

Year-end pointers 2021

Which new Dutch tax measures require your attention?

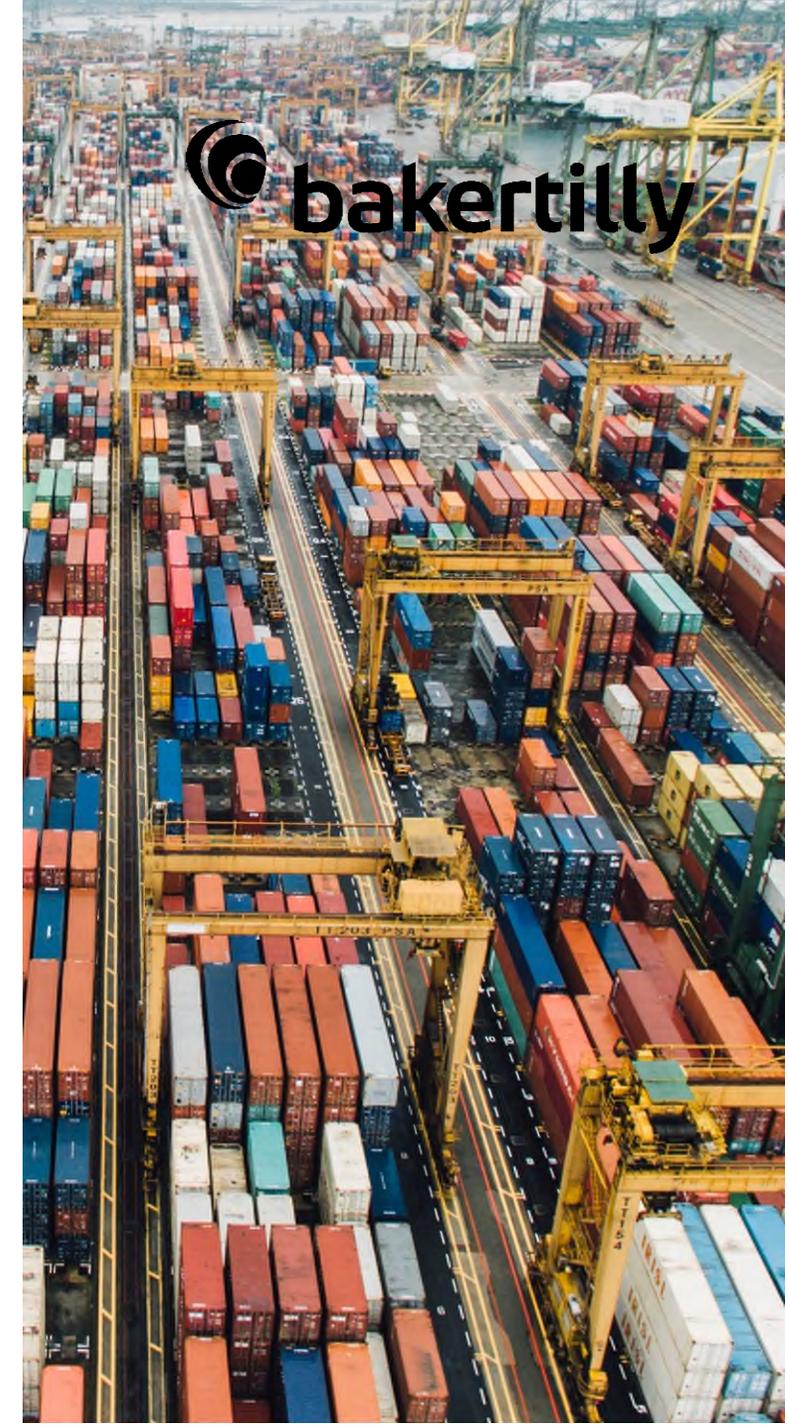
The Dutch Tax Plan that was presented to the House of Representatives on Budget Day has led to a number of new and changed (tax) measures. In most cases, these measures will apply as of 2022. This means that certain matters require your attention before the end of 2021, either to avoid mishaps or to make sure you don't miss out on opportunities.

Overview of the most important pointers

With just a few weeks left until the end of 2021, the tax advisors at Baker Tilly have mapped the tax consequences of the 2022 Tax Plan, and provided a number of practical pointers for an international audience. These pointers describe steps you could take (and sometimes even steps you must take) before the end of 2021.

Please note: The Dutch Senate has yet to approve the Tax Plan

The House of Representatives has approved the Tax Plan, but the 2022 tax measures have not yet been discussed or approved by the Senate. Until that has happened, the measures are not yet final. However, given the approval by the House of Representatives, it is considered unlikely that the measures will undergo any changes.



Year-end pointers 2021

Overview of the most important pointers

General year-end pointers: personal taxation

- Make use of gift tax exemptions
- Reduce your savings in Box 3 before 1 January 2022

Year-end pointers for all businesses

- Request provisional 2020 CIT assessment on time, and prevent (or minimise) legal interest
- Dividend tax refund foreign portfolio owners still possible until end of 2021
- Prevent expiration of 2012 losses
- Consider separating activities or changing fiscal unity for CIT purposes
- Document your transfer pricing
- Process VAT corrections in the final 2021 return
- Check interest deduction for tightened earnings stripping measure

Year-end pointers for employers

- Think about your working-from-home policy
- Make optimal use of Discretionary Margin
- Group scheme not always advantageous
- Designate wages for final tax levy on time
- Inform employees about changes regarding share option rights
- Check conditions for use of labour cost benefits (LKV)
- Check arrangements with self-employed persons
- Inform employees with a partner abroad about changes to tax credit
- Check the application of 30%-rulings
- Map your administration of man-hours

General year-end pointers – personal taxation

Make use of gift tax exemptions

Gifting before the end of the year may reduce your taxable assets in Box 3, which in turn may lower your 2022 Box 3 taxation. The Dutch Tax Authorities may wish to levy gift tax on gifts by Dutch taxpayers, regardless of the whereabouts of the recipient of the gift. Certain exemptions and different tax rates may apply, depending among other things on the relationship between the donor and the recipient, and the intended use of the gifted amount.

For example, parents can give their children a one-time tax-free gift to the amount of EUR 26.881 (2021 amount). This gift can be spent freely. Is a gifted amount used in order to finance a child's higher education? In that case, the aforementioned tax-free amount may be increased to EUR 55.996 (2021). If the one-time gift is used to finance the acquisition or improvement of the child's own home, the tax-free amount may be increased to

EUR 105.302 (2021). This last mentioned own-home exemption may also be applied outside of parent-child situations.

Please note that the two-year term for spending an own-home gift agreed upon in 2019, ends at the end of this year (on penalty of forfeiture of the exemption, and taxability of the gift). Be sure to check whether this applies to your 2019 own-home gift.

In all the cases mentioned above, certain conditions and formalities may apply. Please note that you may be obligated to report gifts by means of a gift tax return, even in cases where an exemption may apply.

Reduce your savings in Box 3 before 1 January 2022

Dutch personal income taxpayers pay taxes on a notional return from their private assets (including

savings and portfolio investments). This is called 'Box 3 taxation'. The notional return is calculated based on the sum of your assets on 1 January. In order to lower this Box 3 taxation, you may for example consider transferring assets to a limited liability company (bv) or moving large expenditures forward to 2021. You may also limit your Box 3 taxation by requesting and paying a provisional tax assessment ahead of time.

Please note that any such steps should be taken before the assessment date of 1 January 2022, in order to affect the 2022 tax year.

We note that certain taxpayers may be exempt from Box 3 taxation because they work for specific international organisations or have a 30%-ruling.

Year-end pointers for all businesses

Request provisional 2020 CIT assessment on time, and prevent (or minimise) legal interest

If the Dutch Tax Authorities issue a (provisional) corporate income tax assessment more than 6 months after the end of the book year, you are charged 4% legal interest on the amount due. As the legal interest is higher than the interest rates offered by most banks, it can be beneficial to request a provisional assessment on time, in order to prevent (or at the very least, minimise) legal interest.

If you expect that your company will owe (additional) corporate income tax over the tax years 2020 or 2021, we advise you to request an (additional) provisional tax assessment. Please note, the 4% legal interest rate is a temporarily reduced rate. In the near future, possible as of 1 January 2022, the legal interest rate will be increased back to the normal 8%.

Dividend tax refund foreign portfolio owners still possible until end of 2021

If dividend tax was withheld by a Dutch company at the expense of a foreign entity, that foreign entity can under certain circumstances request a rebate of that withheld dividend tax until 2022. This has been regulated in a temporary measure, following a judgement by the European Court of Justice.

As of 2022, foreign and domestic shareholders will only be able to offset dividend tax (and gambling tax) against corporate income tax insofar as corporate income tax is in fact due. Non-offset amounts are carried forward to the following year.

Prevent expiration of 2012 losses

Corporate income tax losses can be offset against taxable profits. In 2021, a loss can be carried back to the previous year, and carried forward for offsetting in the following 6 years. As of 2022, there will no longer be a temporal restriction for

offsetting losses incurred after 1 January 2022 and losses that were still available on 31 December 2021 for future offsetting.

These adjustments to the system of offsetting losses, in conjunction with transitional law covering earlier losses, means that 2021 is the last year in which a loss from 2012 can be utilised. Is a 2012 loss at risk of expiring because there are insufficient taxable 2021 profits to offset it against? You may consider preventing loss expiration by realising latent profits (e.g. selling an asset to another group company).

Please note that although the possibility for loss relief will be expanded in terms of time, the annual amount of loss relief is to be restricted.



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Year-end pointers for all businesses

Reassess fiscal unity for CIT purposes

The corporate income tax rates are set to change as of 2022. In 2021, the tax rates were 15% over the first EUR 245,000 of profits, and 25% over any profits above that amount. As of 2022, the threshold for the lower tax rate will be increased to EUR 395,000, and the higher tax rate will be increased to 25.8%.

Although consolidation of taxable profits and losses is just one of several reasons why a fiscal unity for corporate income tax purposes may be a good fit for your business, these changes to the tax brackets and rates may warrant a (re)assessment of your current situation. Likewise, deconsolidation or splitting off certain profitable activities may make (economic) sense.

Please note: during the parliamentary proceedings, the Dutch Secretary of State for Finance promised to monitor whether large companies used the method of segmenting a structure in order to make

inappropriate use of the lower tax rate. If this should prove to be the case, this may lead to adjustments to the brackets and tax rates in the future.

Document your transfer pricing

As of 2022, downward transfer pricing corrections (reduction of profit) will only be accepted if it can be demonstrated that a corresponding upward correction (increase of profit) takes place abroad. This regulation is a breach of the idea of taxing total profits, but the Dutch Secretary of State for Finance justifies this breach by arguing that it combats international mismatches (and therefore non-taxation).

Be sure to assess the arm's-length nature of your transfer pricing and document this in contracts. This will help you prevent transfer pricing corrections without a corresponding (and visible) correction abroad.

Process VAT corrections in the final 2021 return

If you have incurred expenses for a company car in 2021, the VAT on those expenses can be deducted in your quarterly VAT return. This is subject to the condition that the company car is used for VAT-taxable activities.

If you have also used the car for private purposes, you must process a correction to the previously deducted VAT. If you have not kept track of the actual private use, you may apply the standard correction percentage of 2.7% of the list price (including VAT and vehicle tax).

For company cars that have been in use for more than 5 years, you may apply a standard correction percentage of 1.5% of the list price (including VAT and vehicle tax).

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Year-end pointers for all businesses

Have you deducted VAT on the costs of provisions to employees or of promotional gifts in 2021? If so, check whether the benefit received by your employees or business relations exceeded (on an individual basis) EUR 227 (excluding VAT). If so, you are obligated to file a so-called 'BUA-correction'. The BUA is the Dutch Decree on Exclusion of Deduction of Input VAT. This correction to the VAT that was previously deducted, is processed in the final VAT return of 2021.

Check interest deduction for tightened earnings stripping measure

As of 1 January 2022, the general limitation of interest deduction (earnings stripping measure) will be tightened. This measure restricts the deductibility of interest due on balance.

Currently, the interest due on balance is deductible to the highest of either (1) a maximum of 30% of

the fiscal EBITDA or (2) a maximum of EUR 1 million. As of next year, the EBITDA percentage will be lowered to 20%.

This adjustment may impact the deductibility of interest on loans. Be sure to check whether this will affect you, so you can map any restrictions on the deduction of interest and take action on time, where needed.



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Year-end pointers for employers

Think about your working-from-home policy

As of 1 January 2022, you may give your employees a tax-free working-from-home allowance of EUR 2 per employee per day worked from home, as compensation for the extra expenses that that an employee may incur.

The introduction of this working-from-home allowance is however accompanied by austerity measures regarding fixed travel expense allowances. It may also be that case that certain expenses that are currently included in your fixed expense allowance or no longer (or to a lesser amount) incurred by your employees.

It is advisable to consider how you wish to formulate your policy. Which expenses do you wish to reimburse, and in what manner? Do you wish to use a fixed allowance or specific reimbursements?

Make optimal use of Discretionary Margin

As was the case in 2020, the discretionary margin

of the labour cost arrangement was temporarily increased in 2021, to 3% of the first EUR 400,000 of your total fiscal wages. There are various ways to make optimal use of your discretionary margin.

For example, have you already used most of your discretionary margin, and are you planning to offer your employees a Christmas gift or year-end bonus? You can keep part of the discretionary margin available for other matters, by organising the Christmas party or other staff activities at the workplace.

Have you already used up your discretionary margin, but would you like to organise a staff event? Consider a New Year's party or a New Year's gift instead of a Christmas gift or Christmas party. The corresponding costs would then fall within the scope of the 2022 discretionary margin. If you have sufficient room left in the 2021 discretionary margin, you could consider a net pay-

out of the year-end bonus (assuming it is customary to pay out such a bonus in December), or reward your employees with a special Christmas gift.

Group scheme not always advantageous

The labour cost arrangement offers employers the possibility to apply the group scheme, if the company forms a group with at least one other company. This group scheme can be applied in cases of a shareholding of at least 95%. By applying the group scheme, you may effectively lower your administrative burden, and the discretionary margin within the group can be netted. But beware: if you use the group scheme, the temporary increase of the discretionary margin to 3% of the first EUR 400,000 of the total fiscal wages only applies once.

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Year-end pointers for employers

If this group scheme is not applied, each individual company can make use of the temporary increase. It is therefore important to assess whether the group scheme is beneficial in your case. You have until the moment that a final tax levy would be due, to make your decision. The 2021 final tax levy should be reported and paid in the wage tax return for the second reporting period of 2022.

Designate wages for final tax levy on time

Employers can designate certain elements of wages as 'final tax levy wages', which means these elements are no longer treated as normal wages on the paycheck. This choice can be made for each individual employment benefit, ultimately at the moment the benefit is reimbursed, provided or made available.

You therefore do not have to make a choice at the beginning of the calendar year. It is however advisable to document, on time and in writing, your

choices regarding annually recurring wage elements. Such wage elements can be designated in your staff handbook or in a separate document. Also, it is important that it follows clearly from your administration whether certain benefits have been designated as wages for final tax levy.

Inform employees about changes regarding share option rights

If your employees are about to exercise share option rights, or if you are considering granting your employees share option rights, be sure to inform the employees about possible changes to the tax treatment of share options.

A legislative proposal was introduced on Budget Day 2021, allowing employees the option of postponing taxation upon the exercising of the share option rights until the moment that the shares are freely tradable.

Currently, the taxation of the benefit received by the employee takes place as soon as the share option rights are exercised.

Although the legislative proposal was initially intended to enter into force on 1 January 2022, the Dutch Secretary of State for Finance has temporarily withdrawn the legislative proposal. It must first be assessed what the implementation costs will be, whether the scheme can be used by large companies, and whether use by large companies is desirable. The Secretary of State expects to present a revised legislative proposal at the end of February 2022.



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Year-end pointers for employers

Check conditions for use of labour cost benefits (LKV)

The government offers various labour cost subsidy schemes for older employees or employees with disabilities, in order to boost their participation in the labour market. If you employ enough of the aforementioned employees and you meet all the relevant requirements, this may lead to a labour cost benefit.

The amount of the labour cost subsidy depends on the category of employees you hire, and is at least EUR 1.01 per salaried hour, with a maximum of EUR 3.05 per salaried hour. An additional maximum of EUR 2,000 to EUR 6,000 per employee per year does however apply.

In order to qualify for the labour cost subsidy, it is important that your employees provide you with a so-called 'declaration of targeted group' (doelgroepverklaring). This declaration must be

requested within 3 months of the beginning of the employment.

Check arrangements with self-employed persons

Although the enforcement of the Labour Relations Regulation Act (Wet DBA) has been suspended, it is advisable to carefully assess the arrangements you may have with self-employed persons. Is the self-employed person with whom you work not in fact under your control? Is the assignment described clearly enough? Are the activities performed, factually different from the activities that your own employees perform?

Make sure that you document, in writing, the correct arrangements, and that you regularly check whether the factual circumstances are still in line with what has been agreed upon in that agreement. Preferably, you should use a model agreement that has been approved by the Dutch Tax Authorities, in order to minimise the risk of retrospective wage

tax charges. You can also make use of the Web Module Assessing Employment Relationships, which may serve as a tool for assessing the qualification of the labour relationship.

Inform employees with a partner abroad about changes to tax credit

The Dutch personal income tax system offers a specific allowance for working parents, namely the income-dependent combination credit (inkomensafhankelijke combinatiekorting or IACK). Taxpayers are only eligible for this credit if they have either a fiscal partner with a higher income, or no fiscal partner at all.

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Year-end pointers for employers

For taxpayers who work in the Netherlands but live abroad, their partner abroad only qualifies as a fiscal partner if that partner is considered a qualifying foreign taxpayer according to Dutch tax law. In order to prevent such taxpayers from qualifying for the IACK, the scheme will be adjusted in such a way that the foreign partner will be taken into account during the assessment of eligibility for this credit. If you have any employees for whom this is relevant, be sure to inform them of this matter on time.

Check the application of 30%-rulings

If you have hired employees from abroad, these employees may be able to apply for a 30%-ruling if certain conditions are met. If the 30%-ruling is awarded, you may pay out up to 30% of the fiscal wages as a tax-free allowance. Be sure to assess, on time, whether the (remaining) taxable wages of every employee with a 30%-ruling still meet the applicable minimum salary requirements. If the

salary requirements are not met, the 30%-ruling of that employee may be withdrawn with retroactive force to the beginning of the current calendar year, and cannot be applied for again.

If needed, you can still correct the wages in December 2021.

Map your administration of man-hours

If you work with temporary agency workers, posted workers or other workers that are not employed by you, be sure to check whether your administration of man-hours is in order. To mitigate the risk of recipient's and vicarious tax liability you should, in your role as principal, check the identity of all such workers and document their ID data (please note that you are not allowed to ask for a copy of their ID!).

Additionally, you must keep records documenting how many hours these workers performed work for

you and what wages they received for that work. It is also important to check whether the temporary worker agency that you work with is compliant with the registration obligations of for example the Posting of Workers by Intermediaries Act (WAADI).

If you do not perform this check and the temp agency turns out not to be registered for the WAADI, the Social Affairs and Employment Inspection may impose fines on you in your role as principal. These fines may run to EUR 8,000 - EUR 32,000 per employee.



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