

## Introduction

Within the scope of the 2012 national budget proposal, a large number of tax measures were presented to the Lower House. Unless indicated otherwise, the proposed measures are scheduled for implementation on 1 January 2012.

In this memo, we will describe the main tax proposals for 2012 in relation to personal income tax, wage tax and social security contributions, corporate income tax, a number of indirect taxes, real estate transfer tax and formal tax law.

## Personal income tax

### *Personal income tax and social security contribution rates 2012*

The new personal income tax and social security contribution rates for 2012 will be as follows:

Income In excess of	But less than	2012 rate
-	€ 18,945	33,10 %
€ 18,945	€ 33,863	41,95 %
€ 33,863	€ 56,491	42,00 %
€ 56,491	-	52,00 %

Main item that will change in the personal income tax landscape is the introduction of a so-called 'vitality savings scheme', replacing the current life course savings scheme and salary savings scheme. In addition, a number of tax credits will be indexed.

### *Self-employed entrepreneurs' deductions*

Dutch tax law already provides for a facility meant as an incentive for self-employed entrepreneurs. At present, this deduction is high for low profits and decreases as profits increase. This will change to the extent that a fixed deduction of €7,280 will be introduced for self-employed entrepreneurs.

The maximum addition to the fiscal old-age reserve will be reduced by € 2,500 to € 9,382.

## Wage tax and social security

### *30% ruling revisions*

With effect from 2012, there will be a considerable restriction for applying the 30% ruling for foreign workers. Foreign workers residing within a distance of 150 kilometres of the Dutch border will no longer qualify as foreign workers for the 30% rule. Also, workers having lived and worked abroad for a period of less than 25 years will no longer qualify for the 30% ruling once they return to the Netherlands. In addition, the "specific expertise" criterion will be replaced by a mere salary criterion of €50,619 (exclusive of the 30% allowance). The 30% ruling can be applied to PhD students taking up employment in the Netherlands after having obtained their doctoral degree, with more modest salaries.

### *Company cars*

A joint statement of an employee and an employer declaring that a company van is used for business purposes only will serve to prevent a taxable addition to the employee's taxable wages (in kind). The Dutch Tax Authorities will monitor such business use on the basis of camera supervision at an ad hoc basis. Strict sanctions will be imposed in the event of non-compliance with the rules.

The reduced percentages for the addition to taxable wages in relation to the private use of company cars (0%, 14% and 20%) will be maintained but the criteria will be tightened.

### *Employment bonus for older employees*

The current additional employment tax credits for elderly employees will be replaced by a €3,000 employment bonus effective January 1, 2013. It will apply to all employees having reached the age of 61 by that date. In 2012, the late-retirement bonus will remain in force.

### *Changes to wage tax rebates*

The education wage tax rebate will also apply to specific non-Dutch educational institutions. The thresholds for applying the research and development wage tax rebate will be modified in a downward direction.

## Corporate income tax

### *Deduction limitation rule for acquisition holdings*

As already announced in the Fiscal Agenda, the 2012 Budget provides detailed proposals for disallowing interest expenses on excessive debt obtained by a Dutch company that acquires a Dutch target and subsequently includes it in a fiscal consolidation (fiscal unity or merger). Under the proposed rules, interest expenses incurred on acquisition debts will be deductible against the stand-alone taxable income of the acquirer only. In essence, for the purpose of these new rules, the fiscal unity is disregarded.

The new legislation does not distinguish between creditors: it applies to interest expenses incurred on both external (e.g. banks) and internal loans. The proposed rules do not apply:

- If and to the extent interest expenses do not exceed €1,000,000 (only the excess would be limited in terms of deduction), or
- If and to the extent the (tax) debt-to-equity ratio of the fiscal unity does not exceed 2:1.

If and to the extent that the Dutch acquiring company (and its consolidated subsidiaries that were already included in the fiscal unity) have sufficient taxable income to offset the entire interest expense, the new rules have no adverse consequences.

Please note that the debt-to-equity ratio of the fiscal unity is determined on the basis of the tax balance sheet of the fiscal unity. As an acquirer typically pays a premium for the shares (goodwill), which is not reflected in the tax books of the target, the tax equity of the fiscal unity is normally lowered by this difference – effectively reducing the equity for this ratio test. The new legislation allows to add-back this goodwill, subject to a proportional 10-year write off to mitigate this effect.

Under the proposals, any interest expense related to an acquisition that is disallowed for deduction can be carried forward to following years, subject to the same limitations applicable in that year.

Please note that the proposed rules only apply to acquisitions that take place as per January 1, 2012.

### *A territorial tax system for foreign branches*

The proposal introduces a territorial tax system for (active) foreign branches. Currently, income from a foreign branch is included in the Dutch taxpayer's worldwide income, followed by a tax relief for foreign corporate income tax (branche exemption). Under the current system, foreign losses are tax-deductible in the Netherlands, albeit subject to a recapture in case of future profits.

Under the new proposed rules, foreign results will no longer be included in the worldwide profit of the Dutch taxpayer. This is irrespective of whether the branch is subject to any tax. Basically, a branch will then have the same beneficial treatment as income on shares under the Dutch participation exemption. The proposed rules imply that foreign branch losses cannot be deducted from the Dutch profit. If a branch is terminated, the foreign losses incurred will nevertheless become deductible, subject to certain conditions (comparable to the liquidation loss rules for participations).

### *Stricter rules for foreign corporate substantial interest holders*

Under current rules, foreign entities holding a substantial (broadly 5% or more) interest in a Dutch company may become subject to Dutch corporate income tax on dividend and capital gains derived from the Dutch shareholding if such interest held is not part of a business. Often, tax treaties prevent Dutch tax on such income.

Pursuant to questions raised by the European Commission on the discriminatory nature of these rules, the new legislation now proposes to curb the application of these rules. For these rules to apply, a new requirement will be that the (foreign) taxpayer needs to hold the substantial interest with the primary aim (or one of the primary aims) of avoiding the levy of Dutch income or dividend withholding tax. In the explanatory notes reference is made to 'wholly artificial arrangements' as seen in EU case law. The suggested approach is expected to be in line with current policy from the Dutch tax authorities.

### ***Dividend withholding tax on distributions made by cooperatives used in abusive situations***

The Dutch cooperative is an entity that is commonly used in international structures for the avoidance of dividend tax. In addition to the anti-abuse proposal above, it is also said that in abusive situations, distributions made by a cooperative will become subject to Dutch dividend withholding tax.

The newly proposed rules seem to codify existing Dutch tax authorities practice. Further explanation is expected during coming discussions in Dutch parliament.

### ***Stimulating Dutch R&D by introducing a new R&D deduction facility***

In the 2012 Budget, a research & development deduction facility is introduced. The aim of this facility is to decrease the costs relating to R&D (excluding wage costs) and to further stimulate innovation in the Netherlands. Detailed legislation with respect to this facility will be published separately in the coming months. Dutch Government already noted that a budget amounting to € 250m for 2012 increasing to € 500m will be available as of 2015.

## **Indirect taxes**

### ***VAT adjustment for private use of company car***

As per July 1, 2011, the method for determining the VAT adjustment for the private use of a company car was already amended. This new method will now be codified. Whereas, in the past few years, a calculation basis was applied that tied in with the bases for deemed income for wage tax and income tax purposes, the new rules provide for a separate calculation method. The VAT adjustment applies to both employees and self-employed individuals. Contrary to the rules applicable to wage tax and personal income tax, travel to and from work qualifies as private use. As a rule, actual data including mileage and costs will form the basis for determining the VAT adjustment.

However, as this will lead to a considerable administrative burden on employees and entrepreneurs, it will be allowed to use a notional amount as the basis for the VAT adjustment at

the end of the year. This amount will be 2.7% of the car's list price.

### ***Real estate transfer tax***

The temporary real estate transfer tax reduction that is applicable since 15 June 2011 will be codified to the extent that it will remain in force until 1 July 2012.

### ***Vehicle tax ('BPM') and Road tax***

From July 1, 2012, the upper CO2 emission limits for deemed income from company cars, vehicle tax and road tax will be gradually reduced. The new proposal provides for a transition scheme.

### ***Simplified ABC transactions***

ABC transactions are used in large numbers for intra-community supplies of goods. Accounting for such transactions has to be requested separately from the tax authorities. With effect from 2012, they may be settled through the regular VAT returns.

### ***Foreign lease cars***

In the past, there was uncertainty as to whether foreign lease cars made available to Dutch residents were subject to vehicle tax. The European Court of Justice has ruled that Dutch taxation in the form of a lump sum, upon first use in the Netherlands, is not allowed. As from 2012, vehicle tax will be charged on the basis of the period in which the car is used, provided that such period is temporary, with the maximum period being set at four years.

## **Formal tax law**

### ***New period for tax interest***

Whenever the tax authorities impose a tax assessment, it may include tax interest. Taxpayers who receive a tax refund according to their assessment may in certain cases also receive such interest.

The proposed system introduces several changes. Essentially, the tax inspector will charge tax interest if the tax assessment is imposed late as a result of any act or omission on the taxpayer's part. The tax authorities will pay tax interest if it takes them too long to impose an assessment that provides for a refund.

The period for which the tax authorities will charge tax interest will start on July 1 of the next year rather than on January 1 and lasts until the payment deadline. If a taxpayer files a return for 2012 on March 15, 2013, for example, and the tax authorities impose the 2012 assessment before July 1, 2013, no tax interest will be charged or due.

Following a request for an assessment, the tax inspector has eight weeks to impose the assessment. The reasonable period for imposing a provisional assessment after a tax return has been filed is set at 13 weeks. If the tax inspector does not meet that deadline, the interest on the period beyond that deadline will not be charged to the taxpayer.

#### ***Punitive penalties following default penalties***

The law makes a distinction between two types of tax penalties: a default penalty for minor infringements and the more severe punitive penalty for violations that involve intent or gross negligence. At present, it is impossible to impose two separate tax penalties for a single incident. If the tax inspector has already imposed a default penalty, the tax authorities cannot subsequently impose a more severe punitive penalty if intent or gross negligence on the part of the taxpayer is substantiated.

However, the new proposal now includes a rule that makes it possible to impose a punitive penalty following a default penalty if new grounds are put forward. This will serve as an alternative to the existing possibility of prosecuting the taxpayer in such cases. The proposed system is expected to be used primarily for penalties that are imposed for late payment or non-payment of some or all of a self-assessment tax, such as VAT and wage tax.