International aspects of taxation in the Netherlands

Individuals resident in the Netherlands are subject to income tax on their worldwide income. Companies established in the Netherlands are subject to corporate income tax on their worldwide profits. This is known as resident tax liability. Measures have been taken to avoid double taxation, where resident taxpayers pay tax twice on all or part of their worldwide income or profits.

In addition, natural persons who do not live in the Netherlands are subject to income tax on income from a number of sources in the Netherlands. These non-resident income tax payers subject to income tax may still opt to be treated as residence tax payers (see paragraph 4.3). Companies resident outside the Netherlands are subject to corporate income tax on their taxable profits from certain sources in the Netherlands. This is known as non-resident tax liability.

Non-resident taxpayers paying income tax may opt to be treated as resident taxpayers.

Avoiding double taxation for resident taxpayers

There are two ways in which resident taxpayers can avoid being taxed twice on their foreign-source income and foreign- source profits. In the first place, the Netherlands has concluded bilateral tax treaties with a large number of countries. In the second place, the Netherlands has unilateral provisions that in general apply to situations where no treaty has been concluded with a specific country or where a tax treaty does not include a provision pertaining to a specific case. These unilateral provisions are contained in the 2001 Unilateral Decree on the Avoidance of Double Taxation.

Methods to avoid double taxation

The credit method

The credit method usually applies under tax treaties for foreign withholding taxes on income from investments such as dividends, interest and royalties. In accordance with the 2001 Unilateral Decree on the Avoidance of Double Taxation, the credit method only applies to investment dividends, interest and royalties from designated developing countries. The Dutch tax is reduced by the foreign tax levied or by the Dutch tax payable on the foreign dividends, interest and royalties, whichever is lower.

Since the foreign withholding taxes for which credit is allowed in the Netherlands are usually levied on a gross basis, whilst Dutch income tax is levied on a net basis (after deduction of costs), it is quite possible that the Dutch tax will not be sufficient to provide credit for the tax levied by the foreign source country. Full credit is thus not possible. In these cases the excess of the foreign tax not credited may be ‘carried forward’ and, where possible, credited in subsequent years.

Under the treaties aimed at avoiding double taxation, the credit method may be applied to the income from each separate country. On the basis of an approval decision issued by the State Secretary of Finance, it is also possible to opt under treaties for application of the credit method to all foreign income from all countries taken together.

Deduction as costs

In situations in which there are no arrangements for avoiding double taxation, foreign taxes may be deducted as costs related to the relevant income. This option (in the income tax and corporate income tax scheme) applies to the year in which the income is received and to the total amount of dividends, royalties and interest received in that year. The taxpayer may elect to deduct the costs against income tax in box 1 or box 2 individually. Costs may not be deducted in box 3.

Also, in situations in which a credit would normally be granted for dividends, interest and royalties, the taxpayer may opt for non-recognition of the tax credit. This is particularly advantageous if, as already stated, the (high) foreign tax in a year cannot be fully credited because this is higher than the amount that must be paid in the Netherlands.

The exemption method

The exemption with progression method usually applies to foreign elements of income for income tax and corporate income tax. In principle, foreign elements of income are exempt per individual country. The exemption method means that reductions will be granted for Dutch tax relating to foreign income. For income tax, the exemption is calculated per box.
If the income or profits from foreign sources exceed the total income or total profits (for example because the ‘domestic income’ is negative), exemption may not or may not fully be granted in the year in question for the foreign income. In such cases, the total amount of the foreign-source income respectively the ‘excess’ of the exemption may be ‘carried forward’ and reduction of tax may be granted in subsequent years. This enables the Dutch tax liability to be reduced in the subsequent years.
Foreign losses decrease the Dutch tax liability in the year they are suffered and when calculating the reduction in subsequent years are deducted from the positive foreign income qualifying for exemption.

Tax treaties

Outline of treaty policy

The right to levy taxes on certain income or profit is in principle allocated in the tax treaties to one of the countries, so that ultimately income tax or corporate income tax is levied by one country only and the other country reduces the tax to avoid double taxation. The Dutch policy on concluding treaties for the avoidance of double taxation is largely in line with the principles laid down in the OECD Model Tax Convention.

The Netherlands’ aims in concluding tax treaties are various. Its economy is an open one with a small domestic market and a large foreign market. This means that a relatively large number of industrial and commercial companies operate on a mainly international basis. The country's policy on tax treaties reflects this openness in its relationships with EU Member States and with other countries. Dutch policy aims to remove obstacles to the international flow of goods and capital, in this case international double taxation. To encourage international investment it is necessary for the tax on dividends, interest and royalties flowing from a country to be as low as possible, and preferably zero per cent. In line with this policy, Dutch legislation does not require withholding tax to be levied on outbound interest and royalties.

The Netherlands also endeavours to guarantee a neutral investment climate for capital import. As a result, Dutch investors are able to invest in foreign markets on the same terms as other foreign or domestic investors. In line with this policy, all the profits received by a Dutch parent company from a foreign subsidiary or made through a permanent establishment situated abroad are exempt from taxation in the Netherlands. This ensures that these profits are taxed only in the source country, i.e. where the activities are performed.

Treaties for the avoidance of double taxation

The Netherlands has signed many treaties for the avoidance of double taxation with regard to income tax. In older treaties, too, double taxation on wealth was often avoided. Tax treaties with the following countries are in force and effective on 1 January 2007:

Albania, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus (White Russia), Belgium, Brazil, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Great Britain and Northern Ireland, Hungary, Iceland, Ireland, India, Indonesia, Israel, Italy, Japan, Kazakhstan, Kuwait, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malawi, Malaysia, Malta, Mexico, Moldavia, Mongolia, Morocco, New Zealand, Nigeria, Norway, Uganda, Pakistan, the Philippines, Poland, Portugal, Romania, the Russian Federation, Singapore, Slovak Republic, South Africa, the Soviet Union (the treaty applies to the former member states of the Soviet Union with the exception of Azerbaijan and with the exception of those former member states of the Soviet Union to whom a new treaty applies), Spain, Sri Lanka, Surinam, Sweden, Switzerland, Thailand, Tunisia, Turkey, the United States of America, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia (this treaty applies to Bosnia-Herzegovina and Serbia and Montenegro), Zambia, Zimbabwe.

In addition, the arrangement between the Netherlands Trade and Investment Office in Taipei and the Taipei Representative Office in the Netherlands also applies for the avoidance of double taxation.

Tax relations between the Netherlands, the Netherlands Antilles and Aruba are regulated in the Taxation Agreement of the Kingdom of the Netherlands.

Treaties for the avoidance of double taxation on inheritance and gift tax are in force and effective on 1 January 2007 with Austria, Finland, Israel, Sweden, Switzerland, Great Britain and the United States of America.

The Taxation Agreement of the Kingdom of the Netherlands also contains provisions on inheritance tax.

Relief of taxation at source under tax treaties

In general, tax treaties give natural persons and entities the right to relief for tax at source on dividends, interest and royalties. The way in which this relief may be obtained is generally laid down in implementation regulations. Here, a distinction can be made between: foreign regulations for taxpayers resident or established in the Netherlands and Dutch regulations for taxpayers resident or established in treaty countries.
These implementation regulations are published in the Netherlands Government Gazette. The Netherlands only imposes tax at source on dividends (dividend tax); thus there is no tax at source on interest and royalties.
The general rule for relief of dividend tax in the Netherlands is the exemption method: a reduced rate of dividend tax on the dividend distribution. There is also a refund procedure: the excess amount of withheld dividend tax is refunded.
Treaty countries also apply both methods. Whether both methods or just the tax refund is possible, depends on the implementation regulations.
The implementation regulations also set out whether (and which) forms should be used for relief for source taxation. Both the Dutch and foreign forms are available free of charge to interested parties. In the Netherlands these forms can be obtained from the Belastingdienst/Centrum voor facilitaire dienstverlening, Afdeling logistiek reprografisch centrum, PO Box 1314, 7301 BN Apeldoorn (Tel: (+31)(0)55-5282016;). Foreign forms can be obtained from the appropriate Tax Administrations abroad. It is possible that these forms can be downloaded from websites of foreign national authorities.
For Dutch dividends to which the Council Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC) applies, the Dividend Taxation Act (Wet op de dividendbelasting) indicates how a reduction of Dutch dividend tax may be obtained.

Taxation of non-resident taxpayers

Individuals

Non-resident individuals are subject to income tax in the Netherlands for the following types of income derived in a calendar year:

taxable income from work and dwellings in the Netherlands:

a Taxable profits from an enterprise which carries on business through a permanent establishment in the Netherlands or a permanent representative in the Netherlands (Dutch enterprise); the term Dutch enterprise is further extended in the law;

b Taxable wages for work performed in the Netherlands;

c Taxable income from other activities in the Netherlands;

d Taxable periodical benefits or benefits in kind to the extent to which the contributions were deducted from tax in the Netherlands or if these benefits or benefits in kind arise from pension schemes, the premiums for which were paid by a Dutch enterprise;

e The entitlement to periodical benefits and benefits in kind under public law from or on behalf of a Dutch public legal entity;

f Taxable income from the taxpayer's owner-occupied dwelling in the Netherlands less the deduction on account of no or marginal own home-related debt (usually the standard deduction for own home).

taxable income from a substantial interest in a company established in the Netherlands.

taxable income from savings and investments in the Netherlands:

The tax base in the Netherlands is the value of the taxpayer's assets in the Netherlands after deduction of the value of the debts connected with these Dutch assets. Assets in the Netherlands are:

a Immovable property situated in the Netherlands;

b Rights directly or indirectly related to immovable property situated in the Netherlands;

c Rights to participate in the profit of an enterprise the management of which is established in the Netherlands, in as far as they do not arise from shareholdings or employment and have not been taxed on the basis of previous sources.

Non-resident individuals may, subject to certain conditions, elect to be treated as resident taxpayers. In that case they will be taxed as resident taxpayers and will be assessed on their worldwide income for income tax purposes; they will also be entitled to the deductions and levy rebates available to resident taxpayers.

Companies

Non-resident companies are subject to Dutch corporate income tax in a calendar year for the types of income listed below:

Taxable profits from an enterprise which carries on business through a permanent establishment in the Netherlands or a permanent representative in the Netherlands (Dutch enterprise); the term Dutch enterprise is further extended in the law;

Taxable income from a substantial interest in a company established in the Netherlands.

Advance Pricing Agreement and Advance Tax Ruling

Advance pricing Agreement and Advance Tax Ruling
The Netherlands has an ‘Advance Pricing Agreement’ (APA) and an ‘Advance Tax Ruling’ (ATR) practice. The so-called APA/ATR-practice. An Advance Pricing Agreement entails providing advance certainty on the fiscal acceptability of the price (transfer pricing) that the Dutch group company pays to or receives from a foreign group company for receiving or delivering a service or goods. An Advance Tax Ruling is an agreement on the tax characterization of international corporate structures, such as advance certainty on the application of the participation exemption. The APA/ATR-team of the Rotterdam branch of the Rijnmond Tax Administration department deals with Advance Pricing Agreements and Advance Tax Rulings.

The International Investors’ Desk
Foreign investors can contact the International Investors’ Desk (APBI) for information on the tax implications of a first potential investment in the Netherlands of more than € 4.5 million. The APBI is authorised to provide advance certainty, within the context of the law, case law and policy, on, for example, corporate income tax, wage withholding tax, dividend tax, income tax, value added tax and capital transfer tax. The APBI acts as the point of contact for import duties and excise duties. The APBI is part of the Rotterdam branch of the Rijnmond Tax Administration department.