

State of Tax, Legal & People

# International fiscal developments

12 december 2023



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- With the button '[Ask a question]' you can ask your questions directly
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- Evaluation form afterwards

# Agenda

1. Tax - responsibility
2. Corporate income tax
3. Expat ruling
4. Withholding tax
5. CBAM, deforestation



# Poll



## Question: My tax department is responsible for...

1. Mainly corporate income tax and VAT
2. Several taxes, like corporate income tax, VAT, wage taxes and social security, customs
3. Everything that might lead to any tax or levy

01

# Tax - responsibility



# Aligning tax with Sustainability preparation

Efforts at an early stage can create synergies and will prevent missed opportunities

What are the material Sustainability topics linked to you(r supply chain)?

Which disclosures do you already have and which should be developed?

Which Sustainability Frameworks do you already align to & what is on the horizon?

What are your existing local reporting requirements, e.g. tax strategy publication?

How will you align your tax narrative with stakeholders in your organisation?

Can we use tax credits and/or claim incentives to (co) fund reaching the targets?

Do these disclosures impact the tax function of your organisation?

1

Assess your current status including your wider Sustainability tax strategy

2

Monitor standards and their application to your business

3

Consider benchmarking peer activities

4

Enhance your governance, risk and control framework

5

Develop your narrative ready for disclosure at the right time

## Answer: My tax department is responsible for...

1. Mainly corporate income tax and VAT
2. Several taxes, like corporate income tax, VAT, wage taxes and social security, customs
3. Everything that might lead to any tax or levy

02

# Corporate income tax · · · ·





# Corporate income tax topics

- Partnership and entity qualification rules
- Termination of donations deduction
- (Tax transparency) open mutual funds (OFGR)
- Adjustments investment funds
- Implementation Pillar 2 rules
- Public CbCR rules



# Partnership and entity qualification rules

## Tax qualification policy for foreign entities - current policy

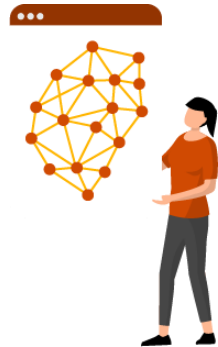
- Current policy based on **Ministerial Decree** of 11 December 2009 (qualification policy for foreign partnerships)
- Method: **comparison of legal forms**
- **Company** (non-transparent)  $\Leftrightarrow$  **partnership** (transparent or non-transparent)
- Transparency of foreign partnerships assessed on **comparability with Dutch (un)limited partnerships**



# Partnership and entity qualification rules

## Tax qualification policy for foreign entities – Bill (1)

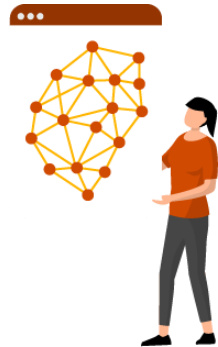
- Difference **unlimited partnership**  $\Leftrightarrow$  **limited partnership** for tax purposes **no longer applies**
- All Dutch partnerships will be **fiscally transparent from 2025**
- Unlimited partnerships (now subject to corporate tax)  $\Rightarrow$  limited partnerships (fiscally transparent): **transfer of assets and liabilities** to its partners
- **Deemed liquidation** and **final settlement**



# Partnership and entity qualification rules

## Tax qualification policy for foreign entities – Bill (2)

- Legal form comparison method is maintained for comparable foreign legal entities
- The following applies to non-comparable foreign legal entities:
  - Fixed approach: foreign entity resident in the Netherlands => fiscally non-transparent
  - Symmetrical approach: foreign entity not resident in the Netherlands => foreign qualification is leading



# Partnership and entity qualification rules

## Tax qualification policy for foreign entities – Bill (3)

- Transitional law:
  - Roll-over facility (general)
  - Share merger facility (including exemption of real estate transfer tax)
  - Transfer facility (specific)
  - Deferral of tax payments



# Tax Transparency open mutual funds

- From 1 January **2025**: an **open mutual fund** (OFGR) will only **remain subject to corporate income tax if** it raises capital from a series of investors and has a Wft permit (Wet op het financieel toezicht)
- From 1 January **2025**, an OFGR in a **family environment** will rarely be subject to corporate income tax, and will generally become **tax transparent**
- In a tax transparent OFGR, the **assets and liabilities** are **allocated to the investors** and subject to personal income tax
- **Transitional law**: if an OFGR exists on 19 September 2023, 3:15 PM, an OFGR can be **converted into a BV** without levying corporate income tax and real estate transfer tax

# Termination of donations deduction

- **Currently: donations** are **tax deductible up to 50%** of the profit with a maximum deduction of EUR 100,000 p.a.
- After discussion in parliament, donations will **remain deductible**
- A donation by a company to a public benefit institution (ANBI) is **no longer treated as a dividend distribution** to the shareholder of the company



# Adjustments investment funds (FBI)

- From 1 January **2025**: investment funds (FBI) are **no longer allowed to invest directly in Dutch real estate**
- However, a FBI **may manage** a real estate entity affiliated with that FBI
- **Debt financing** remains **unchanged**:
  - $\leq 60\%$  of the book value of (foreign) real estate
  - $\leq 20\%$  of the book value of investments other than real estate





# Implementation Pillar Two rules

## Pillar 2

- **Global minimum effective tax rate:**
  - Creates a system where multinational groups are subject to a **minimum effective tax rate of 15%** on **income arising in low tax jurisdictions**
  - Operates via Model Rules, further detailed in Commentary and Examples
  - No change in **international treaties** required, except regarding the subject-to-tax-rule
- **Dutch Pillar 2 Legislative Proposal:**
  - Submitted to the Dutch Parliament on 31 May 2023
  - Implements the Pillar 2 EU Directive **from 1 January 2024**

# Public CbCR rules

**Implementation date** Public CbCR rules **shifted** from financial years starting on or after **1 January 2024** to financial years starting on or after **22 June 2024** (= aligned with EU CbCR directive)



03

# Expatriation ruling



# Dutch Expat ruling

## Conditions 30% ruling:

- Assigned or recruited from abroad
- Income > 46,107 euro per annum (figure 2024)
- Employees under 30 years income > 35,048 euro per annum (figure 2024)

## Benefits:

- Tax free reimbursement of maximum 30%
- Free reimbursement of international schoolfees



# Changes Expat ruling

- "WNT" cap, "Balkenende-standard"
- Choice 30% ruling or actual extraterritorial costs
- 30-20-10% ruling
- Partial non-residence status



# Changes Budget day 2022

## Income cap for 30% ruling as of 2024

- WNT norm 2024: 233,000 euro
- Maximum tax free reimbursement 69,900 euro

## Choice per calendar year as of 2023

- 30% ruling or actual extraterritorial costs
- Except for the first four months of the first year



# Changes Budget day 2023

## Reduction of 30% ruling as of 2024

- First 20 months maximum 30% tax free
- Second 20 months maximum 20% tax free
- Third 20 months maximum 10% tax free

## Abolishment of partial non residence status as of 2025

- For box 2 and box 3 income



# Timeline changes expat ruling

## Timeline changes 30% ruling



## Transitional regime expats granted 30% ruling before 1 January 2023



## Transitional regime expats granted 30% ruling before 1 January 2024





# 04

## Withholding tax



# Withholding tax topics

- Conditional withholding tax on dividends
- Anti-dividend stripping
- Share buy back-schemes and dividend WHT



# Conditional withholding tax on dividends

## From 1 January 2021: conditional withholding tax on interest and royalties

- Payment of interest or royalties by Dutch resident company/Dutch PE to related **recipient in low tax jurisdiction**:
  - Statutory corporate income tax rate < 9%, or
  - EU blacklist
  - Payment of interest or royalties by Dutch resident company/Dutch PE to related recipient (abuse situation)
  - Payments to hybrid recipients may also be an issue!

## From 1 January 2024: conditional withholding tax on dividends

- Payment of dividends by Dutch resident company to **shareholder in low tax jurisdiction**:
  - Statutory corporate income tax rate < 9%, or
  - EU blacklist

# Dividendstripping

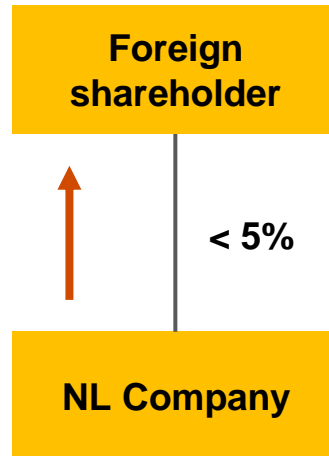
- With dividend stripping planning, the **economic and legal entitlement to dividends are split** in order **to achieve a tax advantage**
- E.g., the legal ownership of the shares is (temporarily) transferred or lent to a third party which has a more favourable tax position, such as a taxpayer who is entitled to a settlement, refund or reduction of dividend WHT
- This **limits or prevents** the **levy** of the withholding tax

# Dividendstripping

- Example dividendstripping (see Bill – wetsvoorstel Wet OFM 2024)

Starting point:

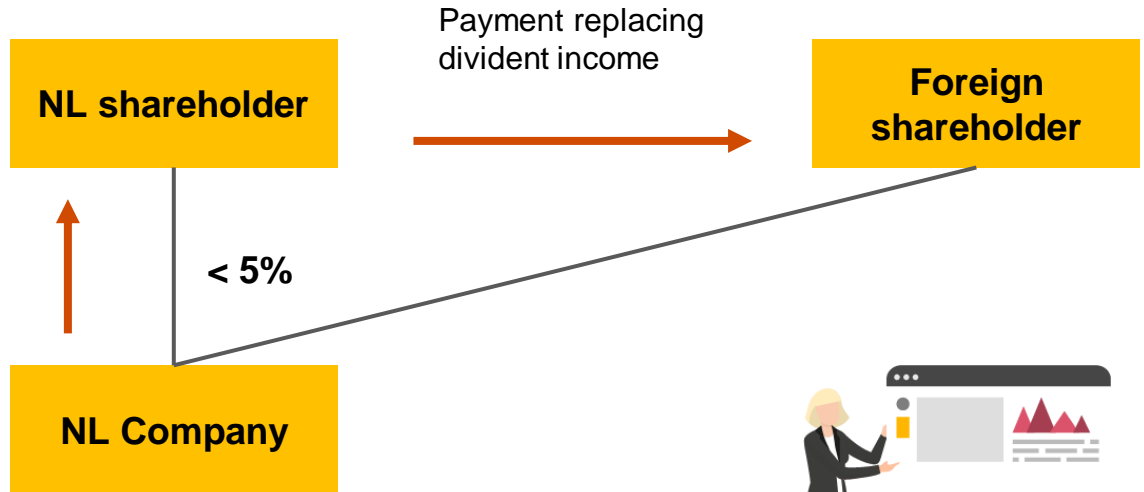
15% WHT on gross dividend,  
**no** settlement, refund or reduction  
of dividend withholding tax



# Dividendstripping

- Example dividendstripping (see Bill – wetsvoorstel Wet OFM 2024)

Intended situation:



15% WHT on gross dividend =>  
settlement, refund or reduction of  
dividend withholding tax

# Dividendstripping

## Bill OFM 2024 mentions three measures to combat dividend stripping:

- The **burden of proof** that the recipient of the dividend is the 'beneficial owner' will be imposed **upon the recipient** (currently: the burden of proof that the recipient of the dividend is **not** the 'beneficial owner' is imposed upon the tax administration)
- From **2024** on, a settlement, reduction or refund of dividend withholding tax will only be granted to those persons who are entitled to this on a registration date to be determined by law ('**record date**')
- Whether there is a '**set of transactions**' will from 2024 on be assessed at **group level**

# Share buy-back and dividend withholding tax

## Currently:

- Benefits from **share buy back-schemes = dividend income**, subject to 15% dividend withholding tax
- But: dividend withholding tax **exemption for certain share buy back-schemes by listed companies**

## From 1 January 2025:

- Dividend withholding tax exemption for share buy back-schemes by listed companies to be **abolished**



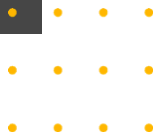


# 05

## CBAM, deforestation · · · ·



# Poll



**Question: How well is your company prepared for the implementation of the Carbon Border Adjustment Mechanism (CBAM)?**

1. We're just starting out
2. We have a general overview of the impact CBAM will have
3. We're well prepared for CBAM
4. I'm not sure...
5. It's not relevant for our company

# CBAM in a nutshell

CBAM is a new topic that will have a significant impact on businesses

## What is the purpose of this regulation?

Level the playing field to protect domestic production



Preventing **carbon leakage** by creating an equal playing field between EU producers and non-EU producers.

## What is the mechanism?

Ensure everyone pays the same price for carbon



Imposing a carbon border tax on the import of certain products to the EU based on their **embedded carbon content**.

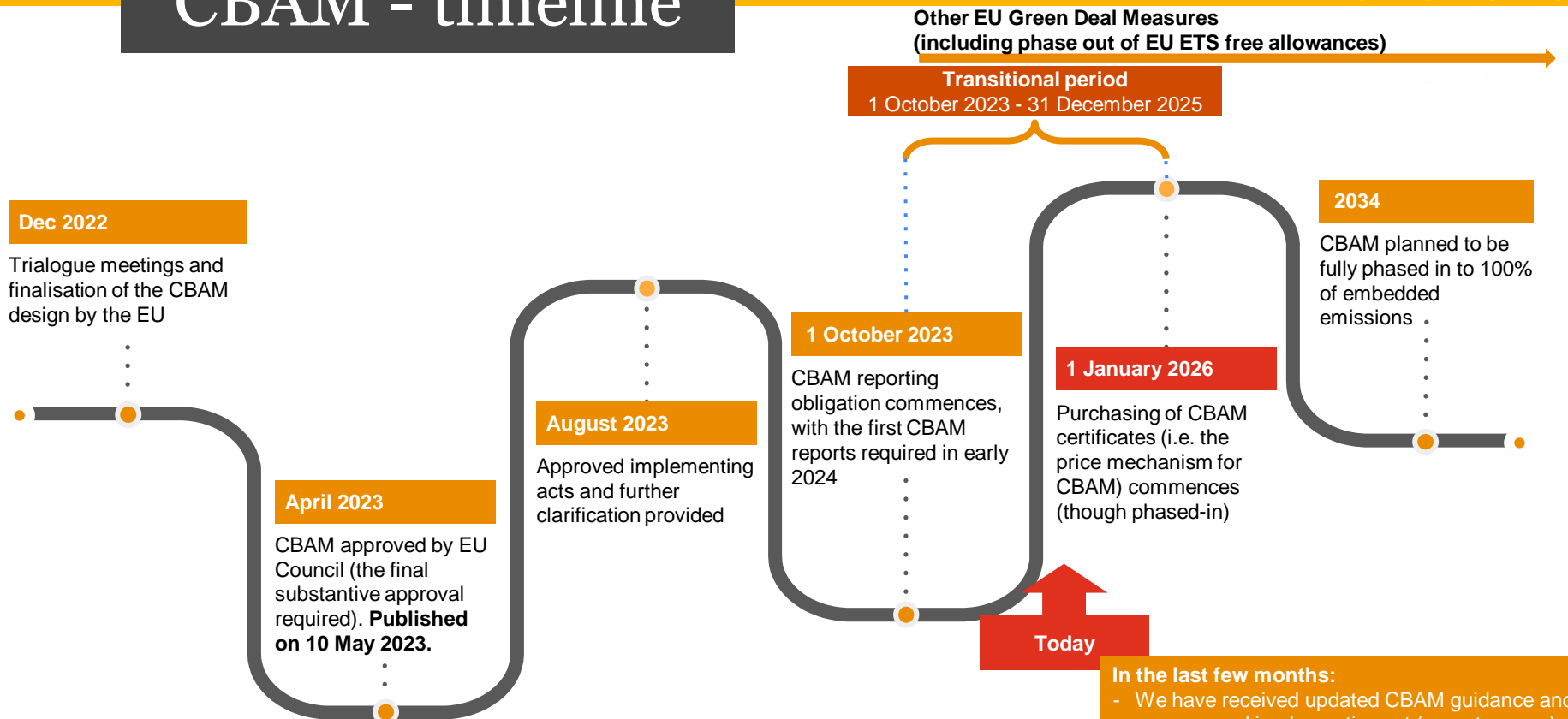
## Who is affected by CBAM?

Business partners of these 'other producers'



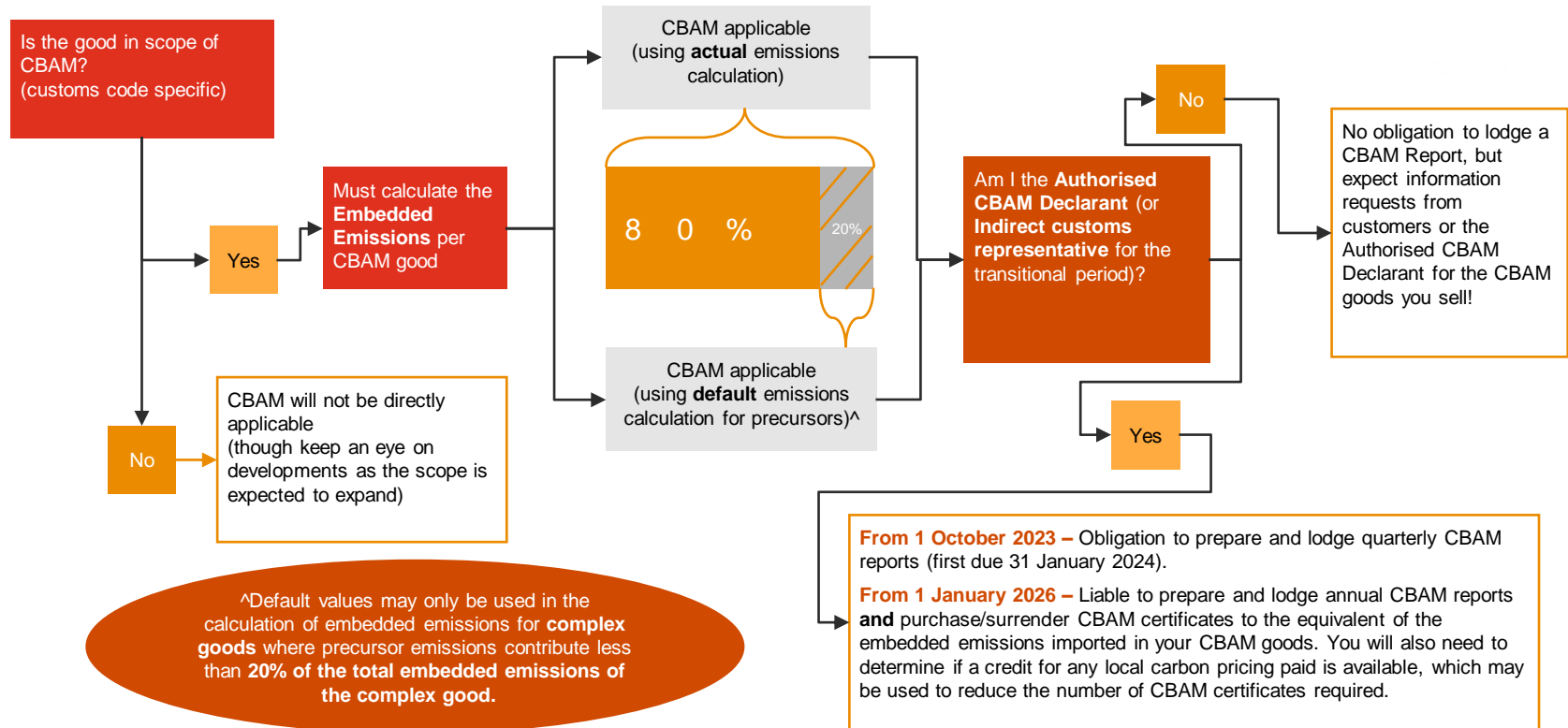
Importers / suppliers will be faced with **higher costs and additional administrative burdens**. Depending on the possibility to pass through the costs will be 'paid' by the consumers or the importers.

# CBAM - timeline



- In the last few months:**
- We have received updated CBAM guidance and an approved implementing act (more to come);
  - The EC has clarified their expectations for the Transitional Period; and
  - The EC has confirmed the application of the default value concession will be limited.

# (Very) Simple CBAM decision tree



# A lot of goods will be covered by CBAM

## Cement

- 2507 00 80 – Other kaolinic clays
- 2523 10 00 – Cement clinkers
- 2523 21 00 – White Portland cement,
- 2523 29 00 – Other Portland cement
- 2523 90 00 – Other hydraulic cements
- 2523 30 00 – Aluminous cement

## Electricity

- 2716 00 00 – Electrical energy

## Fertilizers

- 2808 00 00 – Nitric acid; sulphonitric acids
- 3102 10 – Urea, whether or not in aqueous solution
- 2814 – Ammonia
- 2834 21 00 – Nitrates of potassium
- 3102 – Mineral or chemical fertilisers, nitrogenous except 3102 10 (Urea)
- 3105 – Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilise*Except: 3105 60 00 – Mineral or chemical fertilisers containing the two fertilising elements phosphorus and potassiums - -*

## Aluminium

- Chapter 76 –Aluminium, such as
- 7613 00 00 – Aluminium containers for compressed or liquefied gas
- 7614 – Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated
- 7616 – Other articles of aluminium

## Chemicals

- 2804 10 000 - Hydrogen

## Iron & steel

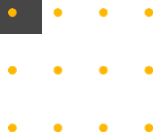
- 2601 12 00 – Agglomerated iron ores and concentrates
- 7201 – Pig iron and spiegeleisen in pigs,
- **Chapter 72** such as 7228 – Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel
- 7229 – Wire of other alloy steel
- **Chapter 73** such as 7301 – Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel
- 7302 – Railway or tramway track construction material of iron or steel, 7303 – Tubes, pipes and hollow profiles, of cast iron
- 7304 – Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel
- 7305 – Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406,4 mm, of iron or steel
- 7310 – Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
- 7311 – Containers for compressed or liquefied gas, of iron or steel
- 7318 – Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel
- 7326 – Other articles of iron or steel

CBAM  
products

CBAM will also apply to processed products from those goods as resulting from the inward processing procedure when they are imported into the EU.

Potential extension of scope to **organic chemicals and polymers** in 2026 - yet to be decided during transition period.

# Poll



## **Answer: How well is your company prepared for the implementation of the Carbon Border Adjustment Mechanism (CBAM)?**

1. We're just starting out
2. We have a general overview of the impact CBAM will have
3. We're well prepared for CBAM
4. I'm not sure...
5. It's not relevant for our company

# Deforestation

## Relevant for both biodiversity, ecosystems and affected communities

### EU Deforestation Regulation – into effect 30 Dec. '24

Combat **deforestation** and **forest degradation** while taking into account the **protection of human rights and rights of indigenous peoples and local communities**

Products shall not be placed or made available on the market or exported, unless they are:

- deforestation-free;
- produced in accordance with the relevant legislation of the country of production; and
- covered by a due diligence statement.

### Commodities/products in scope

<b>Wood</b>	incl. printed books, furniture, pallets
<b>Soya</b>	incl. beans, flower, oil
<b>Oil Palm</b>	incl. nuts, kernel, acids
<b>Cattle</b>	incl. live cattle, meat, leathers
<b>Cocoa</b>	incl. beans, paste, butter, powder, chocolate
<b>Coffee</b>	incl. roasted, unroasted, decaf, substitutes
<b>Rubber</b>	incl. natural, compounded, tyres, inner tubes

### Risk of non-compliance

*Potential business disruption (seizure, suspension, recall), penalties, sanctions and exposure on EU Commission website with company name.*

Need for up to date due diligence framework

Yearly review + public report for non-SMEs

Compliance officer at management level for non-SMEs

Need for independent audit function for all non-SME operators

### Relevance tax & link CSR

**Product & transaction details** (description, quantity, country, geolocation, supplier & customer information)

**CN codes**

**import/supply/export**

**Customs infrastructure**

**risk assessment & reporting obligations**

**yearly review**

**Data gathering & management**

**Connected CSRD topics:**

*biodiversity loss*

*ecosystem services*

*climate change*

*affected communities*

*human rights*



# Key takeaways



If your organisation works with unlimited partnerships or OFGRs, use 2024 to adjust your structure to the new rules in a tax friendly manner



Get ready for CBAM (and be 100% sure if you think your company is not affected by CBAM-regulations)



Ensure that you know which rule is applicable to each of the individual expats in your company.

# Questions?



# Useful links



- [Webcast 'Introduction to the EU ETS - Maritime Sector'](#)
- [Podcast \*Pensioen Inside\*](#)
- [Webcast series 'State of Tax, Legal & People'](#) (next year will include deep dive webcasts on Pillar 2 and CSRD).
- [Tax measures 2024 Tax Plan](#)

# Evaluation

- How would you rate this webinar on a scale from 1 to 10?
- The content was relevant. (Totally agree/Agree/Neutral/Disagree/Totally agree)
- Do you have any suggestions and/or comments?
- Do you have specific questions and would you like us to contact you?

# Closing

- **Questions?** Please contact your PwC advisor or let us know in the evaluation of this webcast.
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- Please fill in the evaluation form

# Contact



**Michel van Dun**

International Corporate Tax  
specialist

**T** +31 6 10421199

**E** michel.van.dun@pwc.com



**Recep Bagci**

International Corporate Tax  
specialist

**T** +31 6 57456581

**E** recep.bagci@pwc.com



**Claudia Buysing Damsté**

Indirect Tax Customs /  
Green Taxes specialist

**T** +31 6 51030463

**E** claudia.buysing.damste@pwc.com

# Contact



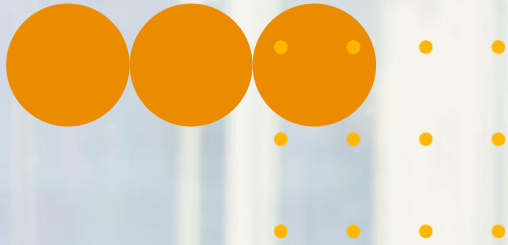
**Merel Mookhoek**  
Corporate Tax specialist

**T** +31 6 51639079  
**E** merel.mookhoek@pwc.com



**Emina Mujkic**  
Workforce | Employment tax

**T** +31 6 53965563  
**E** emina.mujkic@pwc.com



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