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The Netherlands TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in The Netherlands.

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THE NETHERLANDS TAX



1. How often is tax law amended and what is the process?

Generally, tax law is amended and/or proposed on Budget Day (the third Tuesday of September). However, tax proposals are not limited to this day; they may also follow case law.

Legislative proposals are generally drafted by the Dutch Ministry of Finance (although they may also be drafted by Members of the House of Representatives (Tweede Kamer der Staten Generaal), after which the proposals may be released for public consultation before they are formally proposed. During such a public consultation, stakeholders such as the Dutch Order of Tax Advisors (NOB), the Confederation of Netherlands Industry and Employers (VNO-NCW) and others typically provide a response.

After the legislative proposal is sent to the Dutch House of Representatives, it is generally first debated in the House Finance Committee, before it goes to the floor of the House to be voted upon. The House can amend the legislative proposal.

Once the legislative proposal is approved by the Dutch House of Representatives, the proposal is sent to the Dutch Senate (Eerste Kamer der Staten Generaal), where it is debated in the Senate Finance Committee before going to the Senate floor to be voted upon.

If the Senate approves the legislative proposal, the law is signed by the King and the responsible minister and published in the Government Gazette. Generally, Dutch tax law enters into force on January 1 of the year following its acceptance.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Dutch companies are required to file corporate income

tax returns within five months after the end of the book year (a filing extension for a period of 11 months can be obtained if the return is filed by a professional tax advisor).

From a Dutch legal perspective, Dutch companies must prepare financial statements for each financial year. The financial statements may be prepared in a functional currency (if justified by the activities of the company). Upon request and under certain conditions, the taxable amount may also be calculated in the functional currency of the company.

The deadline for preparing and signing the annual accounts is 5 months after the end of the financial year. The shareholders may grant an extension of a maximum of 5 months. After the time for the preparing and signing of the annual accounts, the shareholders have 2 months to approve the annual accounts of the company. The annual accounts have to be deposited with the Dutch Chamber of Commerce within 12 months after the end of the financial year.

The administration (and records) must be kept for a period of 7 years.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

Legislation and regulations in the area of taxation are drafted by the Dutch Ministry of Finance.

Dutch tax law is generally executed by the Dutch tax authorities, which are a part of the Dutch Ministry of Finance.

Tax issues are generally resolved in discussion with the taxpayer (see also the response to question 4).

4. Are tax disputes heard by a court, tribunal or body independent of the tax

authority? How long do such proceedings generally take?

Tax disputes are settled in a relatively similar manner as (other) administrative disputes. Taxpayers can first lodge an objection against an assessment with the Dutch tax authorities within six weeks after the date of the assessment. The Dutch tax authorities reconsider the assessment on the basis of this objection and may accept or deny the objection wholly or partially. The term for the Dutch tax authorities to take their decision is six weeks, which may be extended with another six weeks.

The whole or partial denial of the objection may be appealed with the competent District Court (rechtbank) by filing an appeal within six weeks after the date of the decision to deny the objection. Generally, the combination of the objection phase and the first appeal phase should take no longer than two years (half a year for the objection phase, a year and a half for the first appeal phase).

The decision of the District Court can be appealed at a Court of Appeal (gerechtshof). The appeal has to be made within 6 weeks of the date of the judgment of the District Court, after which it may still be possible to present further arguments. Generally, the Court of Appeal phase should take no longer than two years. Both the District Court and the Court of Appeal deal with factual matters (as well as legal matters).

The judgment of the Court of Appeal can be appealed with the Dutch Supreme Court (Hoge Raad), which only deals with legal and procedural matters.

At any stage of the judicial process, a court can refer a question of interpretation of EU law to the European Court of Justice for a preliminary ruling. This may be the case if the law being interpreted by the court is the implementation of an EU directive or if the court considers that Dutch law may be contrary to (primary) EU law.

Finally, the District Court and the Court of Appeal can refer a question of interpretation of Dutch law to the Dutch Supreme Court for a preliminary ruling.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

In principle, corporate taxpayer receive a preliminary assessment from the Dutch tax authorities at the start of the fiscal year concerned with an amount calculated on

the basis of data from previous years. The amount due under the preliminary assessment may be paid in monthly installments. Generally, tax must be paid within 6 weeks after a final assessment.

If an objection is lodged against an assessment, it can contain a request to have the payment of tax postponed until a final judgment is rendered.

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Pursuant to Dutch administrative law, taxpayer information is confidential. It may only be disclosed to third parties under certain conditions.

Taxpayer information (e.g. exchange tax ruling forms, other EU/international exchange of information mechanisms) may be exchanged with foreign tax authorities in specific situations.

Under the mandatory disclosure rules, certain information on taxpayers / transactions is exchanged between EU Member States.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

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8. What are the tests for determining residence of business entities (including transparent entities)?

Generally, a legal entity must first be qualified as opaque (itself subject to taxation) or transparent (its partners subject to taxation) for Dutch tax purposes. A number questions/elements relating to the legal form (e.g. can the entity own property? Is the liability of the investors limited? Does it have a capital divided into

shares) must be answered in order to determine the qualification.

If the qualification of the entity leads to the conclusion that it is a limited partnership-like legal form, it may or may not be subject to Dutch taxation, depending on the question whether the limited partnership is an open limited partnership (opaque) or a closed limited partnership (transparent). A limited partnership is a closed limited partnership if all partners (both the limited partners as well as the general partners) have to give prior permission for the accession or replacement of limited partners.

The legal entity qualification rules are expected to change as of 2025, with a legislative proposal published on Budget Day 2023. The main change would be that limited partnerships (under Dutch law) would always be treated as transparent. Under the similarity approach, the unanimous consent requirement would therefore no longer be relevant.

The tax residency of legal entities is determined by all relevant facts and circumstances. The most important factor in determining the tax residence of an entity is the place of effective management.

Entities incorporated pursuant to Dutch law are tax residents for Dutch corporate income tax and dividend withholding tax purposes by legal fiction.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

The Dutch tax authorities do not specifically police cross-border transactions within an international group.

Transactions between associated enterprises must, however, take place on an at arm's length basis. In the Dutch corporate income tax returns, questions on intercompany transactions must be answered by taxpayers, furthermore, documentation substantiating the arm's length nature of intercompany transactions must be kept in the taxpayer's administration.

Effective January 1, 2021, a conditional withholding tax on interest and royalty payments made to low tax jurisdictions or in certain abusive situations applies. The conditional withholding tax is levied at a rate of 25.8% (the upper bracket corporate income tax rate).

Effective January 1, 2022, the Netherlands implemented transfer pricing mismatch rules that prevent taxpayers from taking unilateral downward adjustments where there is no corresponding upward adjustment. To the

extent the taxpayer establishes there is a corresponding upward adjustment, the downward adjustment should be granted.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

Effective January 1, 2019, the Netherlands has implemented CFC rules based on the 'Model A' CFC rules of the EU Anti-Tax Avoidance Directive. Pursuant to the EU Anti-Tax Avoidance Directive all EU Member States must introduce, inter alia, CFC rules in their corporate income tax. The Netherlands has only implemented the Model A CFC rules (which include certain types of passive income in the Dutch taxable base) for controlled companies (or permanent establishments) in low tax jurisdictions that do not perform 'significant economic activities'. A presumption of evidence with respect to performing significant economic activities applies if a CFC meets the Dutch substance requirements (most notably that it meets the wage sum criterion and the office space criterion).

The list of low tax jurisdictions is reviewed and/or revised annually and is based on the EU list of non-cooperative jurisdictions and on the statutory corporate income tax rate of a jurisdiction (if less than 9%, a jurisdiction is a low tax jurisdiction).

For 2023, the low tax jurisdictions are:

- American Samoa
- American Virgin Islands
- Anguilla
- Bahamas
- Bahrain
- Barbados
- Bermuda
- British Virgin Islands
- Cayman Islands
- Fiji
- Guam
- Guernsey
- Isle of Man
- Jersey
- Oman
- Palau
- Panama
- Samoa
- Trinidad and Tobago
- Turkmenistan
- Turks and Caicos Islands
- Vanuatu
- United Arab Emirates (expected to be removed effective January 1, 2024)

The Russian Federation is expected to be added to the list effective January 1, 2024.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

The Netherlands has had transfer pricing rules for over half a century. Since 2002 the arm's length principle is explicitly laid down in the Corporate Income Tax Act. The Dutch Ministry of Finance has published guidance in the form of the Transfer Pricing Decree on how, in its view, to apply the arm's length principle. Further, there is limited case law on how to apply the arm's length principle in practice.

The Netherlands does not have specific thin capitalisation rules. However, there are specific interest deduction rules and the Netherlands has implemented the earnings stripping rule included in the EU ATAD I directive, allowing for deduction of excess borrowing costs up to 20% of the taxpayer's EBITDA or EUR 1 million (whichever is highest).

The Netherlands does not have specific transfer pricing safe harbours.

It is possible to obtain a unilateral, bilateral or multilateral APA in the Netherlands.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

The doctrine of abuse of law (fraus legis) may be invoked by the Dutch tax authorities. Abuse of law is only invoked successfully if the main motive of the taxpayer is tax avoidance, the structure is artificial (that is to say, it serves no business purposes) and the tax consequences of the artificial structure are not in line with the object and purpose of Dutch tax law.

Abuse of law is generally invoked by the Dutch tax authorities as a final effort to challenge a structure that is in accordance with the text of the law, but is not in accordance with the object and purpose of the law. As the burden of proof lies with the tax inspector, the abuse of law doctrine is not invoked by the Dutch tax authorities very often.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

No, the Netherlands does not have a digital services tax.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

The Netherlands has in some form implemented BEPS Actions 2, 3, 4, 12 and 14 through the implementation of a number of EU directives (Anti-Tax Avoidance Directives I and II, Mandatory Disclosure Directive, Dispute Resolution Directive). The Netherlands has also implemented BEPS Action 15 (and thereby also BEPS Actions 6, 7 and 14) by ratifying the Multilateral Instrument. Furthermore the Netherlands is compliant with the BEPS Actions on transfer pricing (Action 8-10 and 13) and has no harmful tax practices (BEPS Action 5).

The Netherlands is committed to implementing the OECD's recent two-pillar solution, with a legislative proposal to implement the EU Pillar Two directive currently pending before Dutch parliament.

15. How has the OECD BEPS program impacted tax policies?

The outcome of the BEPS project has significant impact on government policy as can be observed by the answer to question 14.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

The Netherlands, as a member of the OECD, follows the recognized OECD Model. The Netherlands has:

Corporate income tax: levied at rates of 19% (taxable profits up to EUR 200,000) and 25.8% (taxable profits in

excess of EUR 200,000) which is based on business profits and includes capital gains (capital gains on the sale of shares may be exempt under the Dutch participation exemption).

Value added tax: based on the EU VAT system and levied at 9% (lower rate) or 21% (higher rate) with a number of exemptions and 0% rates.

Personal income tax: divided into three 'boxes':

Box 1: Income from labor, which includes business profits, employment income, pensions and other income from labor (where there is no material business enterprise and no employment);

- Levied at a progressive rate of up to 49.50%.

Box 2: Income from significant shareholdings (generally 5% or more of (a class of) shares of a company), which includes dividends and capital gains.

- Levied at a rate of 26.9%.

Box 3: Deemed income from return on investment, which includes all the assets, including land (minus liabilities) not attributable to boxes 1 and 2.

- Levied at a rate of 32% on a deemed return of up to 6.17% depending on the net worth of the individual, with an exemption for the first EUR 57,000.
- The Dutch Supreme Court ruled in late-2021 that the system of taxation in box 3 is not in accordance with Article 1 of the First Protocol to the European Convention on Human Rights. As such, the system for taxing return on investment is currently being reconsidered, with a legislative proposal that was recently put forward that would change the system effective 2027 and taxpayers being able to challenge the deemed return on investment in the interim. Currently, the interim solution (with different categories of deemed return for different asset classes) is also being challenged before court.

The Netherlands does not have capital or stamp duties and does not have specific taxes on savings income, royalties and income from land (other than within the context of the above framework).

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

The commercial accounts of a company are the starting point of the tax accounts. Certain differences in the depreciation of assets, deductibility of expenses and other items need to be taken into account for tax purposes.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

There are many different legal forms through which businesses can be carried on.

Dutch private limited companies (BV)

- Taxable entity (by legal fiction).
- Most common vehicle used for carrying on a business (excluding sole proprietorship).
- Capital divided into shares, legal personality, shareholders only liable for the nominal amount in shares issued.

Dutch public limited companies (NV)

- Taxable entity (by legal fiction).
- Used for listed companies.
- Capital divided into shares, legal personality, shareholders only liable for the nominal amount in shares issued.
- Higher capital requirement than a BV.

Limited partnerships (CV)

- Taxable if open limited partnership, otherwise transparent. Potentially subject to change as of 2023.

Cooperatives (coöperatie)

- Taxable entity (by legal fiction).
- Non-holding cooperatives are not subject to Dutch dividend withholding tax.
- Must be incorporated by at least two members.

Mutual insurance association (onderlinge waarborgmaatschappij)

- Taxable entity (by legal fiction).

Associations (vereniging)

- Taxable entity insofar it conducts a material business enterprise.

Foundations (stichting)

- Taxable entity insofar it conducts a material business enterprise.

General Partnership (vennootschap onder firma)

- Tax transparent.

Professional Partnership (maatschap)

- Tax transparent.

Dutch corporate law does not contain a vehicle that is similar (in concept) to a trust.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

Liability to corporate income tax (resident taxation) is based upon the concept of fiscal residence. Legal entities incorporated pursuant to Dutch law are deemed to be a tax resident of the Netherlands for Dutch corporate income tax and dividend withholding tax purposes.

Generally, a legal entity is considered to be a resident of the Netherlands for tax purposes if its place of effective management is in the Netherlands.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

The Netherlands has two regimes for collective investment: the exempt investment institution (vrijgestelde beleggingsinstelling; VBI) and the fiscal investment institution (fiscale beleggingsinstelling; FBI).

The VBI is fully exempt from corporate income tax and is, as such, not considered a tax treaty resident.

The FBI is subject to corporate income tax at 0%. Therefore the FBI is liable to tax and may enjoy tax treaty benefits. In order to be able to apply for FBI status, certain requirements (e.g. activities of the entity, the (statutory) objective and shareholder requirements) have to be met. An FBI has to distribute all of its profits within 8 months after the end of the financial year.

Both the VBI and the FBI regime are currently subject to review and may be amended. In relation to the FBI regime, direct investment in real estate will likely no longer be possible as of January 1, 2025.

21. Are there any special tax regimes for intellectual property, such as patent box?

R&D Wage Tax Credit

The R&D Wage Tax Credit is a subsidy for research & development activities in the Netherlands which is granted by means of a reduction in Dutch wage tax. In order to apply the R&D Wage Tax Credit, an R&D declaration (WBSO-verklaring) must be obtained from the Dutch Enterprise Agency. The R&D Wage Tax Credit is based on salary expenses related to R&D activities and on certain R&D expenses.

Innovation box

The Netherlands has the innovation box, where qualifying income is subject to an effective tax rate of 9% (instead of 15% – 25.8%).

In order to be able to apply the innovation box to qualifying income, the taxpayer must have an entry ticket (SME) or entry tickets (MNE). SMEs can apply the innovation box to their qualifying income if they enjoy the R&D Wage Tax Credit (which can be obtained with the Dutch Enterprise Agency).

In addition to the R&D Wage Tax Credit, MNEs must also have a qualifying (self-developed) intangible asset in order to apply the innovation box. Such intangibles are intangible assets:

- for which a patent or a plant breeders' right has been obtained/applied for;
- that qualify as software;
- for which the taxpayer is allowed to use/trade a non-chemical method as defined in the Crop Protection Act and biocides;
- for which the taxpayer as EU marketing authorisation for medical products;
- for which the Dutch Patent Center has granted a supplementary protection certificate;
- for which a registered utility model has been granted; or
- that relate to intangible assets qualifying under one of the above categories.

An exclusive license for an intangible asset qualifying under one of the first 5 categories listed above for a certain geographical area, certain application or certain period of time may also qualify for the innovation box.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax

purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

The Netherlands has the fiscal unity regime (fiscale eenheid). Under the fiscal unity regime, corporate income tax is levied from the fiscal unity parent company for all companies consolidated in the fiscal unity. The benefits of a fiscal unity are that, in principle, profits of one company can be set off against losses of another company in the same financial year and that only a single tax return has to be filed for corporate income tax purposes.

A fiscal unity can be formed if the parent company owns at least 95% of the shares (representing 95% of voting rights and equity interest) of a subsidiary and all other requirements (e.g. legal form, financial year, etc.) are met.

In order to form a fiscal unity, the companies wishing to form the fiscal unity must file a joint written request with the Dutch tax authorities. The fiscal unity can be formed with retroactive effect of a maximum of 3 months prior to the date of filing.

The fiscal unity regime is, in principle, a full consolidation regime. Therefore, all assets and liabilities of a fiscal unity company are attributed to the fiscal unity parent company. Each member is jointly and severally liable for the corporate income tax due by the parent company.

Pursuant to legislation adopted after case law from the European Court of Justice, the fiscal unity regime is not applied in relation to a number of anti-abuse rules, most notably the anti-base erosion interest deduction rule (article 10a of the Dutch Corporate Income Tax Act of 1969).

23. Are there any withholding taxes?

The Netherlands has a withholding tax on outbound dividends, levied at a rate of 15%.

As of January 1, 2021, a conditional withholding tax on outbound interest and royalty payments made to so-called 'low tax jurisdictions' and in certain abusive situations (e.g. intermediate companies without substance, interposed between the Netherlands and a low tax jurisdiction), has taken effect. The jurisdictions the Netherlands currently considers as low tax are listed under question 10.

Effective January 1, 2024, the conditional withholding tax will also include dividends distributed to 'low tax jurisdictions' and in certain abusive situations.

24. Are there any environmental taxes payable by businesses?

The Netherlands levies energy tax on electricity and natural gas (on-charged by the relevant utility company), a tax on mains water (on-charged by the relevant utility company) and a carbon tax from certain industrial companies.

25. Is dividend income received from resident and/or non-resident companies taxable?

In principle, dividend income is part of the income of a company. However, the Netherlands has the participation exemption (deelnemingsvrijstelling), which provides for a full exemption on dividends and capital gains derived from a qualifying subsidiary of a Dutch resident taxpayer.

A subsidiary generally qualifies for the application of the participation exemption if (i) the Dutch resident taxpayer owns at least 5% of the nominal paid-up share capital of a company dividend in shares and (ii):

a) The subsidiary is not held as a portfolio investment ("Motive Test"); or

b) The subsidiary is a qualifying portfolio investment; this is the case if:

- The subsidiary is subject to an effective tax rate of at least 10% on a taxable base similar to the Dutch taxable base ("Subject-to-Tax Test"); or
- The assets of the subsidiary consist, for no more than 50%, of low-tax investment assets ("Asset Test").

For the CFC rules introduced on January 1, 2019, we refer to question 10.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

The following advantages would be relevant for international groups wishing to relocate their activities to the:

- Advance Pricing Agreements and/or Advance Tax Rulings can be obtained from the Dutch tax authorities if the international group performs operational activities in the Netherlands;
- The Netherlands has a large tax treaty network with favorable allocation of taxing rights on capital gains and reduced withholding tax rates;
- Possibility to form a fiscal unity (see question 22), leading to administrative savings;
- The 30%-facility, allowing for tax-free reimbursement of 30% of an employee's salary up to a certain threshold if the

employee was recruited from abroad and has specific expertise (assessed on the basis of the salary the employee earns);

- Participation exemption on dividends and capital gains (see question 25);
- Step-up in basis of assets to fair market value.
- Gateway to Europe (Schiphol Airport, harbor of Rotterdam);

The following disadvantages would be relevant:

- Labor law is less flexible than e.g. Ireland;
- Current political climate and the introduction of reactionary anti-abuse rules.

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