



## **BUDGET DAY SPECIAL - 2022 TAX PLAN**

**This Atlas Tax Lawyers Budget Day Special outlines important proposals in the Dutch 2022 Tax Plan and additional legislative proposals.**

This special is divided into the following topics:

- » COVID-19 measures;
- » measures for businesses;
- » measures for employers;
- » measures for VAT;
- » measures for international situations;
- » measures for real estate;
- » measures for cars & mobility;
- » measures for (wealthy) individuals;
- » other measures.

The proposed measures will enter into force on 1 January 2022, unless stated otherwise.

### **COVID-19**

#### **TOGS and TVL are tax-exempt**

Entrepreneurs affected by the corona crisis were able to receive a compensation under government conditions according to the scheme Compensation for Entrepreneurs in Affected Sectors COVID-19 (TOGS). Some entrepreneurs also received a subsidy based on the Regulations governing Subsidy towards Fixed Costs incurred by SMEs due to COVID-19 (TVL). These compensations and subsidies will be exempt from income tax retroactively.

#### **SVL subject to exemption**

The Regulations governing Subsidy towards Fixed Costs incurred by SME Start-Ups due to COVID-19 has been succeeded by the Regulations governing Subsidy towards Fixed Costs due to COVID-19 (SVL). Under certain conditions, companies can receive a compensation towards their fixed costs as from the second quarter of 2021. The legislator also wants to exempt this subsidy from income tax, but expresses a reservation. The European Commission must approve the exemption. The conditionality of the exemption only concerns a possible extension of the SVL as from the fourth quarter of 2021.

#### **Temporary easing of the work-related expenses scheme's discretionary margin**

It had previously been proposed to expand the discretionary margin of the work-related expenses scheme (WKR) for the year 2021. The discretionary margin was fixed at 3% of the taxable wage sum up to €400,000 plus 1.18% of amounts exceeding that. The earlier approval is now being laid down by law. Expansion of the discretionary margin offers employers opportunities to additionally compensate their employees in the difficult corona crisis period.



For example, by providing a gift voucher or providing untaxed homeworking expenses allowances, in addition to the possibilities already available.

### **Take note!**

The proposal will enter into force with retroactive effect from 1 January 2021.

Due to the additional discretionary margin in 2021 on the wage sum up to €400,000, application of the group policy may have unfavorable ramifications. Check whether calculation of the discretionary margin per group member is more favorable.

## **COMPANIES**

### **Self-employed deductions reduce further**

In 2022, the regular self-employed deduction will reduce further from €6,670 to €6,310 for entrepreneurs who have not yet reached the statutory retirement age (AOW). For entrepreneurs who have reached the statutory retirement age, the self-employed deduction reduces from €3,335 to €3,155.

### **Take note!**

The self-employed deduction will continue to reduce annually to €3,240 in 2036.

### **Increase in environmental investment tax credit**

There are three tax credit categories in the environmental investment credit (MIA) scheme. Category I has been expanded with certain green investments, including a light electric van and a subterranean water storage. In addition, the environmental investment credit for category I increases from 36% to 45%. For category II, the environmental investment credit increases from 27% to 36%. And for category III, the environmental investment credit increases from 13.5% to 27%.

### **Take note!**

Once the budget for the MIA tax scheme has been reached, its allowance is discontinued. The budget for the period 2022-2024 will be increased by €30 million per year. This means the budget for 2022 amounts to €144 million.

### **Customary salary in innovative start-up**

Since 2017, the rate of pay of the director and major shareholder of innovative start-ups can be set at the statutory minimum wage. This exception, included in the customary salary scheme, improves the liquidity position of innovative new companies.



The exception should expire on 1 January 2022 unless the measure is evaluated positively. As the evaluation has not been completed yet, the expiry date of the exception has been postponed to 1 January 2023. In 2022, the statutory minimum wage can therefore be maintained for the director and major shareholder of innovative start-ups.

**Take note!**

To be able to make use of the allowance, an R&D statement for start-ups (S&O-startersverklaring) is required.

If the evaluation is positive, a lower salary will also be possible after 2023. The Tax and Customs Administration would approve that, for example, if, in a structural loss situation, the customary salary could even be lower than the statutory minimum wage.

**Restriction in offsetting withholding taxes with corporation tax**

The proposal is to temporally restrict the off-setting of dividend tax and tax on games of chance (withholding taxes) with corporation tax (Vpb) as from 1 January 2022. This is in order to eliminate inconsistency with EU law. The offsetting of withholding taxes is limited up to the amount of corporation tax payable in one year.

In doing so, the withholding taxes that are not offset are deferred without limitation to subsequent years.

**Take note!**

Deference is only possible if the amount of withholding tax to be deferred has been established by the inspector in a decision against which an objection may be lodged.

**Take note!**

In order to regulate the temporal offsetting with existing restructuring facilities and the single-tax entity regime, a number of accompanying measures have been included.

**Mismatches for price corrections**

Transactions between related bodies are governed by the arm's length principle. If a non-arm's length price is maintained, this price must be adjusted. This may bring about a situation where part of the profit is not taxed at all. This happens when a taxpayer's profit is adjusted downwards and this correction is not taxed at the affiliated body or is taxed as a lower amount as income. The measures contained in the proposal in such a situation limit the downward adjustment of the taxable profit in the Netherlands for the taxpayer.



## Loss setoff tax group

Recent case law may result in holding and group financing losses being offset against profits from non-holding and group financing activities. The government indicated in the accompanying letter to the tax plan that it would remediate the consequences. Without remediation, this would cost the treasury a great deal of money. This new scheme will be included in a memorandum of amendment.

## Take note!

In a tax group with a subsidiary established by the holding company and with the holding company having pre-incorporation losses, pay attention to any implications of this remedial legislation.

## EMPLOYER

### Other date of settlement for share options

Share option rights are taxed at the time that they are converted into shares. If the employee cannot sell the shares yet, the funds are not always available to pay the tax. With that in mind, it will be possible to settle this only when the shares are marketable. Then a part can be sold to pay the tax. Does the employee benefit from share option rights between the time of exercising the rights and the time of marketability? And are the share option rights still a component part of the employee compensation benefits during that period?

Then that is also considered to be benefit pay.

The employee may choose between the two dates of settlement. Tying in with the time of exercising the rights is therefore still possible.

### Introduction of tax-exempt homeworking allowance

Employers may provide their employees with a tax-free allowance for working-at-home of up to €2 per homeworking day. It may also be a fixed compensation according to a structural working-at-home pattern. The employer can either provide the homeworking expenses allowance, or the commuting travel allowance per day.

Make good and timely arrangements with your staff about working-at-home and the corresponding compensation. In this respect, take into account that a specific exemption for working-at-home only applies as from 1 January 2022.

### Simplifying R&D tax rebate

Application for an R&D tax rebate has been simplified. An entrepreneur can now submit a new application that starts the next calendar month, even if that month has already been included in a previous R&D statement. This makes it possible to respond quickly to new projects.



Statements will now also cover all the remaining months of a calendar year. This simplifies completion of the notification, which the withholding agent must retrospectively submit every year. Now the withholding agent may also decide at its own discretion, which part of the allowed amount will be deducted in a period. This provides greater flexibility.

## VAT

### Negative VAT return

There will be a simplification for entrepreneurs who make use of the Union scheme, non-Union scheme and import regulations for VAT returns in the Netherlands. They submit VAT returns in the identified Member State. That Member State distributes the VAT among the Member States in which the entrepreneur has made sales.

Corrections for an earlier period are also processed so that the VAT return can become negative. The Member State for whom the correction has been made must settle this. The Netherlands will therefore consider a negative VAT return as a request for a refund, so that the entrepreneur does not have to request it separately.

### Take note!

It has been proposed that negative VAT returns must be regarded as a request for a refund with retroactive effect from 1 July 2021.

## INTERNATIONAL

### Settlement relating to CFC measure

The supplementary ‘controlled foreign companies’ (CFC) measure is aimed against transfer-ring profits to low-tax states. Under certain conditions, this measure allows for settlement of the foreign profit tax of CFC bodies. The foreign tax to be settled will be calculated separately for each body. Sometimes the whole amount cannot be settled and some of it has to be postponed. The law does not specify the order in which the settlement should then take place. This has now been regulated: the tax amounts are taken into account from small to large. If the amounts are equal, then a proportional amount of each will be taken into account.

### International tax avoidance

‘Reverse hybrid entities’ are partnerships that are not independently liable for tax in the country of establishment, but are designated as independently liable for tax by the state in which an affiliated participant is established. These entities become fully liable for tax in the Netherlands if they are established in the Netherlands (or if the partnership has been established here). If the profit is taxed directly at a participant in a state that considers such entity to be transparent, a deduction item is provided for.



There will now be supplements that provide for an adjustment to measures in the income tax, corporation tax, dividend tax and withholding tax structures. There will also be a few adjustments, with reference to the aggregation of interests of affiliated entities to assess whether there is a reverse hybrid entity.

#### **Take note!**

The tax liability measure had previously been implemented, but with a postponed effective date of 1 January 2022.

#### **Permanent establishment and withholding tax**

The government wants to expand the concept of permanent establishment for withholding tax on interest and royalty payments. According to the accompanying letter of the tax plans, the Withholding Tax Act 2021 (Wet bronbelasting 2021) will be amended accordingly. The expanded concept already applies to corporation tax. The expansion will also result in withholding tax being levied on interest and royalty payments to the extent that they are attributable to specific Dutch sources, such as property in the Netherlands.

#### **Clarification on hybrid withholding tax provisions**

In the accompanying letter to the tax plans, the government announces a technical amendment to the Withholding Tax Act 2021.

The hybrid provisions will be clarified. As a result, hybrid entities will no longer be liable for the withholding tax if a minimum of at least one of the underlying beneficiaries (whether or not through a collaborative group) does not have a qualifying interest in the hybrid entity. This amendment will have retroactive effect from 1 January 2021.

#### **REAL ESTATE**

##### **Homeownership scheme in the event of death**

The home equity reserve (EWR) will be restored to the pre-2013 situation. An EWR will again be linked to the person of the taxpayer and will automatically cease in the event of death. This means an EWR can never be transferred to another taxpayer. This also applies for the repayment balance. These changes are meant to not unduly confront a surviving partner with the homeownership history of the deceased tax partner.

##### **Homeownership scheme and partnership**

Amendments are proposed in applying the additional loan scheme and the repayment balance, in order to make the schemes fairer in partner situations. This avoids unforeseen limitations on interest relief, which could also have been avoided by people. For example, by having different antenuptial agreement clauses or by not concluding a cohabitation contract.



A previous policy decision (including the additional loan scheme for the joint purchase and financing of an own home by tax partners, one or both of whom have a homeownership history) has now been laid down by law.

### **Housing allowance and rent limit exceedance**

For rent – on the basis of which the rent subsidy is calculated – exceeding the maximum rent limit, in principle, there is no entitlement to a housing allowance. An exception to this rule is the acquired right. The conditions for this exception will be alleviated. It is proposed to discontinue the requirement that entitlement to the housing allowance had to exist in the month before the rent limit exceedance. This measure is intended to prevent citizens from permanently losing their housing allowance if, in the previous year, they were temporarily not entitled to housing allowance (e.g. due to a higher income) due to a rent limit exceedance.

### **No transfer tax in the event of a sale-regulating clause**

This proposal stipulates that, under certain conditions, an exemption of transfer tax applies for the repurchase of a natural person's residence. The exemption applies if, by extension, it provides for a sale-regulating clause, which includes the following. A residence is sold to an occupant with a buyer's discount by a seller offering residences for sale.

If the seller offering the residence later repurchases it from the occupant in accordance with the clause, it is not desirable to tax the acquisition of the residence at the general transfer tax rate (currently 8%). If the seller offering the residence then resells the residence to a first-time buyer, the seller offering the residence may not pass on the transfer tax costs. This would discourage sellers from selling to first-time buyers.

### **Transfer tax rate and unforeseen circumstances**

If a natural person acquires a residence that will serve as their main residence, they only have to pay 2% (or sometimes no) transfer tax. When assessing this main residence criterion, account can already be kept of unforeseen circumstances that may arise after acquisition, such as death or donation. This clause has now been eased further. One may also, based on a statement, take into account unforeseen circumstances arising after the purchase agreement has been concluded, but prior to delivery. It is important that the acquirer had the intention – before the moment of the unforeseen circumstance – to use the residence as their main residence, but because of this circumstance they were no longer able to do so.



## **Amendment of anti-abuse rule of the Legal Transactions (Taxation) Act**

As of 1 April 2021, the exemption for first-time buyers from transfer tax applies for residences valued up to €400,000 (the property value threshold). To prevent that residences are acquired split in order to remain below such property value threshold, there is an anti-abuse rule. The purpose of this provision in the Legal Transactions (Taxation) Act (Wet op belastingen van rechtsverkeer, WBRV) is to remove the benefit of the exemption for first-time buyers from transfer tax if the total value of the acquisition exceeds €400,000. This has been amended to eliminate several ambiguities.

The anti-abuse rule will not be applied if, on first acquisition, the property value threshold had not applied as yet, and neither for acquisitions pursuant to inheritance law or matrimonial property law by the person who applied the exemption for first-time buyers from transfer tax.

## **Simplification of the transfer tax return process**

In 2022, the contents of the transfer tax return form will be expanded. From then on, the civil-law notary must provide more details via the tax return form (e.g. the citizen service number (BSN) and the exemption which is being invoked).

Some details already submitted to the Tax and Customs Administration via the tax return form will no longer have to be passed on separately by the civil-law notary to the Tax and Customs Administration. This applies, for example, to the written statement made by a private buyer of a residence where the exemption for first-time buyers from transfer tax or the reduced rate is applied.

## **Landlord levy adjustments**

The rate of the landlord levy will be reduced to 0.485%. Moreover, there are levy reductions of landlord levies. An amount has been reserved for this purpose in the National budget. These levy reductions can be reduced to zero as at the first day of each quarter if the budgeted amount has been exceeded. The legislative proposal envisages that the levy reductions can in future be reduced to zero as at the first day of each month.

## **CARS & MOBILITY**

### **Scale down of electric vehicle benefit**

In 2021, a 10% tax credit may be applied to the additional tax liability for the private use of a company car in the case of electric cars and other vehicles without carbon emissions. With a few exceptions, this tax credit is at most €4,500 (calculated on a catalogue value of up to €45,000).





As of 1 January 2022, the tax credit drops to 6% and is then at most €2,100 (calculated on a max. catalogue value of €35,000). In 2023, the tax credit is at most €1,800 (calculated on a max. catalogue value of €30,000)

#### **Take note!**

There will be a further reduction in the tax credit for 2025. The tax credit will then be 5%, being at most €1,500.

#### **Adaptation of the motor vehicle and motorcycle tax (BPM) table**

As vehicles increasingly emit less CO<sub>2</sub> and the extent of the motor vehicle and motorcycle tax (BPM) is based on these carbon emissions, revenue from the BPM reduces. To counter this reduction, the tax bracket limits have been adjusted. The tax bracket limits for passenger vehicles are to be reduced by 2.3% each year for the period up to 2025, and the tax rates are to be increased by 2.35%. This likewise applies to diesel vehicles. From 2023 onwards, the tax rates will first be indexed and subsequently increased by 2.35%.

#### **Determining the extent of the BPM**

BPM is due at the time that a vehicle is registered in the vehicle registration system. The vehicle must then be suitable for use on the road.

For example, for parallel imports of e.g. a damaged vehicle, the extent of the BPM depends on the depreciation rate. This percentage may be based on a valuation report drawn up at the time that the vehicle becomes roadworthy. If a tax return is submitted prior to roadworthiness, then depreciation must be based on the statutory age-related table or a price list specifically applied in the trade.

If it turns out that the roadworthiness will not be used anyway (e.g. because the vehicle is irreparable), then the paid BPM will be refunded.

#### **Transitional provision of BPM rate change**

The government will put forward a separate amendment proposal for a transitional provision in the event of a BPM rate change. As from 1 January 2022, the taxable event for the BPM will be brought forward to its registration in the vehicle registration system. Currently, that is still the moment of registration. In the event of a rate change, all new vehicles that have not yet been denominated, must be denominated within two months. If this is not the case, the new rate will apply instead of the old rate that applied at the moment of registration.



## (WEALTHY) INDIVIDUALS

### 2022 Income tax rates for taxpayers below statutory retirement age

Taxpayers who have not reached the statutory retirement age (AOW) at the beginning of 2022, are expecting the following tax brackets to be applied in 2022.

2022 Income tax rate			
Box 1 rate	Tax.inc. more than (€)	but not more than (€)	2022 rate (%)
Low rate bracket	-	69,398	37.07%
High rate bracket	69,398	-	49.50%

2021 Income tax rate			
Box 1 rate	Tax.inc. more than (€)	but not more than (€)	2021 rate (%)
Low rate bracket	-	68,507	37.10%
High rate bracket	68,507	-	49.50%

These percentages include national social insurance contributions. A different rate structure applies for those who qualify for other national insurance contributions.

### 2022 Income tax rates for old-age pensioners

Taxpayers who have reached the statutory retirement age (AOW) at the beginning of 2022 and were born after 1946, are expected to have the following tax brackets applied in 2022.

Tax credits	2022 (€)	2021 (€)
General tax credit maximum	2,874	2,837
Employed person's tax credit max.	4,260	4,205
Income-dependent combination tax credit max.	2,534	2,815
Young disabled persons tax credit	771	761

### Exception for tax partner concept for Income-dependent Combination Tax Credit (IACK) application

For the income-dependent combination tax credit (IACK), the treatment of taxpayers with a partner residing abroad has been aligned with the treatment of taxpayers with a partner who is a resident taxpayer.

Someone who lives abroad at a single address with a non-employed partner, can now be regarded as a single person for the IACK tax credit.



It is also possible that two non-resident taxpayers with employment income in the Netherlands, who live abroad at the same address with a child, are both entitled to the IACK tax credit.

These exceptions to the tax partner concept will no longer apply to the IACK tax credit.

### **Easing of housing allowance for asylum permit holders**

The birth of a child of parents with a residence permit could lead to the loss of a housing allowance. The child does not actually have a residence permit at birth. Entitlement to a housing allowance requires that all residents must have a residence permit. This requirement has been eased. On assessing the entitlement to a housing allowance, the residence status of minor members of the household is no longer taken into account. Only persons aged 18 or over must be in possession of a valid residence permit.

### **Technical adjustment in Box 3 calculation method of rate of return**

The rates of return on income from savings and investments (Box 3) are adjusted annually. In order to make this technical adjustment more manageable for taxpayers, the calculation methods are explicitly laid down in law in the form of formulas. This does not change the calculation method, only the method of notation will be algebraic.

From 2022 onwards, the consequences of an adjustment of the base year will be achieved by ministerial regulation.

### **Amendment of the partner concept for green investments**

Taxpayers or the partner who has exempted green investments will receive an income tax assessment for Box 3. These investments are also actually relevant to income-dependent schemes. In the 2022 Tax Plans, the imposition of a tax assessment on the presence of green investments, will be corrected with retroactive effect to 1 January 2021. Then a tax assessment will only be imposed if the green investments are part of the possessions of the taxpayer or the partner to whom they were married (or had a registered partnership with) throughout the year.

### **Legislative proposal for recovery procedure of benefits and allowances**

The proposal for an Allowances Recovery Procedure Act (Wet hersteloperatie toeslagen) which is still to be submitted, relates in particular to the classification of policy decisions that have already entered into force and are being implemented. At this point in time, additional arrangements are being made to allow children of aggrieved parents, ex-partners of aggrieved parties and aggrieved parties to be entitled to other allowances. There will also be a 'policy decision on private debt'.



The basis of assessment for municipal benefits will be included in the legislative proposal. This mainly concerns compensation of discharged public debt and helping aggrieved parents in the five living environments (employment, housing, care, family and finances).

## OTHER MEASURES

### Adjustment of reduced rate for shore-based power

If a ship is moored along the quay, power can be drawn from the shore. This will cushion the impact on the environment. This power now has a reduced rate if the shore-based power installation has an autonomous connection. This is not always the case as sometimes, for example, power is drawn from a port building. The concept of a shore-based power installation is now expanded, so that the reduced rate applies in more situations. The installation must be equipped with a suitable metering device. Subordinate legislation will include the regulations that this metering device must meet.

### Energy tax and battery storage

Not all energy is used in power generation. Nowadays, excess energy is stored in batteries. This creates a double levy: firstly, the delivery of the energy is levied with an energy tax to the energy storage facility and subsequently also on delivery to the consumer. It is proposed that the levy for delivery to the energy storage facility should,

under certain conditions, be exempt-ed from energy tax.

### 'Postal code rose scheme' for new members

Under the 'postal code rose scheme', companies supplying electricity to members of the cooperative were allowed to apply a reduced rate in the energy tax for a period of 15 years. The 'postal code rose scheme' can now only be applied in accordance with transitional law. This transitional law does not apply to new members who join after 1 April 2021. The 2022 Tax Plan includes a retroactive easing period to 1 April 2021: if an old member leaves, a new member who replaces the old member will be entitled to the benefits of the 'postal code rose scheme' for the remaining term for the cooperative.

### Take note!

Replacement of a member will not effectuate a new 15-year period.

### Natural gas

The energy tax scheme has a few special regulations. There is an exemption for natural gas which is not used as fuel or as an additive or filler in natural gas substitute products. In addition, there is a zero rate for natural gas substitutes used as fuel in the facility in which they were generated. There is also a refinery exemption.



A combination of these schemes may result in no energy tax being levied at all. In future, this levy omission will be prevented via a change in the law.

#### **Faster adjustment of childcare allowance**

To reduce the number of recoveries of childcare allowances (KOT), it is mandatory for childcare centres and host parent agencies to submit information monthly to the Tax and Customs Administration about the childcare facilities provided for each registered child. Due to the high frequency, the Tax and Customs Administration is able to detect deviations early between the childcare allowance application and the actual situation. In the event of deviations, the Tax and Customs Administration informs the parents, so that they can alter their previous application and avoid any payment and refund issues.

#### **Take note!**

Parents still have to alter the details of their application themselves. The Tax and Customs Administration sends a reminder, but does not adjust anything of its own accord.

#### **Remuneration for assistance when applying for benefits and allowances**

Some parties offer free assistance for online applications for benefits and allowances. To do so, those parties need a level 3 eHerkenning (eH3). eH3 is only available at an additional cost.

The government wants to eliminate this disincentive and any future disincentives when applying for benefits and allowances. The Tax and Customs Administration can now make resources available to the applicant and the supporting assistant. For example, a remuneration could be paid for the purchase costs of eH3 to parties who assist with applications for benefits and allowances free of charge.

#### **Compensation for distressing cases**

In the context of the 'toeslagenaffaire' (serious failings in the childcare benefit system), use was made of policy decisions to make it possible to pay compensation quickly. A disadvantage to this was that advisory bodies and parliament were not involved to a sufficient degree. As a result of the unwarranted treatment by the Tax and Customs Administration, the government wants a better legal basis for compensation for distressing cases. For example, compensation can be granted quickly because, where information is required for implementation of a compensation, a provision is also made to ensure the exchange of data.

#### **Legislative proposal for camera surveillance at Customs Services**

A legislative proposal will soon be submitted to the Dutch House of Representatives to provide a legal basis for camera surveillance by the Dutch Customs Services.



At the advice of the Council of State, this will be a separate legislative proposal. Earlier, the government had included provisions in this legislative proposal based on exchanging data between the Customs Services, the Royal Netherlands Marechaussee and the Police. The Dutch Data Protection Authority has insisted on a detailed consideration and implementation of this proposal. That is why it has been included in legislative proposal to be submitted separately at a later stage.