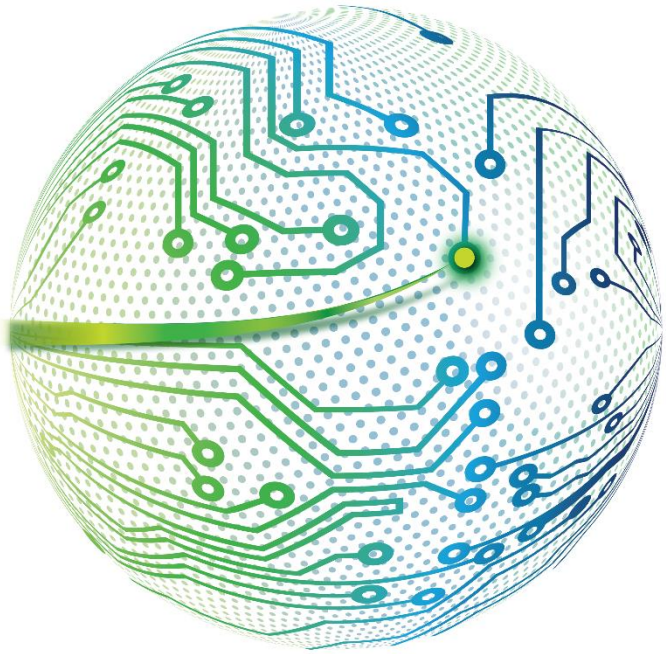


Dutch tax policy developments

January 2022

At the end of 2021 we have seen an unprecedented number of publications and communications from the EU and the OECD on international tax. During that same period the new Dutch government published its coalition agreement. In this paper we provide our views on these developments and insights on what these could mean for businesses.

A new level playing field

One of the most impactful developments is the implementation of a global minimum corporate income tax (GloBE or Pillar 2). Not so long ago it was very unlikely that these rules would become effective but now it is just a question of when. Interestingly the whole Pillar 1 and 2 effort started with the objective to tax the digital economy more fairly but have since than changed focus. Pillar 1 will introduce new profit allocation rules but these are now targeted towards all large profitable companies (> € 20 bio and 10% margin) and not just digital companies. And Pillar 2 focuses on all companies with a turnover exceeding € 750 mio.

The publications of the OECD show that the Pillar 2 rules are complex. The general idea is however simple. Low taxed income in a country will be picked by the parent company and if the parent company does not levy additional tax, the companies paying amounts to that low taxed company will pay the tax. This ensures that there is **no incentive for countries to maintain low effective tax rates.**

How will countries react?

Almost 140 countries have agreed with the Pillar 2 proposals and will have to implement these rules in their local legislation. This will be quite a challenge because the proposed rules from the OECD are already 60 pages, excluding any explanatory notes or guidance. This will be a challenge for developed countries but even more so for lesser developed countries. The OECD and some IGO's will provide support but in the end it is upon the individual countries to make these rules part of their local tax law.

As said there is little incentive for countries not to adopt a 15% tax on larger companies because otherwise the tax on that income will be picked up somewhere else. So especially countries with low rates or special tax incentives will have to adopt their taxation rules together with the implementation of Pillar 2. At this moment there are limited official statements on how individual countries with low rates will deal with this. But they basically have 3 options:

1. Not change the tax rules
2. Change the tax rules and ensure all companies are taxed at 15%
3. Introduce a dual regime where only larger companies are taxed at 15%

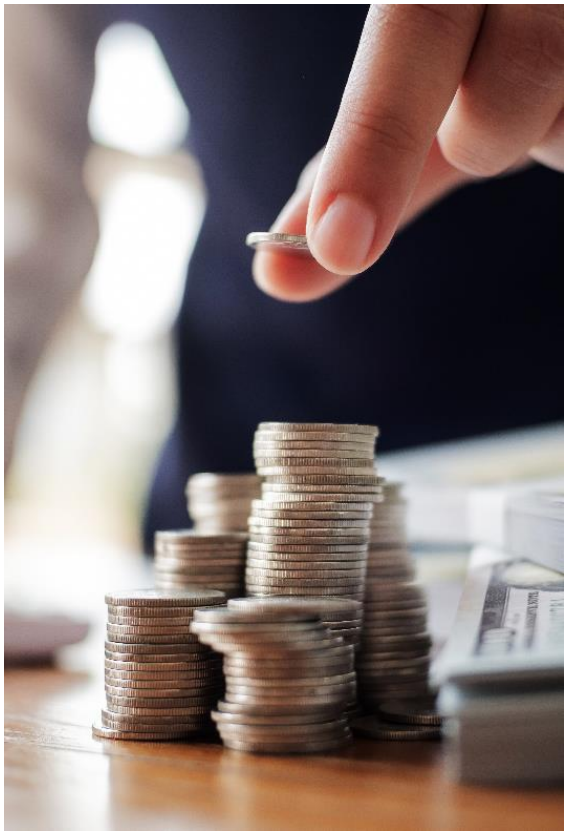
Most countries will go for option 2 or 3 and this will create **a new level playing field**. Corporate income tax can no longer be used to attract foreign investors and will not be a driver for location of activities. This does however not mean that countries will no longer compete with each to attract these foreign investors. We therefore expect that some countries will implement non-income tax incentives together with the minimum tax.

What will this mean for the location of business activities? Activities that are highly mobile (e.g. finance) can quite easily be moved from one country to another. If these activities are now only located in a country because of the tax benefits these will likely be moved. But in many situations these activities are based in a certain jurisdiction because they are a logical hub and have a good infrastructure. So businesses will now have to make a new assessment on different locations and determine the most optimal jurisdiction taking into account all tax and non-tax costs. It therefore makes sense to **not look at tax in isolation** but focus on the total balance of government contributions.

The European agenda

The EU has shown a lot of ambition in the area of tax. Recently the plan for public CbCR (Country by Country Reporting) was officially adopted. And also the EU Green deal includes a number of new tax initiatives and just before Christmas the EU published a Directive to combat the use of shelf companies (ATAD3 or Unshelf). The EU also wishes to increase its own resources. These resources are now mainly based on customs duties, VAT and direct contributions by member states. The EU has published plans to allocate the contributions on CO_2 emissions and the digital levy to its own resources.

These ambitious plans are likely to attract some opposition. It is important to note in this respect that EU tax plans require unanimity of all member states.



The Dutch agenda

The role and position of The Netherlands has certainly changed in the past years. For many years the Dutch government supported a good tax climate to accommodate international businesses. The law changes in the past years have shown that this perspective has changed. The tax burden on (larger) companies has increased considerably and it is planned to further increase this under the coalition agreement. This is a development that is also visible in other countries but the Netherlands seems to take it a step further.

It will be interesting to see how the new government will deal with the international developments and determine its own agenda. Our view is that you should first determine what type of economy you want to be and (tax) legislation should be suited to support that economy.

The forest and the trees

With all the information that is distributed recently it will be hard to determine what is relevant for your organization. Some topics are urgent and relevant while others may seem less urgent but do require attention. We are happy to engage in a conversation with you to provide you background into all these developments and also to hear your perspective on things.

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