

Oil and gas taxation in the Netherlands
Deloitte taxation and
investment guides



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Oil and gas tax guide

Tax professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Oil and Gas Tax Guides, an online series that provides information on tax regimes specific to the oil and gas industry. The Guides are intended to be a supplement to the Deloitte Taxation and Investment Guides, which can be found at www.deloitte.com/taxguides. For additional information regarding global oil and gas resources, please visit our website: www.deloitte.com/oilandgas

1.0 Summary

The Netherlands has several layers of taxation on upstream oil and gas activities. The most important taxes which apply to companies extracting oil and gas from the Netherlands and/or the Dutch Continental Shelf are:

• Corporate income tax ("CIT")*	25%
• State profit share ("SPS")	50% (effective combined SPS-CIT rate 50%)
• Surface rental	Euro 235–703 per km ²
• Production royalty ("cijns")	We refer to the below note**
• Insurance premium tax	21%
• Value Added Tax ("VAT")	21% (see 5.0)
• Withholding taxes:*	
– Interest	Nil
– Dividends	15%***
– Royalties	Nil

* For more detailed information regarding the corporate income tax or withholding tax, we refer to the general Deloitte tax and business guide for the Netherlands.

** Actual levy of Exploration and Production ("E&P") royalty entirely depends on the facts and circumstances at hand.

*** Subject to reduction under double tax agreements and domestic law exemptions.

2.0 State profit share

2.1 In general

Dutch resident companies are subject to corporate income tax on their worldwide taxable profits (subject to various exemptions – for example foreign branches and qualifying dividends). The applicable corporate income tax rate is 20% on the first €200,000 and 25% on the excess.

Next to this, based on the Dutch Mining Act, SPS is levied from the (co-)holder of a Dutch production license on the ring fenced E&P profit at a rate of 50%. Due to interaction between CIT and SPS, the effective combined SPS-CIT tax rate on E&P profits is generally somewhere between 46% and 50%, since the net SPS payable is a deductible expense for CIT purposes, and for SPS purposes a deemed CIT credit is granted for the underlying CIT.

SPS is levied by way of assessment, which is generally imposed after the SPS return is filed. The use of preliminary assessments based on estimated turnover minus costs is used to limit interest on the taxable amount. The holder or co-holder should file an annual SPS tax return next to the corporate income tax return.

2.2 Taxable income

The taxable income for SPS purposes is the ring fenced E&P profit of the (co-)holder of a Dutch production license(s). In principle, this includes all the income and expenses relating to the production license of the relevant year. By way of cross-reference, the Mining Act stipulates that the taxable SPS profit should be determined by taking into account the main taxable profit provisions of the Dutch CIT Act.

As to qualifying expenses for SPS purposes a deemed cost-uplift of 10% is granted. The 10% cost-uplift does not apply to insurance premium tax, surface rental and cijns paid.

Further, based on the Dutch Mining Act, the 10% cost-uplift for SPS purposes may be limited for:

- depreciation concerning an acquired production license, insofar as the purchase price exceeds the expenses debited to the Profit and Loss ("P&L") of the transferor; and
- additions to the abandonment provision stemming from an acquired production license, insofar that the seller of such license has already made appropriations.

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Tariff income

Tariff income, such as income derived from selling pipeline capacity of the license holder to third parties, is excluded from the taxable SPS profit. As a consequence, tariff expenses relating to this tariff income should also be excluded from the taxable profit. There is a specific agreement in place between the Dutch tax authorities and the oil and gas industry on how to exclude the tariff income and tariff costs from the ring fenced SPS profit.

Consolidated tax return

In principle, SPS is due per production license, however if two or more production licenses are owned by a (co-)holder, a tax payer can file a consolidated SPS return. Please note that no fiscal unity (consolidated tax group) exists for SPS purposes, therefore if production licenses are held by different legal owners/companies, separate SPS-returns need to be filed.

2.3 Deductions and allowances

For SPS purposes, in principle, all the income and expenditure relating to the production (license) of the relevant year are deductible. As already noted above, for SPS purposes a 10% cost-uplift is available for qualifying expenses.

Small fields tax incentive

In December 2008, the government announced the introduction of a tax relief for new investments in capital assets (i.e. wells, rigs, platforms, including related or connected facilities, as well as exploration and appraisal drilling) for the exploration and production of qualifying small offshore natural gas fields. Accordingly, once enacted, companies will be allowed to record a one-off extra investment deduction for SPS purposes in the year they invest in operating assets used for the exploration and production of small offshore natural gas fields. The deduction amounts to an additional 25% of the qualifying cost of an investment in ring fenced operating assets, and can be set off against the operating results for SPS purposes. The deduction is in addition to the total amount of normal depreciation of the operating asset involved. The amount of the deduction is, however, limited if the asset is not put into use at the end of the year and to the extent that the company has also deferred payment. The surplus can be carried forward.

Note that the government determined specific criteria in respect of qualifying fields, based on the expected volume, the productivity of the natural gas field, and the distance to existing infrastructure. These criteria are included in amendments proposed to the 2003 Mining Act. As of September 16, 2010 the tax incentive for small fields was enacted.

2.4 Tax depreciation

The general depreciation term of assets for CIT purposes is at least five years. However, if the useful life of the asset is longer, then this period should be taken into account. Note that specific rules apply for goodwill (at least ten years) and real estate (specific computation).

With regards to exploration and production assets, the Units of Production (“UOP”) method generally is applied for both SPS and CIT purposes. Specific rules apply to capitalized exploration expenses. Under special circumstances, the depreciation at will facility is applicable for tax payers. If the conditions of the facility are met, depreciation up to 50% per year is possible on specific assets.

If an exploration license is purchased other than from the Dutch government (i.e. a pre-owned exploration license), for SPS purposes depreciation can only be taken into account insofar that the initial costs incurred by the transferor have not yet been deducted through the P&L. In addition to these main exclusions other exceptions also exist.

2.5 Sound business principles

On the basis of the Dutch CIT Act, the so-called sound business principles apply. The sound business principles have been further defined/clarified in Dutch case law. For SPS purposes these rules apply as well.

Exploratory expenses

Under the rules of the sound business principles, all exploratory expenses may be immediately deducted in the P&L. This is however different if the costs have been incurred in respect of a well which meets the criteria to become a productive well within the near future, and the development of reserves found through such well is (almost) completely certain (90% or more), based on the facts and circumstances prevailing at the time when the results of the well have been fully analyzed. In this respect, please note that the tax authorities in general apply the moment at which a production license has been issued as the moment that capital expenses need to be activated.

The tax authorities do allow for exploratory expenses incurred in connection with (currently) unsuccessful exploration wells to be capitalized (thus subject to choice of tax payer). The amortization of such capitalized costs is subject to conditions.

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Abandonment provision

Based on the sound business principles, a provision for future cost/expenditures is allowed for tax purposes where the following three conditions (following Dutch case law) are met:

- the cause of the future cost/expenditures must be attributable to facts and circumstances which are present prior to the balance date;
- the future cost/expenditure must be attributable to the tax year; and
- there must be a reasonable amount of certainty that the cost/expenditure will materialize.

As such, an abandonment provision for Dutch tax purposes (both SPS and CIT) is allowed. The total abandonment obligation must be estimated before production starts and the estimate must be periodically updated. Within the oil and gas industry it is customary that attributions to the abandonment provision are made on a UOP basis.

The annual contribution to the abandonment provision is calculated as follows: production until the end of the year at hand/total production of the field * total of estimated abandonment costs * discount factor.

2.6 Limitation rules on interest deductibility

The Dutch CIT Act provides for some anti-base erosion concerning the deductibility of interest expense. We refer to the general Deloitte tax and business guide for the Netherlands in this respect. Some of these anti-base erosion rules also apply for SPS purposes.[footnote] However, in general the interest expense due on the financing of production assets and license purchase should be deductible for SPS purposes.

2.7 Losses

Based on current legislation, an SPS loss may be offset with positive results from different book years. These SPS losses may be carried back for three years and carried forward for an indefinite period of time.

Also, unused deemed CIT credits for SPS purposes are carried forward. For the systematics of deemed CIT credits, we refer to section 2.1. In case negative deemed CIT credits arise, for instance due to a SPS loss, these are also carried forward.

CIT losses may be carried back one year and carried forward nine years.

Based on current legislation, an SPS loss may be offset with positive results from different book years. These SPS losses may be carried back for three years and carried forward for an indefinite period of time.

3.0 Transactions

3.1 Farm out exploration or production license through asset deal

If a company realizes a capital gain (sales price exceeds book value for tax purposes) from the sale of its interest in an exploration license through an asset deal, this capital gain is subject to CIT only. However, if a capital gain is realized on the sale of a production license through an asset deal, that capital gain is subject to CIT and SPS. In this case, a deemed CIT credit is granted for SPS, resulting in a total effective tax rate on the capital gain of approximately 46-50%.

3.2 Farm out exploration or production license through share deal

If a company holds interest in an exploration and/or production license, and the shares of that company are sold by its shareholder, no taxable event should be recognized for SPS purposes, both at the level of the shareholder and the company. If a capital gain is realized on the sale of company shares by the shareholder, this capital gain should be exempt from Dutch CIT at the level of the shareholder, provided that:

- the Dutch participation exemption applies (only relevant if the shareholder is a Dutch company); and
- the foreign tax payer regime does not apply (only relevant if it concerns a foreign shareholder) and/or a double tax treaty prevents this regime from being applicable.

4.0 Other taxes

4.1 Surface rental

Surface rental is a tax that is levied on each license holder that either has an offshore exploration license or a production license at January 1 of a calendar year. The 2013 rate amounts to €725 per km² for production areas and €242-725 per km² for exploration areas.

The surface rental is paid on a 'return' basis. The ultimate filing date is April 1 of the year following the calendar year in question.

4.2 Production royalties ("cijns")

Royalties are calculated on a license by license basis by applying specified rates to the value of onshore oil and gas production. For the levy of these royalties, production does not include oil and gas that is used for exploration in the license area, transport or treatment of the oil and gas.

The rates will increase by 25% in the event that the average price of an imported barrel of crude oil exceeds €25. A 100% increase applies in the event of an absence of state participation in the license.

Royalties are paid on a 'return' basis. The ultimate filing date is also April 1 of the year following the calendar year in question.

4.3 Insurance premium tax

In general, Dutch insurance premium tax is levied on insurance for which the risk (and the related services) lies in the Netherlands. This is the case if the insurance is covering risks situated in the Netherlands. Furthermore, the risk is deemed to be situated in the Netherlands in the following situations:

- if a company or any other permanent presence of the company (i.e. branch, permanent establishment) to which the insurance applies, is located in the Netherlands;
- any insured risk with respect to immovable property located within the Netherlands; and
- the insured risk on movable property that is within immovable property in the Netherlands, except when it concerns transit goods.

However, regardless of the above, no Dutch insurance premium tax is due if it relates to the insurance of certain assets (such as immovable property, particular motor vehicle or vessels) that are situated in another member country of the European Union. In addition, particular insurance, including amongst others, insurance for sea-going vessels and transport, are also exempt from insurance premium tax.

The insurance premium tax is levied on the amount of premium due. The insurance premium tax rate amounts to 21%.

Normally, the insurance premium tax is levied at the level of the insurance company. However, if the insured person has insurance with an insurance company which is not resident in the Netherlands, nor in the European Union, the insured person may become liable to insurance premium tax.

Royalties are calculated on a license by license basis by applying specified rates to the value of onshore oil and gas production ... The rates will increase by 25% in the event that the average price of an imported barrel of crude oil exceeds €25.

5.0 Indirect taxes

5.1 Value added tax, goods and services tax, and sales and use tax

The standard VAT rate in the Netherlands is 21%. Next to the standard rate, reduced rates of 6% (gas and mineral oil used for heating in horticulture) or 0% (see separate section below) may apply for certain supplies of goods and services where all legal requirements are met.

Oil and gas companies are able to register for Dutch VAT at the outset of an exploration and production phase and thus recover VAT incurred on expenses. If the exploration is unsuccessful, the Dutch Tax Authorities will not re-claim any previous recovered VAT provided that sufficient documentation is kept in the administration.

If registration is not desired (e.g. in case of trading activities only), non-Dutch established companies can, under specific circumstances, avoid the need to register for VAT in the Netherlands by appointing a limited fiscal representative. The limited fiscal representative will then take care of VAT compliance on behalf of the non-Dutch established company.

The standard filing period for the VAT return in the Netherlands is quarterly. However, it is possible to request monthly filing periods in order to speed up the recovery of incurred input tax. Under certain circumstances, it is also possible to file VAT returns on an annual basis.

Oil and gas are regarded as goods for VAT purposes, although special rules apply to gas moved in distribution networks under high pressure.

5.2 Zero rated Dutch domestic supplies

There are several possibilities to apply the 0% VAT rate for supplies made in the Netherlands in order to stimulate trade. The application of the 0% VAT rate mostly requires a small administrative effort in order to meet a number of strict requirements.

The 0% VAT rate can be applied for supplies of goods whilst under customs control (e.g. situated in a customs warehouse) in the Netherlands. The goods should remain under customs control.

For trading excisable goods and certain bulk goods (such as oil and gas) the 0% VAT rate is applicable if certain conditions are met.

Also the bunkering of sea-going vessels can under circumstances be subject to the 0% VAT rate. This encompasses the supply of bunker oil as well as other supplies made for the usage by or on the sea-going vessel.

A specific provision exists for the supply of sea-going vessels and aircraft. In a number of cases goods such as drilling platforms and drill ships may qualify as a sea-going vessel. For the supply of these types of assets the 0% VAT rate can be applied.

5.3 Import, export, and customs duties

In principle, customs duties (rates depending on product classification and origin) and VAT (in general at 21%) are due on imports of goods into the Netherlands from outside of the EU. However, goods may be placed under customs control (e.g. in a customs warehouse). This suspends payment of import VAT and customs duty until the goods are removed from customs control.

Furthermore, it is possible to apply for a "VAT deferment license" (non-Dutch established companies should also appoint a VAT Fiscal Representative in the Netherlands) which allows the payment of import VAT to be postponed to the filing deadline of the Dutch VAT return. The import then has to be reported as VAT payable in the VAT return, instead of becoming immediately due upon importation. Should a company have a full VAT recovery right, the import VAT is simultaneously recoverable in the same VAT return. Therefore no actual payment is required which is beneficial from a cash-flow perspective as no VAT is actually paid to the government.

Goods exported from the Netherlands are in principle subject to the 0% VAT rate if transport can be proven.

5.4 Excise tax

The rate of excise duty applied to oil products is determined by the classification of the product. In addition, products stored in an excise warehouse are afforded duty suspension, but become subject to the excise duty once removed from the excise warehouse.

5.5 Stamp tax

The Netherlands do not apply stamp tax.

6.0 Other

6.1 Choice of business entity

Companies that are resident in the Netherlands for tax purposes (either by incorporation in the Netherlands or by their central management and control being situated in the Netherlands) are subject to Dutch corporate income tax and SPS if the company holds a production license. Furthermore, foreign companies that hold a production license shall automatically have a Dutch permanent establishment in the Netherlands. These permanent establishments shall also be subject to Dutch corporate income tax and SPS.

All license grants must be approved by the Dutch government who generally require a Dutch place of business.

6.2 Functional currency

For Dutch CIT and SPS purposes, taxpayers, especially Dutch subsidiaries of foreign multinational groups, are under certain conditions allowed to calculate their taxable income in a currency other than Euro (hereafter 'functional currency'). Prior to the application of this facility, a request should be filed with the Dutch tax inspector. This facility can be applied per date of incorporation or per book year starting after the year the request is filed.

There are several possibilities to apply the 0% VAT rate for supplies made in the Netherlands in order to stimulate trade.

The main purpose of the facility is to reduce the administrative burden for internationally operating companies. This burden results from the obligation to file the Dutch corporate income tax return and SPS return in Euro and thus to keep the accounts not only in the group's functional currency (for instance USD) but also in Euro solely for Dutch tax purposes.

An additional purpose is to prevent the taxation of currency exchange gains resulting from a currency exchange difference between the Euro and the functional currency which is economically not recognized as such by the group.

7.0 Oil and gas contact information

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