Deloitte.

International tax

Netherlands Highlights 2015

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 – A 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, permanent establishments (PEs) 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 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 under "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 under "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. Losses incurred in fiscal years 2009 through 2011 may be carried back for three years upon request, in which case, the term for carryforward is limited to six years. Special 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 Netherlands 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/licencing 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.

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.

A research and development allowance (RDA) applies for costs and expenditure directly related to a taxpayer's R&D activities. The RDA reduces taxable income. For 2015, the RDA percentage is 60% of R&D costs and expenditure (except wage costs). Assuming a marginal tax rate of 25%, the net benefit will be 15%.

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 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.

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 – 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 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.

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 – The thin capitalization rules were abolished and replaced with new rules as from 1 January 2013. Under the old rules, interest expense paid to affiliated companies that related to "excess debt" (i.e. debt exceeding a 3:1 debt-to-equity ratio or the "group" ratio) was not deductible. The new rules disallow the deduction of interest costs relating to excess debt (deemed to be) associated with the acquisition price of participations. The excess debt for purposes of this rule is calculated based on a mathematical rule, under which operational participations acquired from a third party generally are excluded. (See also "Other," below.)

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 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.

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.

Disclosure requirements – No

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 statutory voting rights and must be entitled to at least 95% of the profit and capital of the 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 income tax rules.

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 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 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 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. Under certain conditions, foreign individuals with Netherlands-source income are treated as a limited national taxpayer, in which case they are taxed on foreign-source income but are entitled to certain 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 within one of three "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 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 on gains from the sale of a dwelling.

Deductions and allowances – All expenses incurred that are necessary to obtain taxable income in Box 1 and Box 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 36.50% up to 52%; 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%.

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 elated 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 for 2015 is 0.449%.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – In principle, the tax return must 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 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)

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

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