International Tax
Netherlands Highlights 2017

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 – Companies that have their 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, permanent establishments (PEs) and innovative activities (see under "Participation exemption" and "Incentives"). Branches of foreign companies and subsidiaries are treated the same way in determining corporate income tax, although branches usually are exempt from withholding tax on profit remittances to their 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 "Participation exemption"). If the participation exemption does not apply, either because the holding requirement is not met or because one of the three tests is not met and the subsidiary has not been subject to any form of corporate income tax, any profit derived from the shares will be taxed at the normal corporate rate without a credit. If the participation exemption does not apply because one of the three tests is not met but the subsidiary has been subject to corporate income tax, a tax credit will be granted. The amount of the credit varies: the maximum credit is 5%, and for EU subsidiaries a credit is granted for the actual amount of corporate income tax, up to the Dutch corporate income tax levied on the dividends.

Capital gains – Capital gains derived from the sale of a participation are exempt if the participation exemption applies (see "Participation exemption"). Other capital gains are taxed at the normal corporate rate. Gains arising on a (de-)merger may be exempt if certain requirements are met.

Losses – Losses may be carried forward for nine years and carried back for one year. Certain restrictions apply to losses incurred by a company whose activities are at least 90% finance and/or holding activities.

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

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Profits from a PE of a Dutch company generally are exempt from the Dutch tax base. Where a PE of a Dutch company is engaged in low-taxed portfolio activities, a tax credit will be granted for foreign tax paid on such activities. Additionally, a tax credit generally is available for foreign withholding tax on interest and royalties under the Netherlands' tax treaties or, if there is no treaty, where interest or royalty income is received from a developing country.

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 mere portfolio investment; (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 participation exemption is not applicable, a credit for the underlying tax may be obtained.

Group financing/licensing activities generally are deemed to be portfolio investment activities, i.e. participations predominantly engaged in these activities must meet test (2) or (3) for the participation exemption to apply.

As from 1 January 2016, even if the participation exemption applies, dividends and interest payments received are taxable if the payment is tax deductible in the country of the payer.

Holding company regime – See "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 rate of 5%. As from 1 January 2017, the modified nexus approach applies under the regime, with the result that R&D expenses incurred by an affiliated entity will be disregarded and more stringent conditions are imposed on the type of R&D activities that qualify.

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 – In domestic situations, dividends are exempt from withholding tax if the participation exemption applies or, for corporate income tax purposes, if a fiscal unity exists between the dividend payer and the recipient.

Domestic rules implementing the EU parent-subsidiary directive provide for an exemption from withholding tax on dividends paid to EU parent companies under the same conditions as for distributions to a Dutch parent.

Dividend withholding tax at 15% is, in principle, due on dividends paid to foreign shareholders, unless the rate is reduced under a tax treaty.

As from 1 January 2017, tax withheld on dividends paid to nonresident individuals and companies may be refunded, provided the recipient is a resident of another EU/EEA member state and is the beneficial owner of the dividend. The refund will be equal to the amount of tax withheld that exceeds the (corporate) income tax that would have been due had the recipient been a Dutch resident. A similar refund also is available, in certain cases, to a resident of a third country that exchanges information with the Netherlands.

Interest – The Netherlands does not levy withholding tax on interest. Interest on a hybrid loan can qualify as a dividend for tax purposes, in which case the rules for dividends apply.

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 taxes on corporations:

Capital duty – No

Payroll tax – Yes

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 the employer and the employee. The contributions are calculated on gross salary, less pension premiums withheld from the salary.

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

Stamp duty – No

Transfer tax – A 6% real estate transfer tax is payable on the acquisition of real property in the Netherlands, or certain related rights. A reduced rate of 2% applies to the transfer of a residence.

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. Acceptable transfer pricing methods include the comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods, with transaction-based methods preferred over profit-based methods. It is possible to enter into an advance pricing agreement for the use of a certain transfer pricing method.

Thin capitalization – There currently are no thin capitalization rules in the corporate income tax codes.

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.

Disclosure requirements – As a result of the OECD BEPS project, CbC reporting requirements are in effect that provide information to the tax authorities on revenue, income, tax paid and accrued, employment, capital, retained earnings, tangible assets and activities of a multinational group.

As from 1 January 2017, there are rules on the automatic exchange of cross-border rulings and transfer pricing agreements between the tax authorities of EU member states.

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

In addition to the restrictions on the deductibility of interest discussed above, various other rules can result in the (partial) disallowance of a deduction for interest costs incurred by a Dutch taxpayer. These include: (1) anti-base erosion rules that essentially cover the conversion of equity into intragroup debt without a valid business reason; (2) rules on the acquisition of shares against debt from a related party without meeting a business purpose test or an effective tax rate test; and (3) rules on debt-funded acquisitions of Dutch companies that limit an interest deduction for acquisition holdings.

There are rules that disallow the deduction of interest costs relating to excess debt (deemed to be) associated with the acquisition price of participations. The excess debt is calculated based on a mathematical rule, under which operational participations acquired from a third party generally are excluded.

When forming a fiscal unity between a parent company and an acquired subsidiary, interest expense relating to the acquisition may be deducted only up to the taxable income of the parent company. Several exceptions and thresholds may apply to all of these rules.

Compliance for corporations:

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 usually is 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 company and fixed assets of one company may be transferred to another company without corporate income tax consequences. To qualify for fiscal unity status, the parent company must own at least 95% of the economic and legal ownership of the shares of the subsidiary and the parent company and the subsidiaries must have the same financial year. In certain cases, a Dutch PE of a foreign company may be included in a fiscal unity.

As from 9 December 2016, a fiscal unity may be formed via a company based in another EU member state, and it is possible to form a fiscal unity, in certain cases, with an EU/EEA-resident parent company that has a Dutch PE.

Filing requirements – A provisional assessment, generally based on information from the previous two years, usually is 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 five months of the end of the fiscal year. Businesses are expected to file all returns electronically. The tax return must 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 imposed 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 may 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.

Other – See "Disclosure requirements," above.

Personal taxation:

Basis – Residents are taxed on their worldwide income.

Nonresidents are taxed only on Netherlands-source income. In certain cases, nonresident individuals with Dutch-source income are treated as a limited national taxpayer, in which case they are taxed on foreign-source income but are entitled to some credits.

Residence – Residence is based on factors, such as 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 satisfied.

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

Capital gains – In principle, capital gains are taxed at progressive rates in Box 1. If the gains are related to a substantial interest, a 25% rate 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 on gains from the sale of a dwelling.

Deductions and allowances – All expenses incurred that are necessary to obtain taxable income in Boxes 1 and 2 generally are deductible, except expenses related to employment. 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 36.55% up to 52%, with a 14% base deduction for entrepreneurs; Box 2 income is taxed at a rate of 25%; and under Box 3, a fixed presumed gain of 4% (of the market value of the Box 3 assets minus debt) is taxed at a flat rate of 30%. The fixed presumed gain of 4% in Box 3 is abolished as from 1 January 2017 and replaced with a more complex system based on the average distribution of the Box 3 assets on savings and investments (the capital mix). The calculation of the actual presumed gains for each year are based on past market returns realized.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – A 6% real estate transfer tax is payable on the acquisition of real property in the Netherlands, or certain related rights. A reduced rate of 2% applies on the acquisition of a residence.

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 still are 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.

Other – An insurance premium tax is levied at a rate of 21%.

Landlords in the regulated sector that rent out more than 10 houses are subject to a landlord tax, charged on the average value of the houses. The taxable base consists of the total value of the houses minus 10 times the average value. The tax rate is 0.536% for 2017.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – In principle, the tax return must be filed before 1 May of the following 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 nonpayment 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 21%, with a reduced rate of 6% applying for certain goods and services.

Registration – There is no registration threshold in the Netherlands; all VAT payers are required to register.

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 95 tax treaties.

Tax authorities: *Belastingdienst* (Tax revenue)

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