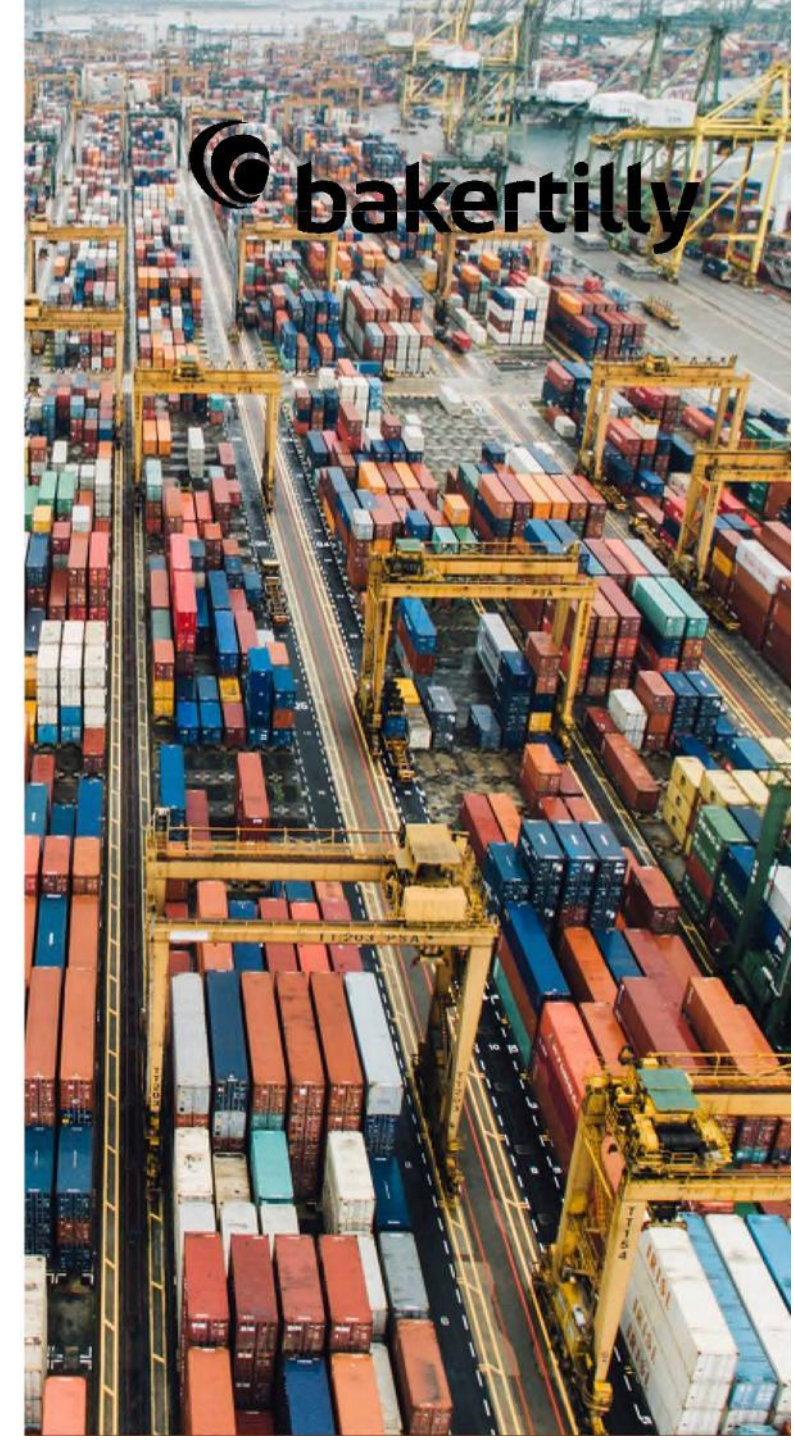


Year-end pointers for entrepreneurs & businesses

Now that we are nearing the end of the year, we would like to provide you with some insight into the points of attention for 2022, with our Year-end pointers. On [Budget Day](#), the cabinet presented the 2023 Tax Plan. As part of the proposed legislative changes will enter into force on 1 January 2023, it is important to consider the tax consequences of these plans on time. Which new obligations will apply next year? And what should you take into account before the end of this present year?

Read more about the key fiscal points of attention regarding personal income tax, gifting, Box 3 and the own-home, as applicable to your personal situation. If you have any questions about these pointers, [your advisor](#) would be happy to discuss which ones are of particular importance for you.

Please note: the Dutch Senate has yet to approve a number of proposals. The likelihood of changes is nevertheless small.



Pointers for all businesses

(personal income tax and corporate income tax)

Form a provision for large expenditures

If you already know that you will have a large expenditure in 2023 or later, you can under certain circumstances form a provision in 2022. A contribution made to that provision would reduce your taxable profit in 2022. Please note that the future expenditure must stem from facts and circumstances occurring in or before 2022. Furthermore, it must also be reasonably certain that the future expenditure will in fact occur. Examples include a transitional payment (*transitievergoeding*) which will be due next year, or a claim for damages which arose in the past year and which will likely need to be paid in the next year. Your advisor can discuss the conditions and necessary documentation with you.

Form and utilise a reinvestment reserve

Have you realised a fiscal profit from the sale of a business asset? Do you intend to replace that asset, and have you already formed a reinvestment reserve (*herinvesteringsreserve* or 'HIR') in order to do so? If so, make sure that you document your intention for reinvestment (annually), in writing and including the relevant substantiation. The HIR must be used within a period of three years.

Pointer: Has the purchase of a new business asset been delayed due to special circumstances, and are you approaching the three-year term? You can ask your tax inspector to extend the period providing you have already started with the reinvestment.

Use the deduction for small-scale investments

If you invest in a business asset, you can under certain conditions make use of the *kleinschaligheidsinvesteringsaftrek* ('small-scale investment deduction' or 'KIA'). Depending on the investment amount, this tax benefit allows you to reduce the fiscal profit in the year in which you enter into the obligation (e.g. by signing a contract of sale or by accepting a proposal). Will you not start using the business asset in 2022? In that case, the KIA is limited to the amount of the downpayment made in 2022.

Please note: if the total amount of the investments exceeds EUR 332,994, the amount of the KIA is nil. If you risk exceeding this amount at the end of the year, it may be prudent to postpone an intended investment until 2023.

Pointer 1: Did you not make use of the KIA in a previous year even though you would have qualified for this option? In that case, you can ask your tax inspector for an ex-officio reduction of your tax assessment of that year. This also applied with regard to the Energy Investment Deduction (EIA) and the Environment Investment Deduction (MIA), if and to the extent that you meet the relevant requirements. In 2022, the oldest year for which you can request an ex-officio reduction is 2017.

Pointer 2: If you sell, within a five-year period, a business asset for which you have previously claimed an investment deduction, an additional taxable benefit for de-investment may apply. Effectively, this involves repaying (part of) the previously received benefit. Do you want to sell such a business asset, which was purchased in 2018? If so, consider postponing the sale until 2023.

Pointers for all businesses

(personal income tax and corporate income tax)

Don't miss the notification deadline for the MIA, EIA or Vamil

If you have invested in a business asset which is included on the Environment List 2022 or on the Energy List 2022, you may qualify for the 'Environment Investment Deduction' (MIA), the 'Energy Investment Deduction' (EIA) or the accelerated depreciation for environmental investments (Vamil). Please note: in order to do so, you must notify the investment to the Netherlands Enterprise Agency (RVO) within three months of entering into the investment obligation.

Pointer: Do you want to invest in a business asset which is not included on the Environment List in 2023, but which in your view should be on the Environment List 2024? From 1 January 2023 onwards you can submit a proposal in this regard to the Netherlands Enterprise Agency. Contact your advisor for more on the conditions and requirements.

Request the tax credit for research and development 2023!

Will you carry out research and development activities in 2023 and do you have employees? The *Wet Bevordering Speur- en Ontwikkelingswerk* ('Act Promotion of Research and Development' or 'WBSO') may offer opportunities for lowering your (wage) costs. The deadline for requesting an allowance based on the WBSO is on 20 December 2022. For self-employed persons without employees, the deadline for requesting the WBSO for all of 2023, is on 1 January 2023.



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VAT Pointers for entrepreneurs

Include VAT refund on uncollectible debts in your VAT return

Have you issued an invoice including VAT, but is this debt now uncollectible? If a customer does not pay your invoice (entirely), you can (partly) claim a refund of the VAT that you have already paid, from the Dutch Tax Authorities. You must do this within one year after the payment of the relevant debt has become due (or earlier if it has definitively been established that the debt is uncollectible). You do not need to submit a separate request to the tax inspector: you can include the amount of the refund in your periodic VAT return. Make sure that you reclaim the VAT in the correct time period and under the correct heading in the tax return. If the correct time period has already lapsed, you may need to file a supplementary VAT return. If it becomes apparent at a later stage that the debt can be collected after all, you must pay back all of the refunded VAT to the Dutch Tax Authorities through a supplementary tax return.

Check whether you are exceeding the threshold for distance sales

Do you sell and ship products to consumers in other EU countries? If so, you are in principle subject to the local VAT rules in each of these countries. This may mean that you must submit VAT returns and pay VAT in several countries. If you are based in the Netherlands, Dutch VAT must be charged and paid, up to the threshold of EUR 10,000. If you exceed that amount of EUR 10,000 in a particular year, you will be liable for VAT in the EU country of destination, from that moment onwards. In that case, it is possible to register the sales and VAT owed using the One Stop Shop ([OSS](#)). This allows you to prevent VAT registration from being needed in every EU country where goods are supplied. Do you expect that you will exceed the threshold of EUR 10,000 before the end of the calendar year? If so, don't forget to register for the OSS on time and to adjust your systems and prices, where needed.

Please note: the scheme only has very limited retroactive effect. It is important that you are fully aware of your VAT obligations upfront and take timely action, where needed. Our advisors would be happy to inform you about the VAT consequences of cross-border trade.

Read more about [VAT and e-commerce](#) here.



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VAT Pointers for entrepreneurs

Pay attention to the consequences of DAC7 for trading on digital platforms

As of 1 January 2023, [additional European legislation](#) applies with regard to e-commerce. This will mean that online platforms must provide the Dutch Tax Authorities with certain data on payments and information regarding sellers on their online marketplace. This will lead to a more thorough due diligence and a new administrative obligation for certain online platforms. If you operate a platform, make sure you are aware of the new rules and that you adjust your systems and protocols on time. If you sell products through an online platform, you should consider that the platform operator may require more information from you and will share certain data with the Dutch Tax Authorities.

Revise car-related VAT in the final VAT return of the book year

VAT on the purchase, maintenance and use of business cars is in principle deductible, if the car is used for activities that are subject to VAT. However, if a car is also used for private purposes, a correction must be processed in the final VAT return of the book year. Unless you have kept records of the actual private use, this correction amounts to 2.7% of the list price (including VAT and motor vehicle tax). For certain cars, such as cars that have been in use in the business for more than five years, a lower percentage of 1.5% of the list price may apply.

Pointer: Keep track of which cars fall under the lower percentage, and check this before filing the return.

Remember to file a supplementary VAT return on time

If it follows from your administration that too much or too little VAT has been paid, this should be corrected by means of a supplementary VAT return, if the total over- or underpayment is more than EUR 1,000 per period.

Please note: the Dutch Tax Authorities can compare the VAT paid with the corresponding item in the corporate income tax return. Make sure any necessary supplementary returns are filed (and paid after receipt of the additional assessment) on time.

Pointer: If the amount of the correction is less than EUR 1,000 VAT in a given period, you may include the correction in the next VAT return, instead of filing a supplementary return.



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VAT Pointers for entrepreneurs

Process BUA-correction in the final VAT return of the book year

If you have deducted VAT on promotional gifts or gifts for employees, you may have to correct this. If the total amount (excluding VAT) per employee or business relation exceeds EUR 227 in any year, a so-called 'BUA-correction' must be applied for that particular employee or relation.

Pointer: Baker Tilly has developed a useful tool for determining the amount of a potential BUA-correction. Please reach out to our [VAT experts](#) or more information.

Provide 90%-declaration within 4 weeks of the end of the book year

Have you acquired real estate in 2021, and did you and the seller jointly opt for a VAT-taxed sale? If so, you must provide the seller with a so-called 90%-declaration before 28 January 2023 (assuming your book year matches the calendar year). By doing so, you confirm that the real estate was used for activities for which you had at least a 90% right to deduct VAT. If you do not meet this 90%-criterion in the first or second book year following the year of sale, the supply of the property is retroactively seen as VAT-exempt. This may have significant consequences for the seller's right to VAT deduction. A provision on this matter will often have been included in the sales agreement.

If desirable, request VAT exemption for small businesses (KOR)

If your annual turnover does not exceed EUR 20,000 (excluding VAT) you may make use of the VAT exemption for small businesses (*kleineondernemersregeling* or 'KOR'). By applying the KOR, you are exempt from charging VAT to customers, whereas you yourself lose your right to deduct VAT. If you wish to apply for the KOR in 2023, be sure to register with the Dutch Tax Authorities on time. Bear in mind that there is a processing time of at least 4 weeks; to apply the KOR as of 1 January 2023, you should therefore send the relevant information to the Dutch Tax Authorities by 1 December 2022 at the latest.

Pointer: When deciding whether or not to use the KOR, you should carefully weigh all of the relevant factors. This may include considering the impact on your customers' right to deduct VAT, as they may prefer a regular invoice including VAT.



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Special pointers for entrepreneurs subject to personal income tax

Pay attention to the hours criterion!

For the purpose of the personal income tax, entrepreneurs can make use of several fiscal measures which can reduce the taxable profit. Examples of such measures include the deduction for entrepreneurs and the possibility of forming a fiscal retirement reserve (*fiscale oudedagsreserve* or 'FOR'). To qualify for this, the entrepreneur will need to have spent at least 1,225 hours on his business (and be able to demonstrate this, for example by keeping a register of the hours). Check whether you meet the hours criterion in 2022, and if not, consider spending some more time on your business in the last weeks of the year.

Make a final contribution to the retirement reserve

The fiscal retirement reserve ('FOR') is a fiscal measure which allows taxpayers who qualify as entrepreneurs for the purpose of the personal income tax and who meet the hours criterion, to 'save up' for their pension. This is subject to certain conditions.

Annually, a certain amount can be contributed to a retirement reserve. This reduces the fiscal profit in the year of the contribution. Simply put, when the reserve is used at a later point, this amount is taxed, unless it is used to purchase an annuity. The FOR will be abolished on 1 January 2023. After this date, a contribution to the retirement reserve will no longer be facilitated from a tax perspective. However, the current rules will continue to apply to pre-existing reserves. It may still be worth making a (final) contribution to the fiscal retirement reserve with regard to 2022.

Pointer: An existing FOR is subject to a tax claim. When determining whether it is worth making a contribution to this reserve, the tax brackets of the personal income tax are relevant. It is important to take this into account for the purpose of your financial planning. Your tax advisor would be happy to discuss what would be the best option in your particular situation.

Offset a 2013 business loss for personal income tax

If your business has a loss for personal income tax purposes from 2013, which has not yet been offset, 2022 is the last year in which this loss can be utilised. After 2022, the loss will expire and you will no longer be able to offset it against future profits. This expiration of losses can affect your decision to for example make a contribution to the FOR.



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Special pointers for businesses subject to corporate income tax

Request a preliminary corporate income tax assessment on time

If a corporate income tax assessment is issued more than six months after the end of the tax year (generally speaking this is on 1 July), the Dutch Tax Authorities impose legal interest. Since 1 January 2022, the applicable interest rate is 8%. By requesting a preliminary corporate income tax return, you can pay the taxes owed in an earlier stage and prevent or reduce the amount of legal interest. Your tax advisor can discuss with you whether it is necessary to request an (adjusted) preliminary assessment for 2021 or for earlier (outstanding) years.

Pointer: Can you already estimate the taxable profit for the tax year 2022, in early 2023? If so, consider requesting a preliminary assessment. If the estimated amount of tax turns out to be too high or too low, you can always request that the preliminary assessment be adjusted.

Bring profits forward and benefit from the lower tax rate in 2022

The corporate income tax rate is set to increase in 2023, and the lower tax bracket will be reduced. In 2022, profits up to EUR 395,000 are taxed at a rate of 15% (2023: 19% for profits up to EUR 200,000). The higher tax rate for profits exceeding these thresholds will remain 25.8%. If possible (and permitted from a tax perspective) it may therefore be prudent to realise profits in 2022 instead of in 2023.

Pointer: Has your annual profit been more or less stable over the past years? If so, check the impact of this change to the tax rate on your corporate income tax return 2023.

File your annual accounts on time

The annual accounts of a limited liability company ('BV') must be filed within eight days after the formalisation of those annual accounts. In any case, the annual accounts must be filed ultimately 12 months after the end of the book year, at the latest. This means that the ultimate filing date for the annual accounts for the book year 1 January - 31 December 2021, is 31 December 2022.

Pointer: If there is a risk of bankruptcy, the timely filing of the annual accounts is of particular importance. Failure to do so can result in personal liability for the director, for debts of the company which cannot be paid through the liquidation.



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Special pointers for businesses subject to corporate income tax

Check transfer prices and transfer pricing obligations

Affiliated parties must take into account at arm's length prices when doing business with each other. This applies both to internal domestic situations and to cross-border ones. Depending on the amount of revenue of a group with international operations, [additional documentation and reporting obligations](#) may apply. Your advisor can discuss with you whether this is the case for your company or group.

Pointer 1: If a Dutch company is a part of an international group with a consolidated group revenue of EUR 750 million or more, a Country-by-Country Report ('CbCR') must be submitted. The Dutch BV can be faced with this obligation. In the case of normal book years, this report must be filed by 31 December of the subsequent year, at the latest.

Pointer 2: If a Dutch company is part of an international group with a consolidated group revenue of EUR 750 million or more, a Country-by-Country notification needs to be submitted. Among other things, this notification must state which entity will submit the CbCR. This notification obligation falls upon every Dutch BV that belongs to such a group, but the notification can be submitted jointly. This notification must be submitted on the last day of the book year of the parent company of the international group, at the latest. Please note: the book year of the parent company may differ from the book year of the Dutch BV. Take this into account when determining the notification deadline.

Pointer 3: It is possible that a foreign group entity applies a different transfer pricing methodology than the Dutch BV. This means that the profit reported by the foreign group entity may differ from the profit reported by the Dutch BV. In some cases, the Dutch tax inspector will not permit a reduction of the Dutch fiscal profit based on the Dutch transfer pricing methodology. This is the case if there is no corresponding increase in the tax base in a different country. It is therefore important to analyse and document this issue.

Request to file tax return in a foreign currency, on time

In some cases, it can be helpful to file a Dutch tax return in a currency other than the euro. This could for example be the case if a Dutch company belongs to an international group. In order to do this from 2023 onwards, you must submit a request to the tax inspector on the basis of the *Regeling functionele valuta* ('Functional currency regulation') before 1 January 2023.

Please note: in principle, this choice is made for a ten-year time period.



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Special pointers for businesses subject to corporate income tax

Be careful when distributing interest on contributed funds

In principle, there is a withholding obligation for dividend withholding tax for distributions of dividend and certain reimbursements on loans which function as equity. Up to and including 2022, there was no withholding obligation when distributing interest on investment funds contributed to a cooperative, interest on shares in a mutual benefit society and other remunerations for the provision of capital by founders, shareholders and members. This situation was unintended and will be remedied on 1 January 2023. Your advisor can discuss the possibilities and limitations with you.

Check whether you healthcare institution still meets the requirements for the exemption for healthcare

Under certain conditions, healthcare institutions can make use of the exemption for healthcare. This means that they are not liable for corporate income tax. It is important to monitor whether the activities requirement (*werkzaamhedeneis*) and the requirement for the destination of profits (*winstbestemmingseis*), amongst other things, have been met continuously. If a change in the Articles of Association is needed in light of the latter requirement, do so before the end of the calendar year.



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Pointers for director-substantial shareholder

Assess your customary wages

A director-substantial shareholder who carries out activities for his company, must pay himself wages. Based on the customary wages arrangement, the minimum amount in 2022 is the highest of the following three amounts:

- 75% of the wages that would be paid in the most comparable employment situation;
- the wages of the highest-earning employee of the company or group;
- a minimum amount of EUR 48,000.

The efficiency margin will be abolished from 1 January 2023 onwards. This means that, for the purpose of determining the three amounts referred to above, 100% of the wages paid in the most comparable employment situation must be taken into account (i.e. no longer 75%). For many director-substantial shareholders this means that their wages will need to be increased in 2023.

Pointer 1: Due to all of the changes to the customary wages arrangement and the tax position of the director-substantial shareholder, it is prudent to pay extra attention to determining (and documenting) the customary wages in 2023. Your advisor can help you determine the customary wages.

Pointer 2: In 2022, the customary wages for innovative start-ups can be set at the level of the minimum wage, for a period of three years. This arrangement will end from 2023 onwards. However, there are transitional rules in place for director-substantial shareholders who already made use of the arrangement in 2022. Are you considering setting up an innovative start-up and do you want to make use of the transitional rules? Make sure you make use of the arrangement in 2022.

Chart your debts owed to your own company

Do you owe an outstanding (mortgage) debt to your own BV? There are a number of reasons why it would be good to reassess and chart these debts. For example, the deduction of mortgage interest will be increasingly restricted in the coming years. In 2022, the interest on a qualifying own-home loan can be deducted at a maximum tax rate of 40% (2023: 36.93%) in Box 1 of the personal income tax. A non-qualifying own-home loan or other type of debt owed to your BV will however fall in Box 3, and therefore have a negative yield of about 2.46% for 2021 (the percentages for 2022 and 2023 are not yet known).



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Pointers for director-substantial shareholder

In addition to this, [the *Wet Excessief lenen bij eigen vennootschap*](#) ('Act Excessive borrowing from own company') will enter into force on 1 January 2023. Director-substantial shareholders who (together with among others their partner) owe a debt exceeding EUR 700,000 to their own BV, will be taxed in Box 2 over the amount exceeding that threshold. Mortgage debts owed to the own BV for the financing of an own-home, are in principle not taken into account for the purpose of this Act.

Pointer: The first reference moment for excessive debts is 31 December 2023. Consider repaying or refinancing these debts before that time.

Make use of tax credit from substantial shareholding before 2023

Did you have an unused loss from a past substantial shareholding, without having a substantial shareholding in 2021 and 2022? If so, you can convert this loss into a tax credit in 2022. The amount of this credit is 26.9% of the unused loss from the substantial shareholding. The credit can be offset against income in Box 1 for the tax years 2022 up to and including 2029.

Make your successor your employee

By using the *bedrijfsopvolgingsregeling* ('business succession arrangement' or 'BOR') you can defer a tax claim as a result of gifting your shares to, for example, your children. This is subject to a number of conditions. One of these is that your successor was employed by the company for at least 36 months at the moment of transfer. Are you considering transferring your shares in the near future? Take into account the 36 month deadline.

Please note: the business succession arrangement is currently subject to debate. At present, the future of the arrangement is uncertain, but it is probable that the arrangement will be restricted or abolished at some point. Are you considering gifting your company to a successor? If so, seek advice about the current possibilities.

Read more about our Year-end pointers for employers and private individuals [here](#).

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Please feel free to contact us if you need further information!