KPMG
cutting through complexity

Netherlands Country Profile

EU Tax Centre

March 2012

Key factors for efficient cross-border tax planning involving Netherlands

EU Member State Yes

Double Tax Treaties

With:

Albania	Czech Rep.	Jordan	Nigeria	Suriname
Argentina	Denmark	Kazakhstan	Norway	Sweden
Armenia	Egypt	Rep. of Korea	Oman[(a)]	Switzerland
Aruba	Estonia	Kuwait	Pakistan	Taiwan
Australia	Finland	Kyrgyzstan[(e)]	Panama[(a)]	Tajikistan[(e)]
Austria	France	Latvia	Philippines	Thailand
Azerbaijan	Georgia	Lithuania	Poland	Tunisia
Bahrain	Germany	Luxembourg	Portugal	Turkey
Bangladesh	Ghana	Macedonia	Qatar	Turkmenistan[(e)]
Barbados	Greece	Malawi	Romania	UAE
Belarus	Hong Kong[(a)]	Malaysia	Russia	Uganda
Belgium	Hungary	Malta	Saudi Arabia	UK
Bermuda[(c)]	Iceland	Mexico	Serbia[(b)]	Ukraine
Bosnia & Herzegovina[(b)]	India	Moldova	Singapore	US
Brazil	Indonesia	Mongolia	Slovakia	Uzbekistan
Bulgaria	Rep. of Ireland	Montenegro[(b)]	Slovenia	Venezuela
Canada	Israel	Morocco	South Africa	Vietnam
China	Italy	Netherlands Antilles[(d)]	Spain	Zambia
Croatia	Japan	New Zealand	Sri Lanka	Zimbabwe

Note:
(a) Treaties signed but not yet in force (date signed): Hong Kong (March 22, 2010), Oman (October 5, 2009), and Panama (October 6, 2010)
(b) Treaty signed with former Yugoslavia applies.
(c) Effective from February 1, 2010. The treaty with Bermuda is an Income Tax Treaty which means it only applies to individuals who are residents of one or both of the contracting parties.
(d) Following a constitutional reform, the Netherlands Antilles ceased to exist as of October 10, 2010. From that date, the Tax Arrangement with the Netherlands Antilles continues to apply to Curacao and St. Maarten, and a Decree for the avoidance of double taxation applies to Bonaire, St. Eustatius and Saba (BES Islands).

KPMG

(e) Treaty signed with former Soviet Union applies.

Residence

A company is considered to be resident in the Netherlands if it is incorporated under Dutch law. Companies incorporated under foreign law are considered to be Dutch residents if they are effectively managed from the Netherlands. Resident companies are taxed on their worldwide income. Non-resident companies are taxed only on their Dutch source income.

Tax rate

The corporate income tax rate is 20 percent on the first EUR 200,000 of taxable profits and 25 percent on the excess.

Withholding tax rates

On dividends paid to non-resident companies

15 percent. This rate may be reduced to zero under domestic law (payments to qualifying recipients within the EU/EEA or to a lower rate or to zero under applicable tax treaties.

On interest paid to non-resident companies

No withholding tax is levied on interest (except on interest on hybrid loans which based on their characteristics are reclassified as equity for tax purposes).

On patent royalties and certain copyright royalties paid to non-resident companies

No withholding tax is levied on royalty payments.

Holding rules

Dividend distribution by resident/non-resident subsidiaries

Exemption method (100 percent):

- Participation requirement: 5 percent or more of the nominal paid-in share capital (smaller shareholdings may also qualify under certain conditions, e.g., if a related entity holds 5 percent or more);
- No minimum holding period;
- The participation may not be a "passive-investment participation" ("PIP") – i.e., a participation which is held with the objective to gain no more than the return that only reflects an ordinary portfolio investment or which, based on its assets/activities is deemed to be passive. A PIP may generally qualify for the participation exemption if its profit is taxed effectively (based on Dutch standards) at a rate of 10 percent or more.

In case of a low taxed PIP, a tax credit may apply (set at 5 percent); in case of profit distributions received from a low taxed PIP resident within the EU or the EEA the real amount of the underlying tax may be credited upon request and subject to conditions.

Capital gains

Same as upon dividend distribution.

	Deductibility of costs Yes. ■ Interest costs: Deductible (special anti-abuse rules apply on loans from related companies and acquisition loans); ■ Acquisition costs: Non-deductible; ■ Costs on disposal: Non-deductible.
Tax losses	Tax losses may be carried forward nine years, and carried back for one year (up to the taxable profits in those years). A significant change in ownership of the company may prevent losses from being carried forward and/or carried back. Tax losses made by holding and/or finance companies may only be offset against profits realized with group holding or finance activities.
Tax consolidation rules	Yes. A parent company and its 95 percent subsidiaries can apply for treatment as a "fiscal unity". As a fiscal unity, the parent company and its subsidiaries can file what a consolidated tax return.
Registration duties	No.
Transfer duties	On the transfer of shares Transfers of real estate and real estate companies may be subject to 6 percent real estate transfer tax depending on the activities of the company, the composition of its balance sheet and the size of its Dutch real estate assets. Exemptions may apply. On the transfer of landing and buildings Transfers of Dutch real estate is subject to 6 percent real estate transfer tax. Exemptions may apply.
Controlled Foreign Company rules	No. However, a shareholding of 25 percent or more in a low taxed PIP should be revalued annually to its market value.
Transfer pricing rules	General transfer pricing rules Dutch tax law contains a set of rules that allows for a profit adjustment if transfer prices are not at arm's length. Documentation of how transfer prices are set is required. Documentation requirement? Yes.
Thin capitalization rules	Yes. These rules apply to companies who are a part of a group according to Dutch company law and effectively restrict the deductibility of interest paid to related entities if the company is excessively debt-financed. In general terms,

	this will be the case where the total debt-to-equity ratio of the company exceeds 3:1.
General Anti-Avoidance rules (GAAR)	Dutch courts may apply the abuse of law doctrine.
Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions	Dutch law provides for anti-dividend stripping rules under which a reduction of the Dutch dividend withholding tax rate or the creditability of withholding tax is denied. Deduction of interest may also be denied e.g. if a related party grants a loan with respect to: 1. profit distributions or repayment of capital to a related company or related person; 2. a capital contribution in a related company; or 3. the acquisition of a participation in a company which becomes a related company after the acquisition. Lastly, deduction of interest might be limited under certain circumstances in case a loan is taken up by an acquisition holding company to finance an acquisition.
Ruling system	Yes. A company can enter into an Advance Pricing Agreement ("APA") or an Advance Tax Ruling ("ATR") with the tax authorities.
IP / R&D incentives	The Innovation Box provides for an effective tax rate of 5 percent on qualifying profits from innovative activities (in general income from patents granted to the taxpayer after December 31, 2006, and activities for which the taxpayer has been granted the so-called WBSO wage tax subsidy).
VAT	The standard tax rate is 19 percent, and the reduced tax rates are 6 percent and 0 percent. Some exemptions may apply.
Hybrid Instruments	Loans are treated as equity for tax purposes if: (i) the interest on the loan is dependent on the debtor's profit; and (ii) the loan is subordinated to all other ordinary creditors; and (iii) the loan has no fixed repayment date or a repayment date of more than 50 years and repayment can only be claimed by the creditor in case of the debtor's bankruptcy, moratorium of payments or upon the debtor's liquidation.
Hybrid Entities	Whether a foreign entity is to be regarded as a non-transparent company or as a transparent entity is based on case law and a Decree issued by the Dutch Ministry of Finance.

Source: Dutch tax law and local tax administration guidelines, updated 2012.

Contact us

Paul te Boekhorst

KPMG in the Netherlands

T +31 (0)20 656 1462

E teboekhorst.paul@kpmg.nl

www.kpmg.com