjusted acquisition cost for a participation, any write-down of a receivable from that participation which has been reclaimed by the taxpayer and included in the taxable profit, without an amount corresponding to the write-down being added to the revaluation reserve (Section 13ba(1), first sentence, CITA 1969) must be taken into account. The adjusted acquisition cost can thus be increased by the reclaimed write-down directly included in the taxable profit.
2. From now on, the holding company scheme will take account of both decreases in value since the direct acquisition of the participation in the dissolved entity and increases in value since the indirect acquisition thereof. The aim is to prevent a non-deductible loss (for example, a capital loss) being converted into a deductible liquidation loss.

1.8 Amendment of FBI regime, introduction of real estate measure (not part of the 2025 Tax Plan package)

The Fiscal Investment Institution (Amendment) Act (*Wet aanpassing fiscale beleggingsinstelling*; FBI) introduces the real estate measure. Consequently, as of 2025 an FBI may no longer *directly* invest in Dutch property or in rights to which the property is subject (hereinafter: immovable property). If they do so, they will lose their FBI status. An FBI is still permitted to invest in shares in an ordinary taxable subsidiary that holds property located in the Netherlands (indirect investment in Dutch property). Contrary to the draft bill launched for public consultation in 2023 (see our memorandum of March 13, 2023), an FBI is still permitted to invest directly in *foreign* property, the financing requirement has *not* been adjusted and an FBI may (continue to) manage a property development or property management subsidiary. On Budget Day 2024, a Memorandum of Amendment to the bill on the 2025 Tax Plan was announced, which will repair the loophole that was detected whereby taxpayers can avoid the envisaged changes to the FBI regime as of January 1, 2025 resulting from the Fiscal Investment Institution (Amendment) Act. With regard to the concept of property in the FBI regime, the Memorandum of Amendment will also seek alignment with the concept of property used elsewhere in corporate income tax.

Temporary real estate transfer tax exemption in connection with changes to the FBI regime

The government has introduced a conditional and temporary real estate transfer tax exemption in order to give FBIs that currently own property the opportunity to restructure. The exemption, which applies to the 2024 calendar year, is intended to retain the fiscal neutrality offered by the FBI by means of a restructuring of the property. It has been decided to only include the acquisition of the economic ownership under this exemption, with the aim being to retain the fiscal neutrality associated with the FBI regime while restructuring. This could be achieved by means of a structure with an entity that qualifies as transparent for Dutch tax purposes. Such a restructuring looks (mostly) in broad terms as follows:

1. The FBI establishes a transparent entity and acquires a participation therein.
2. The FBI contributes the beneficial ownership of the property to that transparent entity.
3. The FBI transfers the acquired participation certificates to its shareholders.

The conditional and temporary exemption can only be used if, in summary, the following conditions are met:

- The economic ownership of the property is acquired.

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- This economic ownership is acquired from a legal entity that at the time immediately prior to the acquisition of the economic ownership qualifies as an FBI and that at that time would not have qualified as such if the real estate measure had already been in force.
- The acquisition of the economic ownership takes place by means of a participation in a non-independent (transparent) taxpayer in which the legal entity had contributed that economic ownership.
- The acquirer is entitled in equal measure to the assets of the non-independent (transparent) taxpayer, in the same way that it previously was via its shares in the FBI.
- A tax return is filed in respect of the acquisitions.

This conditional and temporary exemption does not mean that current exemptions cannot be relied on in order to avoid the acquisition of, for example, the legal ownership leading to real estate transfer tax (for example, the internal reorganization exemption).

1.9 Amendment of VBI regime and change in definition of mutual fund (not part of the 2025 Tax Plan package)

The Mutual Fund and Exempt Investment Institutions (Amendment) Act will change as of 2025 the definition of a mutual fund (*fonds voor gemene rekening*; 'FGR') and the exempt investment institutions regime (*vrijgestelde beleggingsinstelling*; 'VBI'). Transitional rules will apply

Change in definition of mutual fund (FGR)

Under existing law, an FGR is independently taxable if the certificates of participation in the FGR are negotiable. The certificates of participation are deemed to be negotiable if the consent of all unitholders is not required for their disposal (consent requirement). The revised definition of the FGR no longer includes the consent requirement as a distinguishing criterion for the independently taxable FGR. Instead, alignment is sought with the terms 'investment fund' and 'fund for the collective investment in transferable securities' used in the Financial Supervision Act (*Wet op het financieel toezicht*; 'WFT'). Only investment funds within the meaning of the WFT and funds for collective investments in transferable securities can be subject to corporate income tax. In short, these are funds that focus on a broad public; family funds fall outside this definition. For the corporate income tax liability, it is additionally required that the units in such funds are freely negotiable. If the participations can only be sold to the fund itself (redemption option), then the participations are deemed not to be freely negotiable, as is currently the case.

Transitional rules FGR

The change to the definition of FGR for corporate income tax purposes means that certain funds are no longer independent corporate income taxpayers. The transitional rules therefore stipulate by fiction that – for Dutch tax purposes – an FGR that no longer meets the definition of FGR as a result of the change as of January 1, 2025, disposes of all assets to its unitholders immediately prior to this. For Dutch tax purposes, the unitholders of such an FGR will also be independently subject to personal and corporate income tax with effect from January 1, 2025. In order to avoid immediate settlement, the transitional rules contain three facilities: (i) a transfer facility for the tax claim on the hidden reserves, tax reserves and goodwill present in the FGR, (ii) a share merger for certain unitholders and (iii) payment in installments over no more than ten years.

In addition, the unitholders are deemed to have disposed of their share in the FGR, resulting, in principle, in a final settlement, such as settlement of the substantial interest claim. Transitional rules are also provided for here. In many cases, the claim on the participation certificates can be transferred to the shares in the acquiring company via a share swap. In addition, a real estate transfer tax facility applies to this share swap. In order to avoid announcement effects with regard to this real estate transfer tax facility,

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the transitional rules for the real estate transfer tax will not be made available in situations in which, after publication of the original bill on September 19, 2023, 3:15 p.m., the FGR has come into being or property has been contributed in an existing FGR by joining unitholders after September 19, 2023, 3:15 p.m.

Changes to VBI regime

For investment institutions eligible for the VBI regime alignment is sought with the definition of investment institution or UCITS as referred to in the WFT. The change to the VBI regime aims to restrict access to the VBI regime to investment funds and UCITS that offer participation rights to a broad public or to institutional investors. This means that the existing options for using the VBI regime when investing private capital will no longer be available (family VBIs). VBIs with the legal form of a public limited company (NV) will be subject to corporate income tax with effect from January 1, 2025. VBIs with the legal form of an FGR will also be confronted with the aforementioned changes with regard to the FGR regime itself.

1.10 Revision of legal forms tax qualification policy (not part of the 2025 Tax Plan package)

As of 2025 the Legal Forms Tax Qualification Policy Act will adjust the qualification policy for (foreign) legal forms for Dutch tax purposes. These adjustments will mean the Netherlands is more internationally in step.

Codification Dutch qualification policy for foreign legal forms

The first adjustment is the codification of the Dutch qualification policy for foreign legal entities on the basis of the legal form comparison method, supplemented by two additional methods (the fixed method and the symmetrical method) if the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law. According to the existing Dutch qualification policy, for the qualification of a foreign entity, certain civil law characteristics are compared with those of Dutch legal forms, and that entity is treated for tax purposes in the same way as the Dutch entity with a comparable legal form. If the legal form of a foreign entity is not comparable to that of an entity incorporated or established under Dutch law, this method offers no solution. Therefore, the following additional methods will apply to such entities:

- (i) If they are established in the Netherlands, they are always regarded as non-transparent entities and therefore independently taxable (fixed method).
- (ii) If they are not established in the Netherlands, the qualification in the country of establishment is followed (symmetrical method).

The legal form comparison method and the two additional qualification methods are anchored in personal income tax, corporate income tax, dividend tax and withholding tax as much as possible.

Open limited partnership discontinued

The second adjustment is the discontinuation of the open limited partnership. As a result of this, the independent tax liability (for, among other things, corporate income tax) of the open limited partnership is terminated, and the fiction that the interest of the limited partner in the open limited partnership is regarded as a share. This has consequences for the assessment of similar foreign limited partnerships, i.e. that they also become transparent by definition. The transparency of the limited partnership has consequences for both personal and corporate income tax. In addition to the general partners, with effect from 2025 the limited partners will also be directly subject to personal or corporate income tax for their share in the results of the limited partnership. At the same time, the open limited partnership will be deemed to have stopped receiving taxable profit in the Netherlands. In principle, this fiction leads to a mandatory final corporate income tax settlement in respect of all hidden reserves, tax reserves and goodwill present in the business (profit on final settlement). However, transitional rules are provided for in

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the form of various facilities with the claim being transferred to the limited partners, and alternatively a payment in installments over no more than ten years. In addition, the limited partners are deemed to have disposed of their share in the limited partnership, resulting in principle in a final settlement, such as settlement of the substantial interest claim. Transitional rules are also provided for here. In many cases, the claim on the shares can be transferred to the shares in the acquiring company via a share swap. Additionally, a real estate transfer tax facility applies to this share swap if it concerns a real estate limited partnership. In order to avoid announcement effects with regard to this real estate transfer tax facility, the transitional rules for the real estate transfer tax will not be made available in situations in which, after publication of the bill on September 19, 2023, 3:15 p.m., the open limited partnership has come into being or property has been contributed in an existing open limited partnership by joining limited partners after September 19, 2023, 3:15 p.m. In this respect, the transitional rules for open limited partnerships are comparable to the transitional rules for open FGRs.

Open limited partnership was already transparent for withholding tax purposes in 2024

Rules have been provided for to ensure that if an open limited (type of) partnership in 2024 in principle has a withholding tax obligation in respect of dividends pursuant to the hybrid provision in the Withholding Tax Act 2021, it is nevertheless possible to 'look through' (*doorkijken*) the structure to the underlying participants. Whether there is a withholding tax obligation in respect of the relevant dividends must then be determined at the level of these underlying participants. It should be noted that these rules are limited to benefits in the form of dividends – and thus do not apply to interest and royalties Also important is that the rules only apply if the open limited (type of) partnership has a withholding tax obligation under the hybrid provision. The concession therefore does *not*, for example, apply if the open limited (type of) partnership has a withholding tax obligation due to it being established under the laws of a low-tax jurisdiction or it being resident there.

1.11 Follow-up Legal Forms Tax Qualification Policy Act

As a result of the Legal Forms Tax Qualification Policy Act (*Wet fiscaal kwalificatiebeleid rechtsvormen*; FKR see above), the rules for treating foreign entities for Dutch tax purposes will be codified as of January 1, 2025. To that end, several amendments to the Corporate Income Tax Act 1969 and the Personal Income Tax Act 2001 have been proposed, which will rectify editorial inaccuracies and unintended consequences of the FKR.

The main amendment relates to the interest deduction limitation against profit shifting. In connection with the FKR, as of January 1, 2025 limited partnerships and comparable foreign entities will, in principle, qualify as transparent for tax purposes. In the follow-up to this Act, it appears that, in short, these limited partnerships will nevertheless be treated as 'non-transparent' for the purposes of the interest deduction limitation. This amendment also applies to the concept of 'cooperating group'. Investments made through multiple limited partnerships will therefore be assessed as to whether there is cooperation between the limited partnerships, and not so much as to whether there is cooperation between the underlying investors.

Finally, in the context of the FKR an internet consultation on the Foreign Legal Forms Comparison Decree was held earlier this year. The Decree would be the basis for determining whether foreign legal forms are comparable with Dutch legal forms. For the sake of completeness, please note that so far no final version of the Decree has been released.

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2 Minimum Taxation Act (Amendment) Act 2024

The Minimum Tax Act 2024 took effect on December 31, 2023. The Act introduced a minimum tax in order to ensure that multinationals and domestic groups with a turnover of EUR 750 million or more effectively pay at least 15% tax on their profits. The Act implements the EU Minimum Tax Directive that is based on the OECD model rules, as adopted by the Inclusive Framework on BEPS (IF). After the model rules were published, the IF published Administrative Guidance in February 2023, July 2023, December 2023 and June 2024. The OECD rules on minimum taxation do not directly affect the Dutch legal system. In order to ensure the OECD model rules on minimum taxation are consistently applied and to prevent discrepancies in how these rules are applied in other states, various elements of the Administrative Guidance have already been enshrined in law. In the bill on the Minimum Taxation Act (Amendment) Act 2024, the remaining elements in the February 2023 and July 2023 Administrative Guidance and several elements in the December 2023 Administrative Guidance, for which a statutory basis is needed, will be included in the Minimum Tax Act 2024. Several technical changes have also been proposed. The other elements in the December 2023 and June 2024 Administrative Guidance still have to be reviewed.

Qualifying interest

The concept of 'qualifying interest' was further defined in the July 2023 Administrative Guidance. The proposed measures will implement these latest changes. The aim is to treat investments in tax transparent entities the same for the purposes of the Minimum Tax Act 2024, irrespective of the reporting standard used by the investor for those investments.

Qualifying marketable tax credits

The (original) OECD model rules stipulated that qualifying refundable tax credits can be regarded as qualifying income (and thus are not deducted from the relevant taxes), because they are comparable to (government) subsidies. In the July 2023 Administrative Guidance, qualifying marketable tax credits, as well as qualifying refundable tax credits, are taken into account as qualifying income. The proposed measure is in line with the Administrative Guidance.

Currency conversion

In the July 2023 Administrative Guidance, the OECD published rules on the conversion of amounts to another currency. The proposed measure will see the published OECD conversion rules included in the Minimum Taxation Act 2024.

Domestic additional tax

In response to, among other things, practical questions, it is proposed to provide for a further elaboration of the qualifying domestic additional tax and the qualifying domestic additional tax safe harbor rule in order to bring them in line with the July 2023 Administrative Guidance. For example, the domestic additional tax will also apply to group entities based in the Netherlands that are members of a joint venture group. Subject to conditions, the domestic additional tax in the Netherlands should be calculated based on the local financial reporting standard. A tie-breaker rule has also been provided for in the event the financial reporting for all the Dutch-based group entities is prepared on the basis of more than one local financial

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reporting standard. The proposed provisions are intended to ensure that the domestic additional tax can be regarded as a qualifying domestic additional tax.

Carried-forward excessive negative tax expenditure

In accordance with the February 2023 Administrative Guidance, if the additional tax percentage is higher than the minimum tax rate, the negative sum of the adjusted relevant taxes will be deferred as carried-forward excessive negative tax expenditure.

Excluded income based on genuine presence

For the purposes of calculating the surplus profit (the base on which the additional tax is charged), the excluded income based on genuine presence is deducted from the net qualifying income for the reporting year in a state. The July 2023 Administrative Guidance includes additional rules for determining the amount of the excluded income. The proposed changes are in line with this. For example, in the case of an operating lease, the lessor will have the option, subject to certain conditions, to include the value of a tangible asset located in the same state as the lessor in the determination of the excluded income based on genuine presence. Additional rules have also been provided for under which, subject to certain conditions, mobile workers and mobile tangible assets may be taken into account for the purposes of this provision.

The temporary Country-by-Country Reporting Safe Harbor rule

In the December 2023 Administrative Guidance, the OECD elaborated on and published additional rules on the temporary Country-by-Country Reporting Safe Harbor rule. Firstly, groups that fail to prepare a qualifying Country-by-Country report will be given the option to invoke the temporary Country-by-Country Reporting Safe Harbor rule. This is, for example, important for domestic groups, because they are not obliged to prepare a qualifying Country-by-Country report. Measures covering structured hybrid arrangements will also be introduced. It has become apparent that it is possible to use qualifying differences between tax regulations and the financial reporting and so become eligible for the application of the temporary qualifying Country-by-Country Reporting Safe Harbor rule. The IF has agreed to combat such structures through rules that neutralize the qualifying differences. The proposed measure is in line with this. Of importance here is that there is no retroactive effect for this specific measure.

Procedural law aspects

As a result of the effect of the deadlines for filing the additional income information return and the notification, a (shortened) financial year ending before March 31, 2025 could lead to both group entities and national tax authorities having to accelerate their preparation, filing and processing of the aforementioned documents. This accelerated preparation, filing and processing is not in line with the implementation deadline required by national tax authorities. In the December 2023 Administrative Guidance the OECD therefore published additional rules ensuring that the filing date for the additional tax information return and the notification in such cases does not end before June 30, 2026. The proposed measure is in line with this. It has also been proposed to extend the tax return deadline, the payment deadline and other procedural law deadlines for these situations.

Retroactive effect

The government has decided to as much as possible grant retroactive effect to December 31, 2023 to the proposed substantive amendments of the Minimum Tax Act 2024 that follow from the Administrative Guidance published in 2023, and to have the amendments apply with regard to reporting years commencing on or after December 31, 2023. This will, in principle, apply to all the amendments. An exception applies to four measures; they will apply for the first time with regard to reporting years commencing on or after December 31, 2024:

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1. The measure related to the calculation of the amount in domestic additional tax if the financial reporting of all Dutch-based group entities has not been prepared on the basis of the same local financial reporting standard.
2. The measure related to recognizing, under certain conditions, carried-forward excessive negative tax expenditure.
3. The measure related to the allocation of qualifying payroll costs and qualifying tangible assets for the purposes of the excluded income based on genuine presence, if there is an ultimate parent entity that is subject to a deductible dividend regime.
4. As stated above, the provision that is aimed at combating the use of structured hybrid arrangements for the purposes of applying the temporary Country-by-Country Reporting Safe Harbor rule.

3 Withholding taxes

3.1 New group concept for the Withholding Tax Act 2021: qualifying unit

Under the Withholding Tax Act 2021, the levying of withholding tax is subject to the condition that the entities paying the interest, royalties or dividend (withholding agents) and the recipient entity (beneficiary) are affiliated. This affiliation is assessed on the basis of a qualifying interest. Such a qualifying interest may be held at the individual level, but also jointly by group entities if there is a cooperating group as referred to in Section 10a(6) of the Corporate Income Tax Act 1969.

The government has received indications that, in practice, the current concept of cooperating group does not really suit the objectives of the Withholding Tax Act 2021. It is therefore proposed to introduce a new group concept in withholding tax to replace the current group concept. The proposed new group concept is referred to as ‘qualifying unit’. According to the proposed legislative text and explanatory notes, there is a qualifying unit if entities act jointly with as main purpose or one of the main purposes being to avoid the levying of withholding tax at one of those entities. The qualifying unit must also apply for the purposes of the rebuttal rule in the hybrid provision, which, according to the proposal, will have a slightly different structure.

The burden of proof for the existence of a qualifying unit rests on the tax inspector. The tax inspector must state the facts, and if these are disputed, convincingly demonstrate that there is a qualifying unit. This division of the burden of proof must also apply under the revised rebuttal rule in the hybrid provision. The measure must take effect as of January 1, 2025.

3.2 From optional to mandatory withholding exemption

It is proposed making the optional withholding exemption in Section 4(1) Dividend Withholding Tax Act 1965 (DWTA 1965) a mandatory withholding exemption. Currently, withholding agents can opt to not withhold any dividend tax, but this leads to disadvantages for shareholders, such as loss of liquidity and interest. Moreover, the option to credit any withheld dividend tax has been limited since 2022. Nowadays, withholding agents often have sufficient information to correctly apply the exemption. The government has therefore proposed ending the freedom to choose and make the withholding exemption mandatory.

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The conditions for the exemption remain unchanged. Shareholders may submit a notice of objection if the exemption was not applied when it should have been.

3.3 Retention of repurchase tax relief for dividend withholding tax purposes

Dividend withholding tax is in principle levied on the repurchase of shares, other than for temporary investment. The DWTA 1965 provides for several exemptions to this principle. One of these is the repurchase tax relief for listed entities. Currently, listed entities can, subject to conditions and up to certain limits, forgo levying dividend withholding tax if they repurchase their own shares. The repurchase tax relief for listed entities was set to end on January 1, 2025 as a result of an amendment that was adopted when the Lower House of Parliament voted on the 2024 Tax Plan. However, this will now be reversed so that the repurchase tax relief will be retained.

3.4 Clarification of registration date for dividend withholding tax purposes

With effect from January 1, 2024 several measures took effect to strengthen the tackling of dividend stripping. One of those measures concerns enshrining into law current policy on using the registration date as the moment to determine who is entitled to the income from listed shares. No substantive change is thus envisaged. The current legislative text raises practical questions about the scope of the scheme, i.e. whether, in addition to the moment at which the beneficiary to the income from the listed shares is determined, the scheme also (further) elaborates on the concept of beneficiary (for example in the case of usufruct). The latter is not the case. It is therefore proposed to clarify the measure that took effect on January 1, 2024, so that the scheme only indicates the moment at which the beneficiary to the income from listed shares is determined.

4 Personal and corporate income tax

4.1 Simplified direct side-step merger

Under civil law it is possible to have a legal merger without issuing shares (the so-called simplified parent-subsidiary-side-step mergers). The simplified side-step merger is the legal merger option whereby the shareholder/natural person directly holds all the shares in the capital of the merging companies and does not award any shares to the acquiring company pursuant to the Deed of Merger. In practice, it appears that the text of the various personal income tax, corporate income tax and dividend withholding tax schemes is not equipped for such side-step mergers, because the application of those schemes is based on a legal merger whereby shares are indeed awarded. Tax regulations therefore textually impede a simplified side-step merger. Substantively, there is no reason why this merger category should not be subject to tax relief. The text of the various Acts has therefore been amended to include simplified direct side-step mergers. In anticipation of this, approval had already been given in a policy statement that, as of March 19, 2024, the transfer facility for substantial interest purposes could – under conditions – also be applied to a side-step merger.

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4.2 Donation deduction for corporate income tax purposes and donating via the BV

Donations to public benefit organizations (in Dutch: ANBIs) will no longer be deductible for corporate income tax purposes in financial years beginning on or after January 1, 2025. Business sponsorship expenses will remain deductible. The provision regulating that no distribution to substantial interest holders will be presumed (donations by the BV) will also come to an end. This measure will take effect on January 1, 2025.

5 Personal income tax

5.1 Box 1 rates

For income from work and home in Box 1, the rate in the first bracket will be reduced. This should result in workers paying less tax on the first part of their income. However, the rate in second bracket will increase. In addition, the tax point for the top rate will rise. The rates for 2025 are:

	2025
1st bracket (up to and including € 38,441)	35.82% (state pension: 17.92%)
2nd bracket (up to and including € 76,817)	37.48%
3rd bracket above € 76,817	49.50%

In comparison, the rates in 2024 were:

	2024
1st bracket (up to and including € 38,098)	36.97% (state pension: 19.07%)
2nd bracket (up to and including € 75,518)	36.97%
3rd bracket above € 75,518	49.50%

5.2 Reduction of general tax credit

As of 2025, the maximum general tax credit will be reduced from EUR 3,362 to EUR 3,068. For Box 1 income above EUR 28,406 (provisional amount), the general tax credit will gradually be reduced by 6.337%.

5.3 Labor tax credit increased

As of 2025, the maximum labor tax credit will increase from EUR 5,532 to EUR 5,599. The amount of the labor tax credit is dependent on a person’s income from current employment. For employment income up

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to EUR 43,071 (provisional amount), the higher the income, the higher the labor tax credit. For income above that amount, the labor tax credit will decrease by 6.51%.

5.4 Top Box 2 rate back to 31%

As of 2025 the top rate for income from substantial interest in Box 2 will return to 31%. This thus reverses the increase to 33% in 2024 resulting from an amendment that was adopted when the Lower House of Parliament voted on the 2024 Tax Plan. The low substantial interest rate will remain at 24.5% for the first EUR 67,804 (2025 amount, for tax partners EUR 135,604).

5.5 No reduction of Box 3 rate

The tax on income from savings and investment in Box 3 will remain unchanged. Previous announcements had mentioned a reduction in the Box 3 rate.

5.6 Clarification of non-deductibility tenant charges shared workspace

Based on a judgment rendered by the Arnhem-Leeuwarden Court of Appeals on November 29, 2016 and on the parliamentary records, tenant charges for a shared workspace in a home labeled as a business asset are non-deductible. The legislative text will be clarified on this point.

5.7 Changes to transport expenses deduction specific medical expenses

To make the rules for the deduction of special medical expenses more feasible, and also from the perspective of simplicity, it has been proposed to:

- improve the deduction of travel expenses for visits to long-term patients;
- simplify the deduction of transport expenses by introducing a fixed amount.

5.8 Tax solution for single-earner issue

As of 2009, the payment of the general tax credit (GTC) to the partner with the lowest income who was born on or after January 1, 1963 has been decreased to 0%. Decreasing the payment of the GTC can make it more financially attractive for couples to remain on welfare rather than work, due to the way in which the welfare payments a couple receives are determined. As of 2012 a phasing out policy has therefore been used to calculate the welfare payments for couples: 200% GTC will gradually be decreased to 100% GTC. This decrease in welfare will take place more slowly than the decrease in the payment of the GTC to the partner with the lowest income for personal income tax purposes. Some single-earners will thus fall under the minimum income standard. So far, some of these households have been able to rely on additional welfare.

The government has now presented a tax solution for this problem. The tax solution consists – in short – of partially reintroducing the payment of the GTC to the partner with the lowest income who was born on or after January 1, 1963, subject to several additional conditions. This measure is expected to take effect

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on January 1, 2028. In anticipation of this tax solution taking effect, an amendment to the Participation Act is being prepared for the years 2025 through 2027, in order to accommodate the relevant households by means of a temporary scheme.

5.9 End to partial foreign taxpayer status (not part of the 2025 Tax Plan package)

Currently, employees who live in the Netherlands and who fall under the 30% ruling can make use of the partial foreign taxpayer status. This means that they are treated as non-residents/foreign taxpayers for the purposes of Box 2 (income from a substantial interest) and Box 3 (income from savings and investment), despite the fact that they live in the Netherlands. However, as of January 1, 2025 the partial foreign taxpayer status will end. Employees who were already applying the 30% ruling on December 31, 2023, can still benefit from the partial foreign taxpayer status through to 2026 under the transitional rules.

5.10 Decrease in general tax credit based on aggregate income (not part of the 2025 Tax Plan package)

As of 2025 the general tax credit will be decreased on the basis of the taxpayer's aggregate income. The aggregate income consists of income from savings and investment (Box 1), income from a substantial interest (Box 2) and income from savings and investment (Box 3) less any income that is subject to a protective tax assessment. The general tax credit is now only decreased on the basis of the income in Box 1. The measure is aimed at ensuring that the decrease in the general tax credit is applied to each taxpayer with the same aggregate income, irrespective of the composition of that income, and, within the income range in which the general tax credit is being decreased, to tax more heavily aggregate income predominantly made up of Box 2 and Box 3 income.

5.11 Formal registration requirement IACK to be replaced by substantive test, phased out (not part of the 2025 Tax Plan package)

As of January 1, 2025 the formal registration requirement for the income-related combination tax credit (*inkomensafhankelijke combinatiekorting*; IACK) will be replaced by a substantive test. This means that the IACK can be granted even if there is no joint registration at the same residential address, but the taxpayer and child do belong to the same household for at least six months in the calendar year. As of 2027 the IACK will be scaled back in nine steps so that it will be completely phased out as of January 1, 2035.

5.12 Reduction of maximum amount excessive borrowing (2024, not part of the 2025 Tax Plan package)

As of January 1, 2024 the maximum amount that can be borrowed from the own company was reduced from EUR 700,000 to EUR 500,000. The reference date is December 31, 2024.

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5.13 Reduction exemption for green investments Box 3 (not part of the 2025 Tax Plan package)

As of January 1, 2025 the exemption for green investments in Box 3 will be reduced to EUR 30,000 (for tax partners: EUR 60,000).

5.14 SME profit exemption to be reduced to 12.7% (not part of 2025 Tax Plan package)

As a result of the 2024 Tax Plan, the SME profit exemption will be reduced from 13.31% to 12.7% as of January 1, 2025. A further reduction to 12.03%, as announced in the 2024 Spring Memorandum and the Tax Policy and Implementation Agenda published on April 16, 2024 will not go ahead.

5.15 Phasing out of self-employed persons deduction (not part of the 2025 Tax Plan package)

The government is phasing out (at an accelerated pace) the self-employed persons deduction. By decreasing the deduction the government hopes to narrow the divide between how employers and self-employed persons are treated for tax purposes. In figures per year:

Year	Self-employed persons deduction
2024	€ 3,750
2025	€ 2,470
2026	€ 1,200
2027	€ 900

5.16 Gradual phasing out of credit for not having a mortgage or only having a small mortgage (‘Hillen credit’; not part of the 2025 Tax Plan)

The credit for not having a mortgage or only having a small mortgage (the ‘Hillen credit) gives taxpayers who have repaid all or almost all of their home mortgage and thus pay no or almost no interest, a deduction item that, until 2019, was equal to the imputed income from home ownership (*eigenwoningforfait*) (less any remaining interest). As of 2019 the Hillen credit is being phased-out in equal steps over thirty years. In 2025 the credit to be taken into account will thus only be 76.67%.

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6 Payroll taxes and social security contributions

6.1 Scaling back of 30% ruling largely reversed

The scaling back of the 30% ruling resulting from the adoption of an amendment when the Lower House of Parliament voted on the 2024 Tax Plan will largely be reversed. The scaling back to 10% over a period of five years has been canceled. Instead, as of January 1, 2027 the untaxed allowance for highly-skilled employees recruited from abroad will be set at a constant maximum percentage of 27%. For the years 2025 and 2026 the percentage for all incoming employees will remain at 30%.

The general salary threshold for applying the 30% ruling will be increased from EUR 46,107 to EUR 50,436. For incoming employees younger than 30 years of age with a Master's degree, the salary threshold will increase from EUR 35,048 to EUR 38,338.

There will be transitional rules for incoming employees who had already applied the 30% ruling before 2024. For them, a percentage of 30% will continue to apply until the end of the term of the ruling and the old (inflation-adjusted) salary thresholds will remain in effect.

6.2 Reparation tax loophole crew on seagoing vessels

It is not possible to effectuate the right of the Netherlands to tax crew of seagoing vessels who live in Belgium but who work entirely outside the Netherlands for a Dutch employer. Although the tax treaty does assign the right to tax to the Netherlands, the Payroll Tax Act 1964 does not include a tax point for levying tax. The proposed measure ensures that in the situation where the taxing right is exclusively assigned to the Netherlands under a tax treaty, the Netherlands can effectuate its taxing right in situations where the employment is performed entirely outside the Netherlands.

6.3 Concept of delivery van broadened

The law includes rules for delivery vans that are also made available for private purposes. It is proposed to harmonize the definition of delivery van for various taxes as of January 1, 2027 and to have this align with the vehicle registration register. This will mean that a small number of passenger cars will then qualify as a delivery van.

6.4 Final levy delivery van adjusted for inflation over past years

The final levy of EUR 300 for the private use of a company delivery van used alternately by several employees has never been inflation-adjusted since it was introduced in 2006. It is proposed to increase

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this to a fixed amount of EUR 438 per annum as of January 1, 2025 and to adjust the fixed amount annually for inflation as of January 1, 2026.

6.5 Changes to conditions for the international transfer of accrued pensions

The 2025 Tax Plan includes a proposal by the government to change the conditions applying in (tax) legislation and regulations for the transfer of accrued pension to a foreign pension administrator. The conditions have been brought into line with the judgments rendered by the Court of Justice of the European Union (CJEU). According to the CJEU, the Netherlands has unjustifiably restricted the free movement of workers by stipulating certain conditions for the international transfer of accrued pension capital, in particular the provision of security and a commutation prohibition at the acquiring pension administrator. These changes will mainly be relevant for employees who only worked in the Netherlands for several years and who later wish to transfer their accrued pension rights to a foreign pension administrator in order to, for example, centralize (different) pension sums at one pension administrator.

6.6 Withholding of payroll tax for employees of Dutch legal entities governed by public law who work abroad

In certain situations employees of a Dutch legal entity governed by public law (for example a university) are subject to Dutch personal income tax despite the fact that they work entirely abroad. In these type of situations no advance tax in the form of Dutch payroll tax is however levied. This will now be corrected.

6.7 Clarification and expansion of specific exemption for public transport passes

The 2024 Tax Plan expanded the specific exemption for travel by public transport. In practice, it appears that there is uncertainty about the final effects of this expansion. The 2025 Tax Plan therefore attempts to remove this ambiguity.

It is proposed to amend the terminology used in the current scheme, because there is a lack of clarity about what constitutes a public transport pass and what should be regarded as an off-peak pass and what the scope of the specific exemption is in this respect. It has now been clarified that if an employer gives an employee the option to also travel for free for business purposes or to travel at a discount at the employer’s expense, these costs fall under the specific exemption.

It is also proposed to no longer restrict the specific exemption to Dutch public transport.

6.8 Delegation provision Wages and Salaries Tax and National Insurance Contributions (Reduced Remittances) Act

R&D withholding agents (withholding agents that apply the remittance reduction for research & development work) can reduce their R&D costs because they are allowed to deduct some of those costs from the remittable payroll tax. The amount of the R&D remittance reduction is a percentage of the R&D tax base. It is proposed to have changes to the percentages take place by means of a ministerial regulation by the Minister of Economic Affairs. It will then no longer be necessary to amend the Wages and Salaries Tax and National Insurance Contributions (Reduced Remittances) Act.

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6.9 Reduction of discount on addition to income for zero-emission cars (not part of the 2025 Tax Plan package)

As of 2025 the discount on the addition to income for new zero-emission company cars will be reduced from 6% to 5%. The discount is applied up to a maximum list price of EUR 30,000. This cap does not apply to zero-emission cars with an engine that can be powered by hydrogen and cars with inbuilt solar panels. The discount will end as of 2026 and the addition to income for zero-emission cars will then be the same as the normal addition to income percentage of 22%.

6.10 Preventing tax no longer having to be paid (or tax not being able to be paid) by non-regular settlement of self-administered pensions or right of entitlement to periodic payments or compulsory retirement provision

In the past, a director-major shareholder (DMS) could accrue pension in their own private limited liability company (BV) and qualify for tax relief for this accrual, the 'self-administered pension' (*pensioen in eigen beheer*; PEB). The entitlement to the PEB is untaxed and the final benefit payments are taxed post-retirement (this is also referred to as the reversal rule). The PEB for the DMS has ended as of July 1, 2017 as a result of the Self-Administered Pensions (Phaseout) and other Tax-Related Pension Measures Act. Transitional rules apply for existing PEBs. Included under these transitional rules was that a DMS had until January 1, 2020 to convert the PEB into a compulsory retirement provision (*oudedagsverplichting*; ODV). Transitional rules also apply to the right of entitlement to periodic payments, which can no longer arise as of January 1, 2014. Such rights of entitlement to periodic payments can also be self-insured. A DMS should, in principle, pay out the accrued PEB, the accrued ODV or the accrued right of entitlement to periodic payments regularly from the date of retirement. However, if at any one time an action is taken in violation of the tax conditions (for example, using the PEB, the ODV or the right of entitlement to periodic payments as security), the entire pension entitlement, ODV or right of entitlement to periodic payments will be ineligible for tax relief at that time. In that case, tax should in principle then be levied on the fair market value of the overall entitlement.

However, if no tax has been levied and the Dutch tax authorities fail to notice this improper act before the deadline for imposing an additional tax assessment, it will no longer be possible to impose a tax assessment, not even in the event of a following improper act with the PEB, ODV or right of entitlement to periodic payments. If the entitlement is then not regularly paid out or provided to the beneficiary, but is for example waived, that entitlement can remain completely untaxed. The government considers this an undesirable situation that can encourage the creation of inappropriate arrangements. It is proposed that, in the event of a following improper act, for example, having the periodic payments not start on time, a new taxation should be created. This will remove the incentive to not regularly pay out the PEB, the ODV or the right of entitlement to periodic payments and these can then be taxed.

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7 VAT

7.1 VAT adjustment on services to immovable property (2026)

Currently VAT regulations do not offer the option of multi-year revision of the VAT deducted on services to immovable property. It is proposed to expand the current VAT adjustment scheme as of 2026 to cover services to immovable property that comply with a double test. This must firstly concern a service performed long-term for the immovable property and secondly the fee (exclusive of VAT) for the service must amount to at least EUR 30,000. This concerns, for example, renovations and major maintenance. The provision of materials, fixtures and fittings etc. that as a result of installation or assembly become part of the immovable property are also included in the scheme.

A VAT adjustment period of four financial years following the financial year in which the services were first used will apply to such immovable property services that were put into use after December 31, 2025. The measure has its roots in attempts to tackle situations where VAT savings are made, something the governments considers undesirable, as a result of the temporary VAT-taxed exploitation of homes (for example through short stay) after an investment, such as a renovation, and subsequently renting out these homes, exempt from VAT, as living space after the VAT recovery has become final.

As a result of the recent CJEU judgment rendered in the Drebers case on September 12, 2024 (C-243/23), it can be explicitly questioned whether this proposal is fully in accordance with EU law. It is possible that this proposal will be amended in response to this.

We refer to our previous memorandum.

7.2 End of reduced VAT rate for cultural goods and services (2026)

As of January 1, 2026 the current low VAT rate will no longer apply to most cultural goods and services. Specifically, this means that the 21% VAT rate will apply to:

- the supply and lending of books, newspapers, magazines and other publications (hard copies and digitally, including digital educational information);
- supplies of works of art and the importation of works of art and collectibles;
- providing opportunities for sport and bathing, insofar as the aim is profit (otherwise a VAT exemption generally applies);
- granting entry to museums, concerts, festivals, music and theater performances and lectures;
- granting entry to sports competitions;
- performances by performing artists.

The current low VAT rate for zoos, daytime recreation, fairs, circuses and cinemas will be retained and is excluded from the increase. It is questionable whether a sound and tax-neutral demarcation can be made between the various types of entertainment. It is also foreseeable that in the case of a combined offer of different services (for example, a festival with film screenings and theater) disputes will arise about whether there is one or more supplies and the right VAT treatment.

In the case of previous prepayments for services that will take place in 2026, transitional rules stipulate that the VAT rate applicable in 2026 will apply. With regard to ticket sales, this raises the question at which moment the supply takes place for VAT purposes.

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The Budget Day memorandum also states that a total of EUR 60 million per annum will be made available to educational institutions to compensate them for school textbooks and digital educational information that have become more expensive as a result of this measure.

7.3 End of reduced VAT rate for accommodation (2026)

The low VAT rate for accommodation will largely end as of January 1, 2026. Specifically, this means that the VAT rate for overnight stays in hotels, guest houses, short stay rentals and the rental of furnished vacation homes, mobile homes, tents etc. will rise from 9% to 21%. The current low VAT rate for camping grounds will be retained and is excluded from the increase. The explanatory notes contain clarifications for distinguishing between camping and accommodation, but the last word on this has yet to be spoken. It is possible that this distinction may not always be tax-neutral. It is also foreseeable that in the case of a combined offer of different services (for example, the provision of accommodation and food and drink) disputes will arise about whether there is one or more supplies and the right VAT treatment.

In the case of previous prepayments for services that will take place in 2026, transitional rules stipulate that the VAT rate applicable in 2026 will apply.

7.4 VAT on rental service charges and utility services (not part of the 2025 Tax Plan package)

When renting out property, landlords typically also charge tenants for utilities and make them pay service charges. Based on the VAT Property Decree published in December 2024, unlike in the past the service for which (service) charges are charged will be treated as an independent, (often) VAT-taxed service if the tenant by themselves or the tenants jointly have the option to choose their own supplier. It is not necessary for the tenants to actually make use of this option. In the case of the supply of utility services, there is, in any case, a separate VAT-taxed service (in addition to the rental) if the tenant can freely determine their use of utility services (heat, cold, etc.).

In order to give landlords the opportunity to change their service charges policy, if until now they have acted differently in accordance with the old policy, they may continue with that approach until January 1, 2025. After that date, the new policy will apply in full.

We refer to our previous memorandum.

7.5 Changes to small business scheme (not part of the 2025 Tax Plan package)

As of January 1, 2025 it will be possible throughout the entire European Union to use the small business scheme in a different Member State than the one where the business is established, subject to the two conditions that the total annual turnover of the business in the European Union is less than EUR 100,000 and the annual turnover of the business in the relevant EU Member State is less than the threshold set locally (a maximum of EUR 85,000). This new scheme is accompanied by several new administrative obligations for businesses who use the scheme.

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7.6 General VAT rate for agricultural goods and services (not part of the 2025 Tax Plan package)

As of January 1, 2025 the low VAT rate on supplies of certain agricultural goods will no longer apply. This change is related to the VAT agricultural scheme (exemption without recovery of input VAT) that was withdrawn on January 1, 2018. To avoid the cumulation of VAT in sectors and industries, a reduced VAT rate was introduced for supplies of goods and the provision of services that were generally mainly purchased by agricultural businesses. Since this cumulation no longer occurs, there is no longer any reason for maintaining a reduced rate for such products. This concerns legumes and cereals that do not qualify as food, propagating material, cattle (including horses), beets, agricultural and horticultural seeds, roundwood, straw, animal feed, flax and wool, both coarse and unwashed.

7.7 Place of service for online events (not part of the 2025 Tax Plan package)

As of January 1, 2025 new VAT rules will apply for the place where certain events are offered online. For B2C services this will generally be the place where the consumer lives or resides. For B2B services this will be the place where the customer is based.

7.8 No margin scheme for sale of certain works of art and collectibles (not part of the 2025 Tax Plan package)

As of January 1, 2025 new rules for the special margin scheme for art and collectibles will apply. If the reseller has purchased these products or imported them under application of the low VAT rate, they will no longer be allowed to use the margin scheme and VAT should be charged on the entire sales turnover in accordance with the normal VAT rules. This will, in particular, affect auction houses and dealers in art and antiques. Moreover, the low VAT rate for such works of art and collectibles will end as of January 1, 2026, so that the new rules will especially be relevant in 2025.

8 Procedural law amendments

8.1 Extended deadline for additional tax assessments imposed in respect of general tax credit

With regard to a taxpayer who was born before January 1, 1963, the combined tax credit will be increased to a maximum amount, subject to conditions. The law states that the tax inspector may impose an additional tax assessment beyond the general five-year deadline if too much tax credit has been paid out, because the aforementioned maximum amount is exceeded as a result of this.

It is proposed to expand the extended additional tax assessment deadline to cover the general tax credit, such that the tax inspector can also impose an additional tax assessment over a longer period if an amount

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in general tax credit was paid out to the partner with the lowest income, and this amount was either too high or should not have been paid out.

8.2 Penalty provisions General Customs Act brought into line with penalty provisions found elsewhere in the law

From now on, the competent Customs officer charged with imposing tax may also impose a penalty if an offense has been detected. In addition, after imposing a default penalty the Customs officer may also impose an offense penalty for the same offense, if new charges are laid. In accordance with the penalty provisions elsewhere in the law, the previously imposed default penalty will be credited.

8.3 Employment requirement in the Tax Collection Act canceled

The employment requirement corresponded to the same requirement in the transfer schemes for substantial interests inherited or gifted for personal income tax purposes. With the introduction of the Business Succession Tax Relief (Amendment) Act 2024, the employment requirement in this transfer scheme was canceled. This bill will mean that the corresponding requirement in the Tax Collection Act will also be canceled.

8.4 The setting of different rates for interest on tax due and the reimbursement of interest

The interest on tax due and late payment interest that taxpayers are reimbursed if tax is levied contrary to EU law must be at least the same as the rate at which a taxpayer could lend money from the bank (bank interest rate).

The current rate for the reimbursement of interest on tax due (6% as of July 1, 2023) is higher than the bank interest rate (3.57% as of April 2023). Because this may change in the future, the legislator has now made it possible for the government to have the interest on tax due to be reimbursed in the case of tax that was levied contrary to EU law to temporarily be in line with the bank interest rate.

8.5 Extended deadline for taxpayers or withholding agents will from now on also apply to co-perpetrators, perpetrators, instigators and accomplices.

In certain circumstances the tax inspector may impose additional or supplementary tax assessments over a period of 12 years after the end of the tax period or calendar year in which the tax debt arose. This is, for example, the case if the tax inspector imposes an additional tax assessment for foreign-sourced income, for example, business profits from advisory services provided abroad. In those cases, the tax inspector may also impose a penalty on the taxpayer or withholding agent within a 12-year period, provided the other requirements for imposing penalties have been met.

A shorter period applies for imposing penalties on parties other than the taxpayer or withholding agent, for example, perpetrators and co-perpetrators. The bill will end the difference in periods, because the tax inspector may impose a penalty of both the taxpayer or withholding agent and those other parties within a 12-year period, if that extended deadline for imposing additional or supplementary tax assessments applies.

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9 Business succession schemes

9.1 New measures

Business successions will be eligible for tax relief for personal income tax purposes (a transfer facility for the substantial interest inherited or gifted) and for the purposes of the Inheritance Tax Act (a 100%/83% exemption in the business succession scheme). The measures in the bill on the Business Succession Tax Relief (Amendment) Act 2025, which was launched for internet consultation on April 19, 2024 and is now part of the 2025 Tax Plan package, have an envisaged effective date of January 1, 2026, unless stated otherwise:

- For substantial interest holders, access to business succession tax relief will be limited with effect from January 1, 2026 to persons with *ordinary shares* with an *interest of at least 5% in the total paid-in capital.* This also applies for indirectly held shares. This measure can have a major impact. Persons who currently hold class shares, tracking stocks, membership rights in cooperatives, options, profit-sharing certificates or a notional substantial interest will have to re-examine their position because most of those interests will no longer qualify. Under the proposal, preference shares created as part of a phased business succession will only qualify if they constitute a conversion from ordinary shares with an interest of at least 5% in the total paid-in capital. The definition of a preference share will be tightened even further by means of a Memorandum of Amendment. There will also be transitional rules for tracking stocks so that current structures can be adapted before January 1, 2028. The dilution arrangement will continue in place.

- It is proposed to remove certain bottlenecks in the holding requirement and continuation requirement of the business succession scheme. At present, these requirements stand in the way of adjustments to the activities or restructuring that are desirable from a commercial point of view. The basic principle applying as of 2026 is that if there is no change in the entitlement to the business, there will be no new ownership period nor will the continuance requirement have been breached. With regard to the running of a business during the holding period for the gift or the inheritance, the government will relax the rules in cases where the business ceases operating due to government intervention. If there is reinvestment in a new company within three years, the ownership period will not have been interrupted. This is in accordance with the facility in the event of government intervention after the acquisition of the business/shares. In addition to this, as of 2025 the continuance requirement will be shortened from five to three years.

- The government believes that the business succession scheme in the Inheritance Tax Act is sometimes used improperly, for example because elderly people convert their assets into business assets (so-called 'walking frame' investments). This form of investment will be combated by requiring an (increasingly) longer period of ownership for state pension beneficiaries. The measure does not apply to businesses that a testator or gifter started within two years of reaching the state retirement age.

- Another form of undesirable use is using business succession tax relief more than once (double business succession scheme arrangements). This happens, for example, if parents gift the company to their children to qualify for tax relief then buy it back years later and subsequently gift the company again many years later so that they once more qualify for tax relief (double use). In order to tackle this alleged arrangement, an anti-abuse measure has been worked out that

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essentially means that if the same company is gifted twice, business succession tax relief may only be applied once.

- If the property that the gifters/testator makes available to the own company is transferred simultaneously with shares, the business succession scheme may also apply to the building. However, due to an omission, the (mortgage) debt that is transferred at the same time as the building is not taken into account for determining the amount of the business succession scheme exemption. It is proposed to rectify this omission.

9.2 Measures already taken (not part of the 2025 Tax Plan package)

The bill on the Business Succession Tax Relief (Amendment) Act 2025 is part of a larger package of measures on business succession tax relief. It is an updated version of the Business Succession Tax Relief (Amendment) Act 2024, which together with the other bills in the 2024 Tax Plan package, was adopted by the Lower and Upper Houses of Parliament at the end of last year. The following measures, most of which take effect as of 2025 (unless stated otherwise), have already been adopted:

- For the purposes of the business succession scheme and the transfer facility for substantial interest purposes ('TFSI'), as of 2024 immovable property leased to third parties is always legally regarded as investment equity capital. This means that such leased immovable property no longer qualifies for business succession tax relief.

- The 5% efficiency margin will be discontinued. This margin means that the invested equity capital in a company up to 5% of the business assets will also be regarded as business assets. Although it would be simpler for both businesses and the Dutch tax authorities if the TFSI and the business succession scheme were discontinued at the same time, the business succession scheme will now be discontinued as of January 1, 2025, because discontinuing it contributes to tackling tax avoidance arrangements. Due to the consequences for the way in which the Dutch tax authorities operate, it is only possible to discontinue the TFSI at a later date. The effective date for the TFSI is foreseen at a date to be determined by Royal Decree, but this is not expected to be before January 1, 2028.

- Operating assets that are used partly in the company and partly for private purposes (optional assets) will only qualify for the business succession schemes insofar as they are actually used within the company. In order to avoid excessive implementation and administrative expenses, this will only apply to assets with a value of at least EUR 100,000 (inflation-adjusted) at the time they were acquired and which are used for at least 10% for non-business activities. This threshold means that in practice it will mainly be immovable property, aircraft, cars and vessels that are also used privately that will fall under the measure.

- The employment requirement in the business succession scheme for personal income tax purposes will be canceled, because this condition appears to be ineffective. The legislation does not provide any quantitative or qualitative interpretation of the concept of employment. This makes it relatively easy to meet the requirement, for example by performing only a limited number of activities. As such, the employment requirement has little effect. At the same time, the employment requirement sometimes rules out real business transfers because someone has not been formally employed long enough. The employment requirement will be replaced by an age requirement. For the purposes of the personal income tax transfer facility and the gift tax facility, gifts can only be used if the recipient is 21 years or older. Exceptions are possible.

- The exemption in the Inheritance Tax Act will, on the one hand, be expanded and, on the other, scaled back. The 100% exemption will be increased to up to EUR 1.5 million in business assets

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(currently approximately EUR 1.3 million). For everything above that 75% will be exempt (currently 83%).

- The condition in the dilution arrangement (interests between 0.5% - 5% arising from dilution as a result of inheritance or marriage) in the business succession scheme and the TFSI that an indirect interest of at least 0.5% must be held, will end for situations where the acquirer is a blood relative or relative by marriage in the direct descending line. Further, eligibility for the business succession scheme will be expanded to include small shareholdings (Box 3 interests), provided the gifter or testator together with (a very wide circle of) family members of the first family shareholder holds an interest of at least 25% in a business. Because these measures may constitute State aid, the effective date will be postponed until a date to be determined by Royal Decree and the European Commission will first be asked for approval.

10 Real estate transfer tax

10.1 Rate

The 2025 Tax Plan package contains various proposals to change real estate transfer tax. For example, as of January 1, 2025

- the acquisition of economic ownership via a key transfer statement will be excluded as acquisition, subject to conditions; and
- the 2% rate for homes, the first-time buyers' exemption and the return scheme for open market private sales (*terugkeerregeling voor VoV-woningen*) will also apply if only the economic ownership is acquired (and the other conditions have been met).

In addition, it has been announced that as of January 1, 2026 the rate for homes purchased by - in short - investors will be reduced to 8%.

The extent to which the rate differentiation in real estate transfer tax is effective has also been looked into. The government will respond to this soon. In addition to the evaluation of the Real Estate Transfer Tax (Differentiation) Act, an implementation assessment is currently being carried out on the increase in the general real estate transfer tax rate from 8% to 10.4% as of January 1, 2022. This implementation assessment is expected to be finished soon and the results can be included in the aforementioned government response.

10.2 Change to plot exchange exemption to combat unintended use

In order to prevent unintended use, it is proposed to tighten the conditions under which the plot exchange exemption applies for real estate transfer tax purposes. The changes cover the following elements:

- The plot exchange exemption no longer applies to the acquisition of homes, the parcel of land on which they are erected and any associated appurtenances. However, under the plot exchange exemption agricultural company accommodation can be acquired without being subject to real estate transfer tax.

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- The plot exchange exemption no longer applies to the acquisition of other buildings and the parcel of land on which they are erected, unless those buildings are commercially operated for agricultural purposes (the agriculture requirement).
- For buildings that comply with the agriculture requirement and thus are eligible for the plot exchange exemption, the commercial agricultural operation must be continued as such for at least 10 years (the continuance requirement).
- If the continuance requirement is not met, real estate transfer tax will be payable, except if the continuance requirement is not met due to the fact that a building is withdrawn from agricultural use as a result of government policy on the development and conservation of nature and landscape.
- With regard to undeveloped land, the measure does not entail any limitation of the current scheme. The agriculture requirement and thus the continuance requirement do not apply to undeveloped land.

10.3 Treatment of real estate share transactions (not part of the 2025 Tax Plan package)

VAT is normally payable on the supply of – in short – new Dutch immovable property. Such transactions are exempt from real estate transfer tax (concurrence exemption). No VAT is payable on the acquisition of shares in legal entities that own such new Dutch immovable property (real estate entities). In some cases, no real estate transfer tax is payable either. This is the consequence of case law of the Dutch Supreme Court from 2010, in which it was ruled that the concurrence exemption can also apply to share transactions. The government no longer considers this desirable and has taken the following measures:

1. As of January 1, 2025 the concurrence exemption will, in principle, no longer apply to the acquisition of shares in a real estate entity.
2. The scope is however limited to new immovable property and/or building land that is **not** used for more than 90% for VAT-taxed purposes for two years after the acquisition of (> 1/3 of) the shares of the real estate entity. This means that:
   - the acquisition of (> 1/3 of the) shares in the real estate entity is exempt from real estate transfer tax if 90% or more of the underlying property is used for VAT-taxed purposes during the aforementioned two-year period (e.g. in the case of VAT-taxed leasing of commercial property);
   - the acquisition of (> 1/3 of the) shares in the real estate entity is not exempt from real estate transfer tax if less than 90% of the underlying property is used for VAT-taxed purposes during the aforementioned two-year period (e.g. in the case of VAT-exempt housing rental).
3. If the acquisition of the shares in the real estate entity is nevertheless taxed, the real estate transfer tax payable is 4% instead of 10.4%.
4. As a result of transitional rules, the measure does not apply to projects where the acquirer and the vendor agreed the acquisition in writing before 3:15 p.m. on September 19, 2023, the request to disregard the measure was made within three months of January 1, 2024, it is plausible that the agreement was not concluded for the main purpose of becoming eligible for the concurrence exemption and the shares are acquired before January 1, 2030.

10.4 Change to division exemption (not part of the 2025 Tax Plan package)

On April 8, 2024 a proposal to change the division exemption in real estate transfer tax was published and launched for consultation (see our memorandum of April 10, 2024). The new division exemption is, on the one hand, more limited than the current facility, because it has been made subject to the conditions that the property must be transferred as part of a business, that the business must be continued for three

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years and that the acquired shares must also be held for three years. This will make it more difficult to separate business units with a view to a sale (carve-out). On the other hand, a specific exemption will be introduced for so-called dispute divisions, for which no business requirement is stipulated. This will make it easier to set up personal holding structures and have (quarreling) shareholders of real estate companies go their separate ways. The change to these rules is expected to be included in the 2024 End-of-Year Decree.

11 Taxes and the environment

11.1 Change to rules on objections and appeals against MIA and VAMIL in accordance with EIA

The environmental investment allowance (*milieu-investeringsaftrek*; MIA) and the free depreciation of environmental investments (*willekeurige afschrijving milieu-investeringen*; VAMIL) are tax schemes in the profit domain that are intended to contribute to the realization of environmental goals by means of innovations. The role of the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*; RVO) in respect of the MIA and VAMIL is currently limited to advising the tax inspector. The tax inspector ultimately imposes the tax assessment and thereby determines whether the deduction options will be accepted or (partially) rejected. Taxpayers may submit a notice of objection or appeal the tax assessment. This is arranged differently for the energy investment allowance (EIA). Under the current legal framework, the RVO decides – after a technical assessment – whether or not to issue a declaration stating there is an energy investment that is eligible for the EIA. This decision by the RVO is open to objection and appeal by means of a separate procedure. The proposed change will bring the application process for the MIA and VAMIL in line with that of the EIA. This means that after an environmental operating asset or environmental investment has been notified to the RVO, the RVO will review the notification. The RVO will decide whether or not to issue the declaration.

11.2 Energy tax on natural gas reduced

Energy bills for natural gas have risen in recent years due to an increase in the energy rates. The government's goal is to reduce energy bills for households and therefore it proposes to reduce the energy tax on natural gas up to a consumption of 170,000 m^3. The rate in the 1st and 2nd natural gas bracket (up to and including 170,000 m^3) will be reduced by 2.8 cent per m^3 in 2024, increasing to 4.8 cent per m^3 in 2030 (2024 price level).

Further, the 2025 key table for tax purposes shows that the energy tax rates for natural gas are to rise as from the 3rd bracket. A different picture emerges with regard to the electricity rates.

11.3 Energy tax reduction increased

Energy tax includes a reduced rate for shore-side power. The rationale behind this is that the reduced rate will act as an incentive for moored ships to use electricity instead of having their diesel generators generate their power supply. An adopted amendment provides for the reduced rate to be phased out in 10

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steps as of January 1, 2024. The amendment also provides for the income from this to be used to reduce the rate of the first energy tax bracket for electricity. The rate reduction is very small due to the modest tax revenue from the phasing out and the large number of electricity consumers. In light of this, alternatives were sought. In the 2025 Tax Plan it has been proposed to increase the energy tax reduction to EUR 521.81 (exclusive of VAT) with retroactive effect to January 1, 2024.

11.4 Introduction of separate energy tax rate for hydrogen

For energy tax purposes hydrogen is now taxed the same as its fossil fuel counterpart, i.e. natural gas. Consequently, there is no tax incentive to replace natural gas with hydrogen in energy applications. It is proposed to as of January 1, 2026 tax the energy consumption of hydrogen at a separate energy tax rate that is lower than the rate for natural gas. This will prevent energy tax from having an inhibiting effect on the energy consumption of hydrogen where it can serve as a substitute for natural gas.

11.5 End of netting scheme for low-volume users (2027)

In the Coalition Agreement it was agreed to end the netting scheme as of January 1, 2027. Feeding back self-generated renewable energy into the national grid is placing a strain on the energy system. Ending the netting scheme will act as a financial incentive for customers to use self-generated renewable electricity efficiently and at the same time to use this electricity as much as possible themselves rather than feeding it back into the national grid. The end of the netting scheme means the fed back electricity will no longer be netted against the amount of electricity supplied, thus ending the existing tax benefit.

11.6 Changes to CO_2 tax on industrial emissions waste incineration plants

Within the current CO_2 tax on industrial emissions, waste incineration plants receive a relatively large allocation of dispensation rights compared to other companies falling under this tax. By means of the 2025 Tax Plan bill, the government proposes increasing the CO_2 emission reduction target for waste incineration plants by reducing the amount of available dispensation rights for the year 2030 by 1 Mton. This intended tightening will be achieved with the proposal to introduce an adjustment factor for waste incineration plants.

Additionally, as of January 1, 2024 waste incineration plants fall under the EU ETS with regard to the monitoring, reporting and verification obligation. The CO_2 tax on industrial emissions closely aligns with the EU ETS. What this means for the CO_2 tax on industrial emissions is that as of January 1, 2024 (greenhouse gas) installations for the incineration of municipal waste would not only meet the definition of waste incineration plant, but also the definition of greenhouse gas installation. This will, among other things, cause problems with pricing. It is therefore proposed to as of January 1, 2025 regulate that if a greenhouse gas installation is also a waste incineration plant, the rules for waste incineration plants will apply. For the year 2024, the ambiguity will be explained in favor of taxpayers, which means applying the rate for greenhouse gas installations.

11.7 Waste tax reduced

Earlier this year the District Court Noord-Nederland ruled that the CO_2 produced by waste, which is released during incineration and is discharged via chimneys, may be deducted from the tax base of the

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waste tax. The bill Other Tax Measures 2025 clarifies that all substances, including CO_2, that are released via chimneys after incineration, are not eligible for deduction from the tax base.

11.8 Coal tax exemptions to end

Several exemptions apply to coal tax, including the exemption for dual use of coal and the exemption for using coal (input) to generate electricity. The government proposes ending the exemptions for dual use of coal and the non-energy use of coal as of 2027.

11.9 Changes to Climate Tax Measures for Greenhouse Horticulture

The Climate Tax Measures for Glasshouse Horticulture were published at the end of 2023. One of the measures concerns a CO_2 tax on glasshouse horticulture emissions. In the 2025 Tax Plan it is proposed to introduce several improvements to the CO_2 tax on glasshouse horticulture emissions, including a more specific definition of an energy supplier for glasshouse horticulture, keeping the rate for 2030 the same as the current level in legislation, although the rate in 2025 will be reduced somewhat, and in the coming year the government will further work out the possibilities of excluding green gas from the CO_2 tax.

It is also proposed to bring the limit for the various regimes for middle and large plants/installations in line with the total installed electrical power of no more than or more than 20 megawatt, instead of the thermal power.

12 2025 Tax Plan package - miscellaneous

12.1 Motor vehicle tax (BPM and MRB)

- The BPM has a separate rate table for plug-in hybrid electric vehicles (PHEVs). This table is stricter than the normal table because the difference between the tested and actual CO_2 emissions of a PHEV is much larger than for normal fuel cars. Recent amendments to EU regulations, intended to bring the measurement of CO_2 emissions more in line with the actual emissions, will lead to a significantly higher BPM rates for these vehicles as of 2025 and 2027. In response to this, it is proposed to no longer use the specific PHEV rate table and place PHEVs under the ordinary BPM table.
- A new temporary rate discount of 25% for zero-emission passenger cars will be introduced in the MRB between 2026 and 2030. This rate discount applies both to the state portion and the provincial surcharges. This discount will end as of 2030. As of 2026 all other zero-emission vehicles, such as EV delivery vans and EV buses, will be excluded from the MRB discount (these vehicles currently receive the same discount as passenger cars). In 2025 the discount will be the same as that agreed in the Climate Agreement (75% for zero-emission vehicles and 50% for plug-in electric vehicles).

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- The BPM and MRB use vehicle definitions that differ from the official registration in the vehicle registration register. For example, a vehicle is officially a delivery van, although it is regarded as a passenger car for tax purposes. It is proposed to as of 2027 follow the official vehicle registrations for tax purposes.

- As a result of the 2023 Tax Plan the BPM exemption for company delivery vans will end as of January 1, 2025. As of that date, the BPM tax base for delivery vans will be the CO_2 emissions. A specific fixed amount will be introduced for (heavy) delivery vans for which no CO_2 emission value has been set based on the Worldwide Harmonised Light Vehicle Test Procedure (WLTP).

- Vans to transport the handicapped are exempt from the BPM. If BPM is to be levied on normal vans as of 2025, pre-financing will often have to be provided, because the BPM is first paid by the importer and only later reclaimed by the handicapped individual. It is proposed simplifying this process so that pre-financing can be avoided.

- The MRB has a zero rate for buses if they run on natural gas or LPG and if they are mainly used for public transport. In cases where the bus registration is changed, it is not always clear where and as of which moment the zero rate applies. To ensure that the zero rate is applied correctly when there is a change in registration, it is essential that the owner who wishes to become eligible for this rate submits a request for this. Transitional rules have been provided for so that bus owners who already use the zero rate do not also have to submit a request. A request is thus only required for a bus that is registered after the 2025 Tax Plan takes effect.

12.2 Excises

- The current reduction in excise duties on fuels will be extended by a year through to 2025.

- The Excise Duty Act contains provisions for imposing supplementary tax assessments or for the refunding of excise duties on excised stocks in the event of an increase or reduction of the excise duties on fuel. These provisions have been around a long time but are almost always disregarded because they are unenforceable for Customs. That is why the relevant legislative articles are now being deleted.

12.3 Tax on games of chance

The tax on games of chance will be increased in steps. In 2025 the rate will increase from 30.5% to 34.2% and in 2026 to 37.8%.

12.4 Revenue tax rate BES islands

With regard to the BES islands, of importance among other things is that it is proposed to increase the revenue tax rate, which has remained unchanged since it was introduced in 2011, from 5% to 7.5% as of January 1, 2025. Instead of profit tax, a revenue tax is (also) levied on the BES islands, the purpose of which is to tax distributions (of profit) from entities to the beneficiaries at such an entity. From an international perspective, the rate of this tax is extremely low and will therefore be increased; also in order to do justice to an even distribution of the tax burden between entrepreneurs who carry on a business or profession whereby profit is subject to personal income tax.

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13 Other tax developments

There are a number of other relevant tax-related developments that are not part of the 2025 Tax Plan package. We will address some of these briefly below.

13.1 Directive to prevent misuse of shell entities

On December 22, 2021 the European Commission published a proposal for a directive laying down rules to prevent the misuse of shell entities and arrangements for tax purposes. This proposal stems from a communication issued by the European Commission on May 18, 2021 entitled Business Taxation for the 21st Century. The directive provides for the Anti-Tax Avoidance Directive (ATAD) and the Directive on Administrative Cooperation to be amended. The directive, also referred to as ATAD3, contains a list of features ('gateways') for identifying entities that lack minimum substance. Entities that meet all three gateways and that cannot make use of a carve-out or exemption, are regarded as high-risk entities and must report on their substance in their annual tax return. Entities that do not meet all the substance requirements referred to in the directive are presumed to be shell entities (also known as conduit companies). These types of entities will be denied a number of tax benefits available under directives and tax treaties, unless they are able to refute this presumption. The data reported by entities falling under the scope of the directive will automatically be exchanged between Member States and may be subject to tax audits. The final text of the directive that Member States will ultimately have to implement still has to be adopted.

13.2 EU Directive on Information Exchange in the Digital Platform Economy (Implementation) Act (DAC7)

On March 23, 2022 the Deputy Minister of Finance at the time, Mr. Van Rij, presented the bill on the EU Directive on Information Exchange in the Digital Platform Economy (Implementation) Act to the Lower House of Parliament. This bill regulates, among other things, the introduction of a reporting obligation for digital platform operators to provide the Dutch Tax and Customs Administration with information about certain users ('sellers') on their platform. This obligation stems from Council Directive (EU) 2021/514 (DAC7) and will apply for the first time to financial years commencing on or after January 1, 2023. The Lower House of Parliament adopted the bill on November 10, 2022 and the Upper House on December 20, 2022. The first reporting deadline was January 31, 2024. For sellers that were already active on the platform before January 1, 2023 (the 'existing sellers'), the first reporting deadline is January 2025. Only if the platform had already identified and verified the existing sellers by the end of 2023, should they have been included in the report for January 2024.

13.3 Implementation of Directive on Public Country-by-Country Reporting

On December 21, 2021 an EU directive came into force as regards the disclosure of income tax information by certain undertakings and branches. The EU Member States had until June 22, 2023 to implement this Directive. However, the Dutch implementation bill was only adopted by the Lower House

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of Parliament on July 6, 2023 in the form of an amendment to Book 2 of the Dutch Civil Code and its adoption by the Upper House on December 5, 2023 was a mere formality. The rules oblige Dutch companies that are members of a multinational group with a consolidated turnover of at least EUR 750 million in the two preceding financial years to annually prepare and publish a separate report on profit tax. On December 30, 2023 the domestic rules applying to financial years commencing on or after June 22, 2024 took effect. For most companies this means that they must publish a report for the first time with the Dutch Trade Register no later than December 31, 2026, for the 2025 financial year.

KPMG Meijburg & Co
September 17, 2024

The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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