Meijburg & Co
Tax & Legal

Year end 2022 tax accounting considerations

Dutch tax measures for 2023

January 2023

Introduction

On September 20, 2022, the 2023 Tax Plan package has been presented by the Dutch government. On December 20, 2022, the Upper House of Parliament adopted the 2023 Tax Plan package based on which the legislation is considered substantially enacted.

Many of the proposed measures will take effect on January 1, 2023 or as from the financial year that starts on or after January 1, 2023. However, this could still impact the tax position of your 2022 financial statements as the proposed measures were (substantively) enacted before December 31, 2022.

This memorandum outlines the main tax accounting consequences of the 2023 Tax Plan under IFRS and the impact it may have on the tax position of your financials. Reference is also made to our memorandum released on September 20, 2022 for a complete overview and description of the tax measures of the 2023 Tax Plan. In addition, also some other tax developments relevant to the 2022 financial statements are described. In this memorandum it is assumed that the taxpayer has a book year equal to the calendar year.

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1. Corporate income tax

1.1 19% corporate income tax on first EUR 200,000

The step-up for corporate income tax purposes, i.e. the portion of the taxable amount that is subject to the low corporate income tax rate (the ‘SME bracket’) will be scaled back from EUR 395,000 to EUR 200,000 as of 2023. It has also been proposed to increase the tax rate in this bracket (the ‘SME tax rate’) from 15% to 19%. The normal corporate income tax will stay at 25.8%. This results in the following:

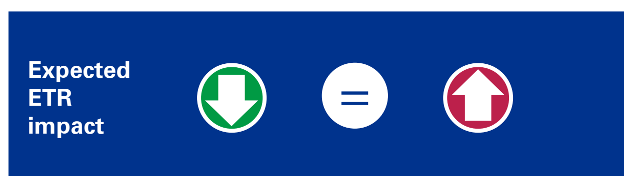
Taxable amount	Corporate income tax rate 2022	Corporate income tax rate 2023
≤ € 395,000	15%	
≤ € 200,000		19%
> € 395,000	25.8%	
> € 200,000		25.8%

If the fiscal year differs from the calendar year, then the corporate income tax rate will be a mixed percentage, depending on the days of the fiscal year in 2022 and the days of the fiscal year in 2023.

This will have an impact on the reported deferred taxes if the SME tax rate is used for the measurement of deferred taxes, as these will have to be remeasured since the tax rate changes have been (substantively) enacted.

The effect of the rate changes should generally be recorded in the profit and loss account. The effect of the rate change is recorded through OCI or directly in equity if the underlying item (or transaction) to which the temporary difference relates is previously recognized outside the profit and loss account.

Whether the increase of the SME tax rate and the reduction of the SME bracket affects the Effective Tax Rate (“ETR”) in 2022 depends on whether the company has recognized deferred tax assets (“DTA”, decrease ETR) or liabilities (“DTL”, increase ETR). In practice, DTAs and DTLs are often measured at the headline corporate income tax rate of 25.8%. In that case, there will be no impact on the ETR as this rate remains unchanged.



Actions needed

Assessment of deferred tax assets and liabilities including if the resulting deferred tax adjustment relates to items previously recognized outside the profit and loss account.

1.2 Payment discount to end (not part of the 2023 Tax Plan package)

The government intends to cancel, as of 2023, the payment discount that is currently granted for the payment, in full, of any corporate income tax payable that is paid before the first installments deadline, instead of a payment in installments.

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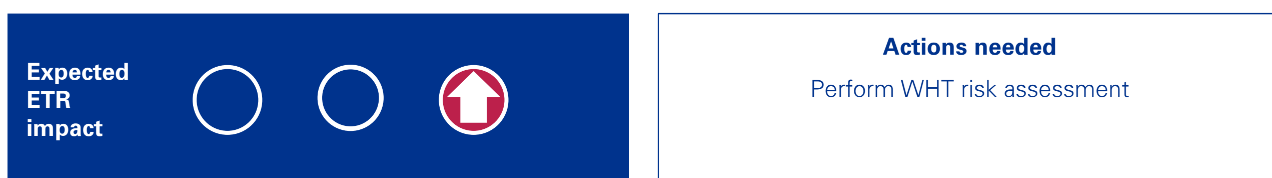
2. Withholding taxes

2.1 Withholding tax on dividends to low tax jurisdictions (2024, not part of the 2023 Tax Plan package)

Since the government wants to put an end to the Netherlands being used as a gateway to low-tax jurisdictions, a withholding tax on interest and royalties had already been introduced as of January 1, 2021. As of 2024, that tax will be supplemented with a conditional withholding tax on dividends. The measure will apply to cash flows to countries with a profit tax rate of less than 9% and to countries appearing on the EU blacklist, even if the Netherlands has a tax treaty with these countries. The withholding tax on dividends will be levied in addition to the existing dividend tax. If the conditional withholding tax on dividends cumulates with the dividend tax, the conditional withholding tax will be reduced by the imposed dividend tax. On balance, the withholding tax rate payable will therefore be the rate that is equal to the headline corporate income tax rate (25.8%). The Lower House of Parliament passed the bill on September 30, 2021 and the Upper House on November 2, 2021.

The ETR is negatively impacted by the withholding tax if no full credit is obtained elsewhere. Withholding taxes generally have to be recognized at the level of the entity receiving the dividend. The rules were enacted as of November 2, 2021 therefore impacting the financial statements as of 2021.



2.2 Private Member's bill on conditional final settlement of dividend withholding tax

On July 10, 2020 MP Snels (the Greens) submitted a Private Member's bill to the Lower House of Parliament introducing a dividend tax settlement obligation on cross-border relocations of the registered office, mergers, split-offs/divisions and share mergers, if as a result thereof the (deferred) profit reserves of the withholding agent established in the Netherlands is transferred to a jurisdiction that does not take over the Dutch dividend tax claim; the 'qualifying state'. Mr. Snels had submitted a Memorandum of Amendment on the bill on September 18, 2020, in which he also announced that more changes would follow. In response to criticism from the Council of State, he finally submitted a completely new legislative text and Explanatory Memorandum to the Lower House of Parliament on October 9, 2020. The Memorandum in response to the Report followed on March 12, 2021, in which Mr. Snels indicated that he saw no reason to withdraw his proposal or fundamentally change it, as did a supplemental Memorandum of Amendment. After Mr. Snels' departure from the Lower House, it was left to MP Van der Lee to defend the bill. On December 8, 2021 the proposal underwent major revision based on a 4th Memorandum of Amendment. It was proposed to introduce the measures with retroactive effect to 9:00 a.m. on December 8, 2021, the date on which the 4th Memorandum of Amendment was presented to the Lower House of Parliament. On May 20, 2022 the Council of State's negative advice on the 4th Memorandum of Amendment was published. On July 15, 2022 the Deputy Minister of Finance announced that the government had advised the Lower House not to pass the Private Member's Bill.

Based on the above, it is not expected that the Bill will be enacted in the near future and should hence not affect the 2022 financial statements.

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3. Other taxes part of 2023 Tax Plan

3.1 Conditional increase Mining Act fee

The government is introducing a solidarity levy in the form of a temporary increase in the duty rate in the Mining Act, so that it can use the revenue from this to compensate citizens for the sharp rise in energy prices. Specifically, a temporary duty rate of 65% has been proposed for that part of the turnover realized from the sale of natural gas at a price higher than EUR 0.50 per m3 of natural gas in the years 2023 or 2024, for natural gas extracted both on land and offshore.

Under the scheme now proposed, the license holder may use the average gas price during the year. This is calculated by dividing the turnover of a license holder by the number of units of natural gas extracted in the license area. What will also be looked into is whether, and if so how, hedge contracts – where the risks of market price fluctuations are hedged for a longer period – have to be included in the calculation of the increased duty rate. The current rate will continue to apply for turnover realized with an average price up to and including EUR 0.50 per m3.

The mining levies does not impact the ETR since they are not considered an income tax under IFRS and US GAAP.

3.2 Temporary solidarity contribution by fossil fuel sector

On November 1, 2022, Deputy Minister of Finance Mr. Van Rij presented a bill to the Lower House of Parliament that is meant to introduce a temporary solidarity contribution payable by, put simply, companies with activities involving crude oil, natural gas, coal and oil refinery (bill for Temporary Solidarity Contribution Act – in Dutch). These companies are expected to pay a contribution based on their profit for 2022. The contribution will be due by about 40 companies that generated above-average profits in 2022 because of the high energy prices. The idea is for the solidarity contribution to be implemented with retroactive effect for the year 2022.

The solidarity contribution is a separate levy; it will be imposed in addition to corporate income tax. The solidarity contribution will be due on any excess profit, i.e. the portion of the taxable profit for corporate income tax purposes (hereinafter: CIT profit) generated in the contribution year that exceeds 120% of the average taxable CIT profit for the four financial years preceding the contribution year (the reference profit).

The solidarity contribution will be due at a rate of 33%. It will be non-deductible for corporate income tax purposes.

When the bill results in a contribution being due, this will result in an increase of the current tax expense for 2022 and hence in an increase in the ETR as the temporary solidarity contribution should be considered an income tax for IFRS (and US GAAP) purposes.

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4. Other tax developments

4.1 Pillar Two

On December 20, 2021 the OECD published the Global Anti-Base Erosion (GloBE) Model Rules. These model rules, which are also known as Pillar 2, are part of the BEPS 2.0 project and offer governments a template for implementing the Pillar 2 agreement that was reached in October 2021 by 137 jurisdictions in the OECD/G20 BEPS Inclusive Framework.

The GloBE rules aim to impose a global minimum tax rate of 15% on multinational enterprises with revenues of EUR 750 million and above. On December 22, 2021 the European Commission published a proposed EU Directive to incorporate Pillar 2 into EU law. The directive generally mirrors the OECD model rules, but it is in broader in scope to include large groups that are based in just one EU member State (large-scale purely domestic groups). The proposed directive also clarifies the interaction between the Pillar 2 Income Inclusion Rule (IIR) and existing EU legislation on controlled foreign companies (CFCs). The EU Member States have reached agreement about the directive and it is envisaged to be implemented during 2023, having effect from 2024.

On Monday, October 24, 2022 the Dutch Ministry of Finance launched an internet consultation on the legislative proposal for the Minimum Taxation Act 2024 (Pillar 2).

With respect to the impact of Pillar 2 on the 2022 financial statements, we refer to this KPMG article in which it is concluded that if companies expect GloBE to affect them and that information is relevant to the users of financial statements, they should consider providing qualitative disclosures where possible.

Proposed amendments to IAS 12 published

As jurisdictions prepare to amend their local tax laws to introduce the global minimum top-up tax ('GloBE model rules'), stakeholders are questioning how they will account for those changes under IFRS. In particular, they are questioning whether top-up tax is in the scope of IAS 12 Income Taxes and, if so, how to account for its deferred tax impacts.

In response to these concerns, the International Accounting Standards Board (IASB) announced in December that it would release an Exposure Draft for consultation, which has now been published outlining the proposed amendments to IAS 12 Income Taxes. In short, the IASB proposes to amend IAS 12 to:

- provide a temporary mandatory exception from deferred tax accounting for top-up tax; and
- require companies to provide new disclosures to compensate for the potential loss of information resulting from the temporary exception.

In a KPMG web article and new talkbook a further outline on the proposals, including a timeline on next steps of the proposals is provided.

In terms of proposed actions to take now, we recommend to:

- Continue to engage with tax specialists, assess the potential impact and monitor the progress of implementation of GloBE model rules into relevant jurisdictions' tax laws.
- Engage with investors to determine the appropriate level of disclosures you are required to provide now before the proposed relief applies, and the disclosures required once the proposed relief applies.
- Ensure that you collect sufficiently detailed information to provide the proposed disclosures about your operations in low-tax jurisdictions.

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4. Other tax developments

4.2 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. The proposal stems from the Communication on Business Taxation for the 21st century that was released on May 18, 2021. 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.

It is currently expected that agreement will only be reached on this proposal after some technical adjustments will be made to the ATAD3 Directive and its implementation will be delayed to January 1, 2025. This proposal therefore should consequently not affect the 2022 financial statements.

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Meijburg & Co
Tax & Legal

Contact us

Ivor Lacroix
Partner | International tax & tax accounting
T +31 (0)88 909 1363
E Lacroix.Ivor@kpmg.com

Mieke Verhappen
Manager | International tax & tax accounting
T +31 (0)88 909 3012
E Verhappen.Mieke@kpmg.com

Eveline Gerrits
Director | Tax accounting & risk management
T +31 (0)88 909 2006
E Gerrits.Eveline@kpmg.com

Jan Moret
Director | Tax accounting & risk management
T +31 (0)88 909 1516
E Moret.Jan@kpmg.com

Sjoerd Peer
Senior tax manager | International tax & tax accounting
T +31 (0)88 909 1143
E Peer.Sjoerd@kpmg.com

Harry Struik
Senior specialist | Tax compliance & Tax accounting
T +31 (0)88 909 3259
E Struik.Harry@kpmg.com

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