



# DUTCH TAX PLAN 2022

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## Dutch Tax plan 2022

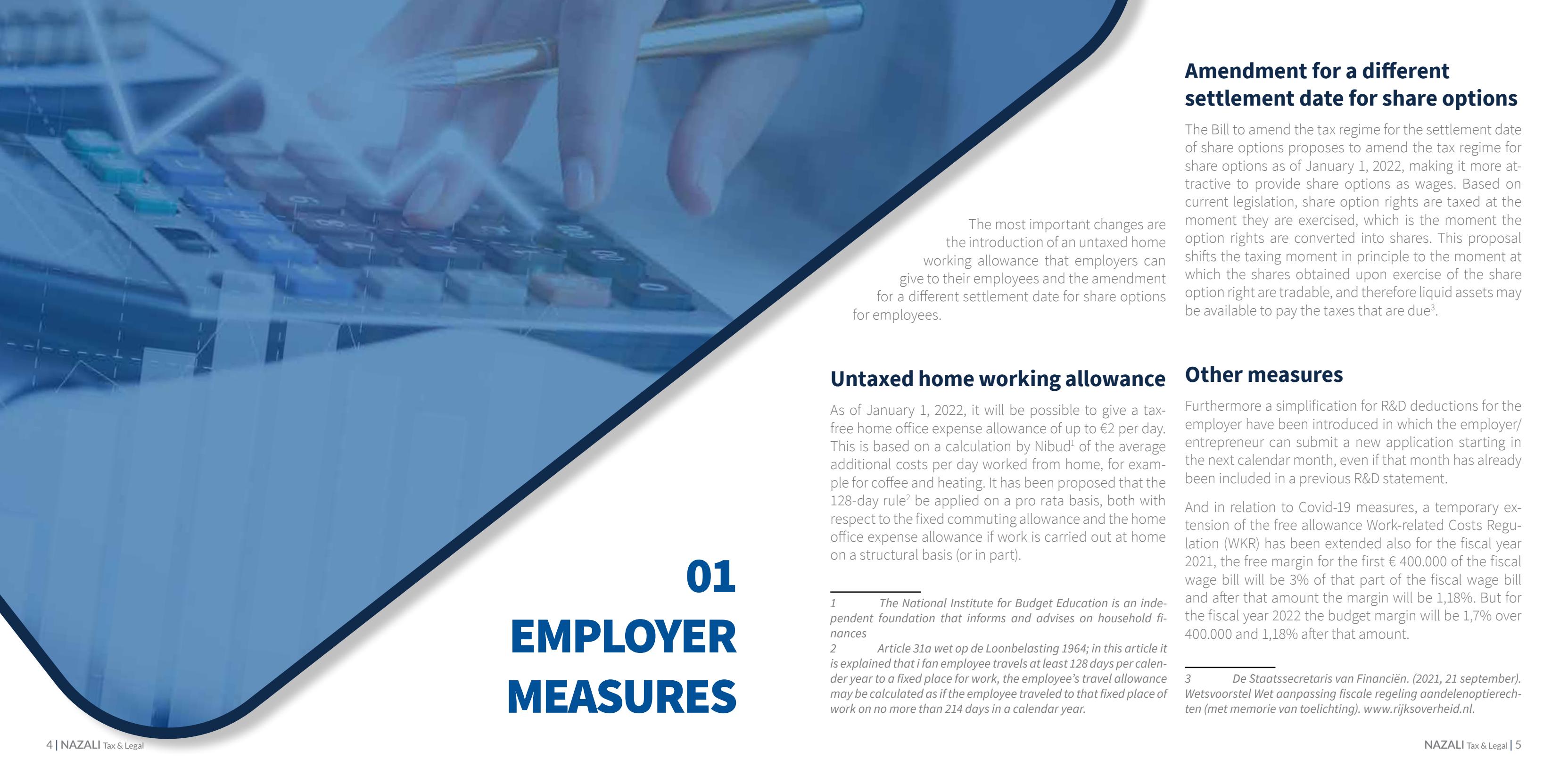
During the Dutch Budget day 2022 on the third Tuesday of September, the Dutch parliament presented its Tax Plan 2022. Because the Netherlands currently has a caretaker government, there have not been many new or major decisions and changes with regard to taxes. This year there are mainly small(er) changes, which will improve the tax system. In particular, improvements are being made to the existing taxes in the areas of housing, work, green initiatives and business start-ups. This makes the Tax Plan 2022 package a lot smaller in policy terms than previous years, which is appropriate for the caretaker status of this government.

This year's Tax Plan Package 2022 consists of six bills. The bills in the Tax Plan Package 2022 are:

1. The Tax Plan Bill 2022;
2. The Bill Other fiscal measures 2022;
3. The Bill “Wet implementatie belastingplichtmaatregel uit de tweede EU-richtlijn” anti-tax avoidance;
4. The Bill to amend the tax regime for share options;
5. The legislative proposal Act on delegation provisions for compensation of distressing cases;
6. The Bill to reduce the rate of landlord and tenant levy and monthly change amounts of tax reductions.

This brochure contains the following subjects:

1. Employer measures
2. Company and investment measures
3. Individuals
4. Real estate
5. Car measures
6. VAT and Customs measures



# 01 EMPLOYER MEASURES

The most important changes are the introduction of an untaxed home working allowance that employers can give to their employees and the amendment for a different settlement date for share options for employees.

## Untaxed home working allowance

As of January 1, 2022, it will be possible to give a tax-free home office expense allowance of up to €2 per day. This is based on a calculation by Nibud<sup>1</sup> of the average additional costs per day worked from home, for example for coffee and heating. It has been proposed that the 128-day rule<sup>2</sup> be applied on a pro rata basis, both with respect to the fixed commuting allowance and the home office expense allowance if work is carried out at home on a structural basis (or in part).

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<sup>1</sup> The National Institute for Budget Education is an independent foundation that informs and advises on household finances

<sup>2</sup> Article 31a wet op de Loonbelasting 1964; in this article it is explained that if an employee travels at least 128 days per calendar year to a fixed place for work, the employee's travel allowance may be calculated as if the employee traveled to that fixed place of work on no more than 214 days in a calendar year.

## Amendment for a different settlement date for share options

The Bill to amend the tax regime for the settlement date of share options proposes to amend the tax regime for share options as of January 1, 2022, making it more attractive to provide share options as wages. Based on current legislation, share option rights are taxed at the moment they are exercised, which is the moment the option rights are converted into shares. This proposal shifts the taxing moment in principle to the moment at which the shares obtained upon exercise of the share option right are tradable, and therefore liquid assets may be available to pay the taxes that are due<sup>3</sup>.

## Other measures

Furthermore a simplification for R&D deductions for the employer have been introduced in which the employer/entrepreneur can submit a new application starting in the next calendar month, even if that month has already been included in a previous R&D statement.

And in relation to Covid-19 measures, a temporary extension of the free allowance Work-related Costs Regulation (WKR) has been extended also for the fiscal year 2021, the free margin for the first € 400.000 of the fiscal wage bill will be 3% of that part of the fiscal wage bill and after that amount the margin will be 1,18%. But for the fiscal year 2022 the budget margin will be 1,7% over 400.000 and 1,18% after that amount.

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<sup>3</sup> De Staatssecretaris van Financiën. (2021, 21 september). Wetsvoorstel Wet aanpassing fiscale regeling aandelenoptierechten (met memorie van toelichting). [www.rijksoverheid.nl](http://www.rijksoverheid.nl).

# 02 COMPANY AND INVESTMENT MEASURES

## Corporate income tax rates 2022

	2021	2022
<b>Disc 1</b>	15%	15%
<b>Disc 2</b>	25%	25%
<b>Disc limit</b>	€245.000	€395.000

Currently the tax rates in 2021 are a 15% tax rate on profit up to an amount of €245.000 . After that amount tax rate on profit is 25%. In 2022 the disc limit of disc 1 will increase; meaning that up to an amount of €395.000 profit will be charged with 15% and after that amount it will get charged with 25%.

## Reversed hybrid mismatch

Starting 1 January 2022 legislation regarding reversed hybrid mismatch situations is implemented in the CITA<sup>1</sup>, DWTA<sup>2</sup> and the WHTA<sup>3</sup>. A Hybrid mismatch concerns situations in which different jurisdictions classify an entity differently, where one jurisdiction classifies a company as transparent while another considers the same com-

<sup>1</sup> Dutch Corporate Income Tax Act

<sup>2</sup> Dutch Dividend Withholding tax Act

<sup>3</sup> Dutch Withholding Tax Act

pany as non-transparent with different fiscal treatment as result. Hybrid mismatches allow companies to deduct a payment (e.g. interest) from their taxes in one country without it being taxed in another, or deduct one payment in multiple countries. The reverse-hybrid measure aims to tackle the hybrid mismatch at the source by making the hybrid entity subject to tax, for example in the infamous CV/BV structure. Effectively, a reverse hybrid entity will become subject to Dutch corporate income tax only to the extent that the profit is attributable to related participants that qualify the entity as non-transparent. The general rule is that a deduction in one country may not lead to an exemption in another country.

## Mismatches in Price Adjustments

In addition, separate from the Tax Plan, another bill has been sent to the House of Representatives to address mismatches. Within a group of companies (transactions between related entities), business dealings with each other must be just as professional as independent par-

ties would do under comparable circumstances. This is required on the basis of the arm's length principle. But because countries apply that principle differently or not at all, differences ('mismatches') may arise in international situations, resulting in part of the profits of a group not being taxed anywhere, being taxed lower and a situation of double non-taxation. In such a situation, the measures in the proposal limit the downward adjustment of the profit taxable in the Netherlands at the taxpayer's expense.

## **Restrictions of Advance Tax Deductions for Corporate Income Tax purposes (Sofina)**

It has been proposed to limit the possibilities for taxpayers to offset dividend tax and tax on games of chance (advance levy) against corporate income tax as of January 1, 2022 after the Sofina case.

Under the main rule of the proposed measure, the set-off of withholding taxes will be limited to the amount of corporate income tax payable before the set-off of withholding taxes has been taken into account. This applies to all entities subject to corporate income tax.

In short, under the proposed measures, the crediting of withholding taxes will only be limited with respect to taxpayers who:

- » Are not in a position where CIT is due because those taxpayers are loss-making or entitled to statutory deductions or double taxation relief; or

- » Are in a position to pay CIT, but the amount is lower than the amount of withholding taxes levied; and
- » Pay gambling tax because a game of chance has been won as part of the company's activities; or
- » Hold an equity interest of less than 5% in an entity established in the Netherlands that is liable to withhold dividend tax. Also if the dividend withholding tax exemption is not applied to an interest of 5% or more of the taxpayer in an entity established in the Netherlands which is liable to withhold dividend tax is liable to withhold dividend tax, there may be dividend tax levied of which the set-off is limited in time.

## **The order of loss offset in the case of CFC measure**

CFC legislation (CFC stands for Controlled Foreign Company) is tax legislation aimed at preventing Dutch taxpayers from having their income deposited in letterbox companies abroad, particularly in tax havens. It is anti-abuse legislation, particularly in the area of corporate income tax. CFC legislation taxes this income on the shareholder, even if no dividend has been paid.

The current Dutch CFC legislation is laid down in art. 13a of the VPB 1969 Act. Pursuant to art. 13a VPB 1969, a taxpayer is, under certain circumstances, required to

annually value its interest in a subsidiary at fair value (revaluation obligation). As a result, the result of the subsidiary will be subject to corporate income tax of the parent company before any profit distributions have taken place or any disposal benefit has been realized, and both the rate and deferral benefit associated with the use of a CFC will be lost. From 1 January 2022 a new measure is implemented. This new measure establishes a mandatory foreign profit tax credit sequence for a CFC entity. Until now, you could choose what part of the tax was settled in one year and what part you wanted to defer to future years. The measure starting 1 January 2022 dictates in what order foreign profits taxes can be offset, if the parent company has more than one CFC. The measure entails a mandatory order to set off the foreign taxes by first setting off the lowest amount, followed by the increasing amounts. If the amounts to be set off are identical, both amounts should be taken into account for a proportionate amount.

## **New CITA loss offset rules in the CITA**

Starting from 1 January 2022 new loss offset rules apply in the CITA for companies. There will be a broadening that means that losses can be carried forward indefinitely. In addition, a restriction will be introduced whereby losses are only fully deductible up to an amount of € 1 million. To the extent that a loss exceeds the amount of € 1 million, only 50% of the loss is deductible. The backward loss relief is limited to the previous year. The limitation for losses above an amount of € 1 million also applies to the backward loss relief. The amendments apply to losses from financial years commencing on or after January 1, 2013, to the extent that these losses are set off against taxable profits from financial years commencing on or after January 1, 2022.

# 04 INDIVIDUALS

## Personal Income Tax:

### Box 1: Taxable income from work and home.

The tax rate in the first disc of Box 1 will gradually decrease in the coming years, this is a minor adjustment in the Tax plan 2022:

This table looks at taxpayers below state pension age (non-AOW)

The limit between disc 1 and 2 will be at € 69,398 in 2022.

	2021	2022	2023	2024
<b>Disc 1</b>	37,10%	37,07%	37,05%	37,03%
<b>Disc 2</b>	49,50%	49,50%	49,50%	49,50%

Furthermore there will be an increase in general tax credit, employment tax credit, senior citizen discount and young handicapped persons' discount. And also a reduction of income-dependent combination discount.

## Reduction of income-dependent combination tax credit (IACK)

The income-dependent combination discount in the Dutch Personal Income Tax Act ("PITA") is intended to make it more attractive for single persons and the lowest earning partners with children to work. The combination discount comes into play in case the care for children is combined with earning income. Currently the maximum amount of discount that a person can get in 2021 on their Personal Income Tax ("PIT") is €2.815. It is proposed

to reduce the maximum amount of the IACK by € 318 as of 2022. This measure serves to partially cover the expenditure resulting from the Paid Parental Leave Act bill passed by the House of Representatives on April 20, 2021. Starting 2 August 2022 parents can get a paid leave period up to 9 weeks, this period is currently set on 6 weeks.

### Box 2: Taxable income from substantial shareholding

No amendments are due for 2022. The tax rate will remain 26.9%.

### Box 3: Taxable Income from savings and investments

#### Tax free capital

In box 3 currently the first €50.000 from savings and investments is set as tax-free capital. This amount will increase from €50.000 to €50.650 in 2022. There is no prospect yet of taxation of assets in Box 3 at an actual rate of return. In the coalition agreement of 2017-2021, the government expressed its ambition to bring the taxation of income from savings and investments (Box 3) more in line with the actual returns achieved. Despite the adjustments to the Box 3 levy in recent years, the main problem remains that the notional income in Box 3 on which tax is due still differs from the actual income.

The fixed assumed ('lump sum') return is determined on the basis of a graduated assumed return. The rule here is: the more assets, the higher the assumed return.

With the tax-free allowance increase to € 50.650 per tax-

payer in 2022, for tax partners, a tax-free capital of € 101.300 in total will apply. The assets must be valued each year at fair value for the purposes of the taxation. The assumed rates of return have been adjusted. For the savings component it is -0.01% and for the investment component 5.53%.

#### Change partner definition Green investments

With regard to the Decision Amount Green Investment, the scope for imposing an assessment if a partner is involved has so far been interpreted too broadly. With the proposed amendment, the partner concept for the imposition of an income tax assessment and a related Green Investment Decision will be brought into line with

the partner definition used for the imposition of a Personal Income Tax assessment and a related decision on the amount of the return base, with retroactive effect to January 1, 2021.

# 04 REAL ESTATE AND HOUSING

## Transfer tax (overdrachtsbelasting)

Exemption from transfer tax on the repurchase of a home with a sales regulation clause

Housing corporations or project developers who buy back so-called 'sale under conditions' homes from private individuals will no longer pay transfer tax from January 1, 2022 (this was 8% this year).

In this situation, it is not considered desirable - under certain conditions - to tax the acquisition at the general tax rate, despite the fact that the acquirer will not use the home as his/her main residence. The acquirer acquires the home from the natural person (transferor) to whom he, or his legal predecessor, previously sold the home with a sales regulation clause. This measure has been set in place to create more opportunities and housing for people in The Netherlands that want to buy their first home. These homes are sold by housing corporations and project developers under conditions with a substantial discount to first-time buyers and people with lower middle incomes. With the measure, these homes also remain affordable for the next private buyer. The elimination of the 8% taxation for housing corporations and project developers has been set in place to ensure that more affordable housing will be available for the aforementioned target group.

### Clarifications and technical amendments transfer tax

Since January 1, 2021, an exemption from transfer tax applies to first-time home buyers when acquiring a home to live in.

The exemption applies if the acquirer is under 35 years of age and has not previously used the exemption. As of April 1, 2021, the value of the home may not exceed €400,000 to be able to use this exemption.

In order to prevent abuse with respect to the €400,000 limit, an anti-abuse rule applies. This rule has not yet been clarified until now, but will be clarified by law starting 1 January 2022. The clarification consists of the fact that the anti-abuse regulation aims to take back the starters exemption in cases where within one year after the acquisition of a part of the house, another part of the house or appurtenances (such as a garage) is delivered. If the joint value exceeds €400,000, the starters exemption previously enjoyed will be taken back. In addition, it is regulated that the anti-abuse regulation cannot apply if an heir acquires a house from a person who recently made use of the starters exemption and then the heir buys, for example, a garage box with the house.

### Increase in age limit for status of child of Asylum seekers / Status Holders

The Dutch government is making amendments to improve their current benefits system in the short term to prevent bottlenecks, distressing situations and prevent recoveries. One of these improvements regards the rent benefit allowance that status holders receive in The Netherlands in regards to the rent they pay. Currently some status holders have been disadvantaged due to the birth of their new child in The Netherlands. The disadvantage stems from the fact that legally this newborn child is seen as a "illegal resident". One of the circumstances for the status holders to receive their rent benefit is that all of the people living in their house

are legal residents or status holders.

The parents of the newborn must apply for a residence permit instead of the residence permit being automatically given to the child

The government proposes to increase the age limit for the requirement of lawful status for co-habituants for the rent benefit allowance to 18 years. This means that upon the birth of a child of status holders, no direct action is required from the parents to continue to be entitled to rent benefit allowance.

### Rent allowance in the event of rent limits being exceeded

The income and assets of tenants should not be too high in order to receive the rent benefit allowance. There is also a limit to the rent of the house. Sometimes the rent rises above that limit. This is called rent limit violation. In principle, there is no entitlement to rent subsidy if the rent exceeds the

maximum rent limit. There is an exception to this rule. It is proposed to relax the conditions for this exception as of 1 January 2022. It is proposed that the requirement that there must have been an entitlement to rent benefit allowance in the month prior to the rent limit being exceeded be dropped. This measure should prevent citizens from losing their housing benefit permanently if they have temporarily lost their right to housing benefit in a previous year due to exceeding the rent limit (e.g. due to too high an income).



## 05 CAR MEASURES

### **Amendment of cap in the additional taxable benefit for emission-free passenger cars**

It is proposed to reduce the cap in the addition (the list price over which the maximum discount on the addition for emission-free passenger cars applies) in two steps from 2022. The discount on the additional taxable benefit

stipulated in the Fiscal Measures Climate Agreement Act (Wet Fiscale Maatregelen Klimaatakkoord) will not be adjusted. This means that the 6% discount on the additional tax liability applicable as of January 1, 2022 will be applied to a cap of € 35,000 and, as of 2023, to a cap of € 30,000. By lowering the cap, the demand in the business market will be steered more towards cheaper emission-free car models from the lower market segments. This improves the connection to the (private) second-hand market.

### **Adjusting CO2 disc limits and disc rates for passenger cars and the CO2 limit and rate for the diesel surcharge for passenger cars**

In the Taxation of passenger cars and motorcycles Act 1992 (BPM Act 1992), the CO2 disc limits for passenger cars for the period 2022 through 2025 are reduced by 2.3% each year and the disc rates are increased by 2.35% to align the tax base with the (expected) average CO2 reduction of newly sold conventional passenger cars for the period 2022 through 2025. This also applies to the CO2 limit and the rate for the diesel surcharge. The rates, the tax amounts per gram/km of CO2 emissions, with the exception of the fixed foot, will first be indexed for the year 2023 and beyond and then increased by 2.35% to align the tax revenue with the (expected) CO2 reduction.

# 06 VAT MEASURES

## Negative VAT Statement (OSS)

As of July 1, 2021, entrepreneurs established in another EU country who sell goods from their country to individuals established in the Netherlands can remit the VAT due in the Netherlands via the One Stop Shop (OSS) return. The OSS return must be submitted by the entrepreneur to his own tax authority abroad. The rule is that if, for example, as a result of return shipments, there is a net entitlement to a refund of Dutch VAT, the foreign trader doesn't need to submit a claim for a refund anymore at the Dutch Tax and Customs Administration.

### “Mindgame” organizations subject to VAT as of January 1, 2022

Mindgame organizations such as bridge, go-, chess and checkers associations are as of January 1, 2022 VAT entrepreneur with VAT taxed services. The State Secretary has announced that mind games are not sports

within the meaning of VAT because there is no question of a non-negligible physical component. This means that the sports exemption for non-profitable operators and the reduced rate for profitable exploitation will no longer apply as of January 1, 2022.

### E-recognition compulsory as of 1 January 2022

As from 1 January 2022, the VAT return can no longer be filed through the old portal of the Dutch Tax and Customs Administration, the new online portal of the Dutch Tax Authorities must then be used (“Mijn Belastingdienst Zakelijk”).

Private entrepreneur (not companies) can still log in with their DigiD instead of e-recognition. Legal entities that submit their own VAT returns must purchase the digital key e-recognition (level 3). Businesses that only need the e-recognition for contact with the Tax and

Customs Administration can purchase a special variant of the digital key. There is a compensation scheme for this, which allows businesses to be reimbursed €24.20 once a year. There is no compensation scheme for regular e-recognition.

Entrepreneurs who do not wish to use “Mijn Belastingdienst Zakelijk” can file their VAT returns using a suitable software package or via the tax service provider. The tax service provider can be authorized to use e-recognition to file VAT returns and the entrepreneur then does not need to purchase e-recognition.



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