

OVERVIEW OF IMPORTANT CHANGES RELATED TO INCOME YEAR 2023

1. Supplementary pension scheme constituted abroad

(See also the article on our website www.vandendijk-taxlaw.be for more details).

Cancellation of the retroactive effect of the law of 21 January 2022

The law of 21 January 2022 has been the subject of an action for annulment before the Constitutional Court. This law removes the possibility for certain supplementary pensions constituted abroad to benefit from the tax exemption provided for in article 39 §2 of the CIR92.

In its ruling of 14 December 2023, the Constitutional Court annulled article 60(4) of the Law of 21 January 2022. This article provides that article 28 of the Law of 21 January 2022 takes effect from the 2022 tax year. The Court notes that such a retroactive effect is not justified in any way in the preparatory works and is likely to create legal uncertainty. Consequently, the entry into force as from the 2022 tax year (2021 income) is annulled.

In addition, the Court and the Administration in its circular on the amendment confirm that the new system does not apply "if the taxpayer proves that the supplementary pension was not facilitated for tax purposes at the time it was built up".

The law relating to supplementary pensions (WAP) does not apply to non-Belgian pensions

In a judgment of 21 June 2023, the Brussels Court of Appeal ruled on the tax treatment in Belgium of pension rights that residents have built up abroad (and in particular in the Netherlands). What important is in this ruling of 21 June 2023 is that the court limits the application of the WAP territorially.

It was already clear from tax case law that the WAP could not be applied retrospectively to pensions built up before 1 January 2004. It has now been added that the WAP cannot be applied to supplementary pensions built up abroad either, as its territorial effect is limited to Belgium.

It is therefore no longer necessary to distinguish between contributions paid before and after the entry into force of the WAP in 2004, since the WAP does not apply at all to non-Belgian pensions.

2. Belgian transparency tax

(See also the article on our website www.vandendijk-taxlaw.be for more details).

As a reminder, we mention that the transparency tax aims to tax the income of foreign legal structures that are little or not taxed (like trusts, offshore companies or insurance vehicles investing in the other two structures).

The Program Law of December 22, 2023 further amended this law. An additional presumption of incorporation has been added, an adjustment has been made to the legal structures concerned, a broadening of the taxable distributions and an exit tax has been foreseen as of January 1, 2024.

Important for the tax return related to income year 2023, is that an extended reporting requirement has been introduced, whereby more details of the legal structure must be provided in an annex to the return form, indicating not only the name, address and directors, but also the income and distributions through the legal structure.

If you think you may be subject to these new obligations, please let us know and we will provide you with more details.

3. Annual tax on securities accounts

With regard to the annual tax on securities accounts, the holder is responsible for submitting an electronic declaration before 15 July of the year following the end of the reference period. Payment of the tax must be made no later than 31 August of the same year. The amendment comes into force for returns for which the reference period ends on or after 30 September 2023.

4. Tax reduction for charging stations for electric cars

You are entitled to a tax reduction when you install a charging station at home. The tax reduction depends on the income year and amounts to 30% of up to €1 750 for tax year 2024.

In addition, a limit of €8 000 per taxpayer applies to the installation of bi-directional charging stations. This means that electricity can be charged in two directions. From the charging station to the car, or vice versa.

5. New condition for deduction of rental income: obligation to identify the owner

With effect from the 2024 tax year (2023 income), the deduction of rent paid as business expenses will be subject to strict conditions.

Accordingly, any individual tenant (or holder of a building lease, emphyteusis or any other real right) who deducts (part of) his rent as actual business expenses will be required to provide, in an appendix to his tax return, information on the owner, the address of the property and the rent paid.

This information must be provided so that the tax authorities can establish the link between the rent deducted for tax purposes by the tenant and the rent to be taxed on behalf of the landlord. If this information is not provided, the rent is not deductible as a business expense.

Do not hesitate to contact us if you have any further questions with regard to these changes.

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