



International tax

Netherlands Highlights 2012

Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No

Accounting principles/financial statements – IAS/IFRS/Dutch GAAP. Financial statements must be filed annually.

Principal business entities – These are the public company (*naamloze vennootschap* or NV), private limited liability company (*besloten vennootschap* or BV), partnership (*commanditaire vennootschap* or CV, *vennootschap onder firma* or VOF, etc.), cooperative and branch of a foreign company.

Corporate taxation:

Residence – Any company that has its management in the Netherlands and, in principle, all companies incorporated according to Dutch civil law are regarded as Dutch resident.

Basis – Residents are liable to tax on their worldwide income; nonresidents are taxed only on Netherlands-source income. Exemptions may apply for certain income from shareholdings and innovative activities (see under “Participation exemption” and “Incentives”). Branches of foreign companies and subsidiaries are treated the same in determining corporate income tax, although branches are usually exempt from withholding tax on profit remittances to foreign head offices.

Taxable income – Corporate income tax is due on all profits derived from conducting a business, including trading income, foreign-source income, passive income and capital gains. In principle, all costs relating to the business are deductible.

Taxation of dividends – Dividends received by a Dutch resident company are exempt if the participation exemption applies (see under “Participation exemption”).

Capital gains – Capital gains derived from the sale of a participation are exempt if the participation exemption applies (see under “Participation exemption”). Other capital

gains are taxed at a rate of 25%. Gains arising on a (de-)merger may be exempt if certain requirements are met.

Losses – Losses may be carried forward for 9 years and carried back for 1 year. Losses incurred in fiscal years 2009 through 2011 may be carried back for 3 years upon request, in which case, the term for carryforward is limited to 6 years. Special restrictions apply to losses incurred by a company that conducts mainly finance and holding activities.

Rate – 20% on the first EUR 200,000 of taxable profits; 25% for taxable profits exceeding EUR 200,000.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – As of 1 January 2012, income from a permanent establishment (PE) in a foreign country is exempt from the Dutch tax base unless the foreign PE is a low-taxed investment company (in which case a tax credit will be granted for the foreign tax).

Participation exemption – The participation exemption applies to dividends and capital gains derived from shareholdings of at least 5% provided: (1) the subsidiary is not held as a portfolio investment (i.e. predominantly operational); or (2) the subsidiary is subject to a reasonable effective tax rate based on Dutch tax principles (“subject to tax test”); or (3) less than 50% of the assets of the subsidiary consist of “passive” assets based on the fair market value of the assets (“asset test”). If the exemption is not applicable, a credit for the underlying tax may be obtained.

Holding company regime – See under “Participation exemption.”

Incentives – Various investment deductions and reliefs are available. Under the “innovation box” regime, income derived from self-developed intellectual property (R&D) is effectively taxed at a 5% rate.

As from 1 January 2012, a research and development allowance (RDA) applies for costs and expenditures directly related to a taxpayer’s R&D activities (except for wage

costs). The RDA reduces taxable income and, for 2012, the RDA percentage will be 40%. Assuming a marginal tax rate of 25%, the net benefit will be 10%.

A special tonnage tax regime applies to shipping companies. A 0% tax liability or an exemption is provided for qualifying investment funds.

Withholding tax:

Dividends – If the participation exemption applies, dividends are exempt from dividend withholding tax. Dividend withholding tax at 15% is, in principle, due on other dividends paid to foreign shareholders, but the rate is frequently reduced by tax treaty.

Interest – The Netherlands does not levy withholding tax on interest.

Royalties – The Netherlands does not levy withholding tax on royalties.

Technical service fees – The Netherlands does not levy withholding tax on technical service fees.

Branch remittance tax – No

Other – No

Other taxes on corporations:

Capital duty – No

Payroll tax – No

Real property tax – Municipalities impose an annual tax at varying rates on owners of real property. Real estate tax is deductible for corporate income tax purposes.

Social security – Social security contributions on employment income are payable by employers and employees. The contributions are calculated on gross salaries, less pension premiums withheld from the salary.

An income-dependent health insurance contribution, disability insurance contribution and unemployment insurance contribution are also levied.

Stamp duty – No

Transfer tax – Transfer tax at 6% is payable on the acquisition of real property in the

Netherlands or certain related rights. (Under a temporary measure to stimulate the housing market, the transfer tax will be 2% for residences until 1 July 2012.)

Other – No

Anti-avoidance rules:

Transfer pricing – Intracompany pricing for goods and services must be at arm's length, and documentation must be maintained on intragroup transactions. It is possible to enter into an advance pricing agreement for the use of a certain transfer pricing method.

Thin capitalization – Under the thin capitalization rules, interest expense exceeding a 3:1 debt-to-equity ratio may not be deducted; however, if the debt-to-equity ratio for the group as a whole exceeds 3:1, the Dutch company may be leveraged to the same extent. Although the thin capitalization rules take third-party debt into consideration when calculating ratios, only interest due on debt between related parties can be disallowed as a deduction.

Controlled foreign companies – There is no specific CFC legislation, but there is an obligation to annually reassess shareholdings of 25% or more in low-taxed companies whose assets consist of at least 90% "passive" assets.

Other – The abuse of law doctrine applies where the motive of a transaction or series of transactions is the avoidance of tax.

While legislation must still be enacted, for a fiscal unity formed on or after 15 November 2011 between a parent company and an acquired subsidiary, interest expenses regarding such acquisition will only be deductible up to the parent company's taxable income. The interest limitation rules will not apply when the interest payable does not exceed EUR 1,000,000 or if the acquisition loan does not exceed a certain percentage of the acquisition liability. This percentage is 60% in the first year of consolidation (decreasing by 5 percentage points per annum until reaching 25%).

Disclosure requirements – No

Administration and compliance:

Tax year – The tax year generally corresponds to the calendar year, although a deviating year may be used if so provided in the company's articles of association. The tax year is usually 12 months, but shorter or longer periods are permitted in the year of incorporation.

Consolidated returns – Provided certain conditions are satisfied, a parent company may form a fiscal unity with one or more of its subsidiaries, under which the losses of one company may be offset against the profits of another and fixed assets of one company may be transferred to another without tax consequences. To qualify for fiscal unity status, the parent company must own at least 95% of its subsidiary. A Dutch PE of a foreign group may be included in a tax-consolidated group but it is not possible to include companies incorporated under Dutch law and resident outside the Netherlands. The parent company and the subsidiaries must have the same financial year and must be subject to the same corporate tax rules.

Filing requirements – A provisional assessment, generally based on information from the previous 2 years, is usually issued in the first month of the taxpayer's financial year. This assessment is payable in monthly installments for the remaining months of the year. Corporate income tax returns must be filed annually, within 6 months of the end of the fiscal year. Businesses are expected to file all returns electronically. The tax return should be accompanied by all information required to determine taxable profits, including the balance sheet and profit-and-loss account and any other information requested by the tax inspector. If a company does not meet these obligations or does not file a proper tax return, the inspector may issue an estimated assessment.

Penalties – Administrative penalties may be due for late filing or failure to file a Dutch return, or for the late payment or nonpayment of tax. Criminal penalties may be imposed if the Dutch authorities can prove fraud or gross negligence.

Rulings – A taxpayer can request an advance ruling from the tax authorities on the application of the participation exemption to holding companies in international structures; the use of hybrid financing instruments and hybrid entities; the existence of a PE in the Netherlands; or the classification of activities, i.e. group services or shareholder activities.

Personal taxation:

Basis – Residents are taxed on their worldwide income. Nonresidents are taxed only on their Netherlands-source income. Foreign individuals with Netherlands-source income can opt for limited national taxpayer status under which they are taxed on foreign-

source income but are entitled to certain credits.

Residence – Residence is based on factors like employment, family circumstances, etc.

Filing status – Married couples must file a joint assessment unless a petition for a divorce has been filed. Unmarried couples must file a joint assessment if certain conditions are met.

Taxable income – Income is categorized and taxed within one of 3 "boxes." Box 1 is income from an enterprise, employment and housing. Box 2 is income from substantial interests (5% and more). Box 3 is income from savings and investments.

Capital gains – Capital gains are, in principle, taxed at progressive rates in Box 1. If the gains are related to a substantial interest, a flat rate of 25% applies in Box 2. If the gain relates to an investment, the gains are not taxed as such in Box 3. There is no capital gains tax concerning dwellings.

Deductions and allowances – In general, all expenses incurred that are necessary to obtain taxable income in Box 1 and Box 2 are deductible. Certain expenses of a mixed character are not deductible or are deductible subject to certain limits. In relation to Box 3, liabilities are deductible from the taxable base.

Rates – Box 1 income is subject to progressive rates of 1.95% up to 52%; Box 2 income is taxed at a flat rate of 25%; and, under Box 3, a fixed presumed gain of 4% is taxed at a flat rate of 30%.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – Transfer tax of 6% is payable by the purchaser on the acquisition of real property or certain related rights.

Real property tax – Municipalities impose tax at varying rates on owners of real property in their municipality on an annual basis. Real property tax is not deductible for individual income tax purposes.

Inheritance/estate tax – Inheritance tax is due on inheritances received from Dutch residents. Dutch nationals who emigrate from the Netherlands are still considered residents during a 10-year period. Rates vary between 10% and 40%.

Net wealth/net worth tax – No

Social security – State social security contributions are payable by all individuals resident in the Netherlands. Additional social security contributions are payable by employees and the self-employed.

Administration and compliance:

Tax year – Calendar year

Filing and payment – The tax return must, in principle, be filed before 1 April of the next calendar year. Payment must be made upon assessment.

Penalties – Administrative penalties may be imposed for late filing or failure to file a Dutch return, or the late payment or non-payment of tax. Criminal penalties are imposed if the Dutch authorities can prove fraud or gross negligence.

Value added tax:

Taxable transactions – VAT is levied at each stage in the chain of production and distribution of goods and services. VAT applies on the supply of goods, the rendering of services, the acquisition of goods by businesses and the import of goods.

Rates – The standard VAT rate is 19% with a reduced rate of 6% applying for certain goods and services.

Registration – There is no registration threshold in the Netherlands.

Filing and payment – Depending on the amount of VAT payable, VAT returns are filed monthly, quarterly or annually.

Source of tax law: *Grondwet voor het Koninkrijk der Nederlanden* (Constitution of the Kingdom of the Netherlands), as specified in various tax acts

Tax treaties: The Netherlands has concluded more than 80 tax treaties.

Tax authorities: *Belastingdienst* (Tax revenue)

International organizations: EU, OECD, WTO, IMF, World Bank, Organization for Security and Co-operation in Europe (OSCE), Council of Europe (COE)

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