Netherlands Country Profile

EU Tax Centre

June 2019

Key tax factors for efficient cross-border business and investment involving Netherlands

EU Member State

Yes

The MLI was ratified in March 2019 and will presumably take effect as of January 1, 2020.

Double Tax Treaties

With the following countries, territories and jurisdictions:

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

Most important forms of doing business

Public company (NV)
Private company (BV)
Cooperative association (Coop)

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

Legal entity capital requirements

The minimum paid-up share capital of an NV must be EUR 45,000. There are no minimum share capital requirements for BVs.

Residence and tax system

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.

Compliance requirements for CIT purposes

Companies must file their tax returns electronically by the date set by the tax inspector. This applies to corporate income tax returns, VAT returns and payroll tax returns. Tax and accounting firms may apply for a special extension of the filing date for their clients. The tax return must be accompanied by copies of documents that may be relevant with respect to preparing an assessment, most notably the annual financial statements for financial reporting purposes and explanatory notes. Accounting records relevant to taxation must be kept for a period of 7 years. They should be maintained in such a way that tax liabilities are easily recognizable. The filing date may not be less than 1 month after the tax inspector has sent the tax return. In general, corporate income tax returns must be filed before June 1 of the year following the tax year (provided that the tax year coincides with the calendar year).

Corporate income tax rate

The standard 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 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.

On fees for technical services

No

On other payments

No

Branch withholding taxes

No

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

Holding rules

Dividend received from 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 either held with the objective of gaining no more than the return that 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 the 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 obtained from resident/non-resident subsidiaries

Generally taxable, however subject to the participation exemption (same conditions as above with regard to dividend distributions).

Tax losses

Tax losses may be carried forward for 9 years, and carried back for 1 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 group holding and/or finance companies may only be offset against profits realized from group holding or finance activities.

Tax consolidation rules/Group relief 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 is in effect a consolidated tax return. By virtue of CJEU case law in the joined cases of *SCA et seq.* (C-39/13, C-40/13 and C-41/13) and further to codification of this case law, a fiscal unity between sister companies of a common parent company resident in another EU/EEA Member State is now also possible. The same applies for a Dutch parent company with its sub-subsidiaries held through an intermediate company in another Member State of the EU/EEA (*Papillon*).

On February 12, 2019 a Bill on the Fiscal Unity Emergency Repair Act was adopted by the Lower House. This bill, which is now pending before the Upper House, is a response to a judgment rendered by the Court of Justice of the European Union ('CJEU') on the per element approach. This approach means that taxpayers, despite being unable to enter into a fiscal unity with subsidiaries established elsewhere in the EU, are nevertheless eligible for benefits from separate elements of the fiscal unity regime (the 'per element' approach). Further to its decision in the Groupe Steria case, the CJEU concluded in a preliminary ruling that not granting these benefits

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

would be in breach of the freedom of establishment. This would mean that the more favorable treatment by virtue of the consolidation in domestic situations, can also be invoked per element in similar EU situations.

The emergency repair measures mean that for a number of legal provisions the approach to be taken is as if a fiscal unity for corporate income tax purposes does not exist. As a result, some Sections of the Corporate Income Tax Act ('CITA') and the Dividend Withholding Tax Act ('DWTA') will have to be applied as if there is no fiscal unity. This specifically concerns the following rules:

- interest deduction limitation anti-profit shifting (Section 10a CITA);
- rules on PIPs (Section 13(9) through (15) CITA and 13a CITA);
- anti-hybrid measure for participation exemption purposes (Section 13(17) CITA);
- interest deduction limitation for excessive participation interest (Section 13l CITA);
- combating the trade in loss-making and profitable companies (Section 20a CITA);
- remittance reduction in the case of redistributions (Section 11(4) DWTA); this provision will be abolished)

Subject to approval by the Upper House, the bill with have retroactive effect to January 1, 2018. These measures will be followed by group rules that are EU-proof in the near future. The consolidation character of the current fiscal unity will probably not be maintained in the new regime.

Registration duties

No

Transfer duties

On the transfer of shares

Transfers of shares in 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. A reduced rate of 2 percent applies, insofar as the assets of the company qualify as dwellings or holiday homes.

On the transfer of land and buildings

Transfers of Dutch real estate are subject to 6 percent real estate transfer tax; 2 percent for owner-occupied dwellings, rented out dwellings and holiday homes. Exemptions may apply.

Stamp duties

No

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

Real estate taxes

Yes, landlord charge on rental dwellings and local tax.

Controlled Foreign Company rules

Yes, as a result of the implementation of the EU Anti-Tax Avoidance Directive ('ATAD1') as per January 1, 2019 a company is considered a CFC if:

- it is controlled or managed, directly or indirectly, by a Dutch company (e.g. by voting rights, share capital, or a share in the profit of more than 50 percent), and
- it is resident in a State that does not subject entities to a profit tax with a statutory rate of at least 9 percent, or
- if that State appears on the EU list of non-cooperative jurisdictions for tax purposes.

A shareholding of 25 percent or more in a low-taxed PIP should be revalued annually to its market value, unless the income from such a PIP was already taken into account under the CFC-rules.

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

Abolished as from January 1, 2013.

General Anti-Avoidance rules (GAAR)

Dutch courts may apply the abuse of law doctrine.

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions/Anti-Hybrid rules

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:

- Profit distributions or repayment of capital to a related company or related person;
- A capital contribution in a related company; or
- The acquisition of a participation in a company which becomes a related company after the acquisition.

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

As of January 1, 2019, an earnings stripping rule implementing ATAD1 applies. This means that the net interest payable will only be deductible up to 30 percent of the taxpayer's EBITDA (in short: the gross operating result) or up to EUR 1 million, whichever is higher. The non-deductible interest can be carried forward without limitation to subsequent years.

The net interest is the difference between the interest expense and the interest income in respect of loans and comparable agreements (such as financial leases and hire purchase). The interest definition also covers exchange results on the principal and the interest installments on and results from instruments used to hedge interest and exchange risks on loans. The costs incurred on loans and on instruments to hedge interest and exchange risks on loans will be treated as interest expenses.

To determine the EBITDA, the profit determined according to tax standards (thus without the exempt benefits such as the exempt participation benefits and before the deduction of donations) will be:

- increased by the total depreciation and write-downs of an asset taken into account in a year;
- decreased by any write-downs of an asset recaptured in a year; and
- increased by the net interest in the particular year.

The profit will not be adjusted for any interest to be capitalized in a year. This interest will however be taken into account for the purposes of the 30 percent rule. If the 30 percent criterion is exceeded, the limitation of the deduction of the other interest expense (i.e. the interest expense other than the interest to be capitalized) will take precedence. Insofar as the interest to be capitalized is less than 30 percent of the EBITDA, it will be capitalized; insofar as the interest to be capitalized exceeds 30 percent of the EBITDA no capitalization will take place, but the interest will be carried forward to a subsequent year.

As of January 1, 2016, two new anti-avoidance rules were introduced in order to implement the amendments to the EU Parent-Subsidiary Directive:

1. The participation exemption no longer applies to payments received from or made by a subsidiary insofar as the subsidiary can deduct those payments for profit tax purposes (anti-hybrid provision).

2. The already existing anti-abuse provision that covers foreign shareholders with a substantial interest (in short: an interest of at least 5 percent) in a Dutch-resident company for corporate income tax purposes now also applies to capital gains on disposal and therefore does not only apply to dividends. This means that benefits are taxed if the primary objective, or one of the primary objectives, for holding the substantial interest is to evade dividend withholding tax or personal income tax and this involves an artificial arrangement. In practice, this means that tax is levied on tax-driven investment and business structures without sufficient substance. In addition to all the known substance requirements that took effect on January 1, 2016, the following two new conditions were introduced: firstly, a payroll expense

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

	criterion of at least EUR 100,000 (whereby this amount must be a fee for the linking function activities) must also be met and, secondly, during a period of at least 24 months the company must have its own office equipped with the usual facilities for performing holding activities. The two new requirements apply as of April 1, 2018.
Advance 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 7 percent on qualifying profits from innovative activities for which a patent has been granted and a WBSO payroll tax subsidy is granted (these requirements do not apply to software development). As of January 1, 2017 the modified nexus approach applies. A transitional regime applies until January 1, 2021 for income from patents obtained before January 1, 2017 or activities performed before that date for which the WBSO payroll tax subsidy was granted.
Other incentives	A special tax regime applies for maritime shipping companies. The tonnage regime is applied upon request.
VAT	A special tax regime applies for maritime shipping companies. The tonnage regime is applied upon request.
Other relevant points of attention	No

Source: Dutch tax law and local tax administration guidelines, updated 2019.

© 2019 KPMG International Cooperative ("KPMG International"). KPMG International provides no client services and is a Swiss entity with which the independent member firms of the KPMG network are affiliated.

Contact us

Robert van der Jagt

KPMG EU Tax Centre

T +31 (20) 656 1356

E vanderjagt.robert@kpmg.com

Paul te Boekhorst

KPMG in the Netherlands

T +31 (0)20 656 1462

E teboekhorst.paul@kpmg.com

kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved. The KPMG name and logo are registered trademarks or trademarks of KPMG International.