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Netherlands: Law & Practice

Michael Molenaars, Jeroen Smits, Reinout de Boer and Rogier van der Struijk
Stibbe

NETHERLANDS

Law and Practice

Contributed by:
Michael Molenaars, Jeroen Smits, Reinout de Boer and Rogier van der Struijk
Stibbe

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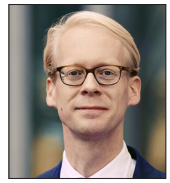
Authors

Michael Molenaars is head of Stibbe's tax practice group. His specialisms include domestic and international taxation, with an emphasis on M&A and private equity transactions, corporate reorganisations and investment fund structures. Michael guides large multinational companies, financial institutions and private equity firms through every stage of technically complex issues, including contentious issues. He is also a frequent speaker on international tax issues and has co-authored several books and articles on international taxation.

Jeroen Smits is a partner in Stibbe's Amsterdam tax practice group. He specialises in Dutch domestic and international taxation, with a focus on M&A, private equity and capital markets transactions. In addition, he is part of Stibbe's investment management practice and advises on the Dutch tax aspects of fund structuring. Jeroen is a member of the Dutch Bar Association, the Dutch Association of Tax Advisers and the International Fiscal Association.

Reinout de Boer is a partner in Stibbe's Amsterdam tax practice group and specialises in domestic and international taxation with an emphasis on M&A, private equity transactions and corporate reorganisations. He heads the Dutch tax controversy practice of Stibbe and advises in a wide range of (international) tax litigation cases.



Rogier van der Struijk specialises in international corporate taxation of Dutch and foreign multinationals, advising clients on complex matters such as tax-efficient structuring of investments and divestments. He has experience in various industries – such as financial services – advising clients on the tax aspects of large cross-border investments. Furthermore, he has experience with tax controversy work, including (tax) litigation, and is a member of Stibbe's tax controversy practice. He has written several articles in Dutch tax journals. He is also a member of the Dutch Bar Association and the Dutch Association of Tax Advisers.

Stibbe

Beethovenplein 10
1077 WM
Amsterdam
Netherlands

Tel: +31 20 546 06 06
Email: amsterdam@stibbe.com
Web: www.stibbe.com

1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Large businesses in the Netherlands typically carry out their activities via a limited liability company (*besloten vennootschap* or BV) or – to a lesser extent, typically in the case of a listed company – via a public limited company (*naamloze vennootschap* or NV) or a no-liability co-operative (*coöperatieve UA*). Each of these legal forms has a legal personality so that the entity can own assets in its own name, and the shareholders (membership right-holders in the case of a co-operative) cannot, at least as a starting point, be held personally liable for corporate obligations.

A BV, NV and co-operative are separate taxpayers for Dutch corporate income tax purposes.

Reverse Hybrid Rules

A reverse hybrid entity is an entity that for Dutch tax purposes is considered transparent (generally a partnership), whereas the jurisdiction of one or more related participants holding in aggregate (directly or indirectly) at least 50% of the votes, interest or profit entitlements, qualifies the entity as non-transparent (ie, leads to the entity being considered a taxpayer for profit tax purposes). Pursuant to the reverse hybrid rule, entities incorporated or established in the Netherlands that in principle qualify as tax transparent, may nevertheless be considered non-transparent and integrally subject to Dutch corporate income tax. If, and to the extent that, the income of the reverse hybrid entity is directly allocated to participants in jurisdictions that classify the entity as transparent, the reverse hybrid rules provide for a deduction of the income at the level of the reverse hybrid entity.

If a Dutch transparent entity is considered a reverse hybrid entity, distributions by the reverse hybrid entity would in principle become subject to Dutch dividend withholding tax to the extent the recipient of the distribution is a participant that leads to the entity in its jurisdiction being classified as non-transparent. In addition, interest, royalty and dividend payments by a reverse hybrid entity will in principle become subject to a conditional withholding tax provided that the recipient of the payment treats the reverse hybrid entity as non-transparent and provided certain conditions are met. See **4.1 Withholding Taxes**.

Furthermore, foreign participants could – in (deemed) abusive situations – be subject to Dutch corporate income tax in respect of capital gains and/or dividends derived from its participation in a reverse hybrid entity. See **5.3 Capital Gains of Non-Residents**.

1.2 Transparent Entities

In the Netherlands, the tax-transparent entities typically used are a limited partnership (*commanditaire vennootschap* or CV), a general partnership (*vennootschap onder firma* or VOF) and a fund for joint account (*fonds voor gemene rekening* or FGR). Each of these legal forms lacks legal personality and should be considered as a contractual business arrangement.

VOFs

As a VOF is tax transparent, it is not a taxpayer for Dutch (corporate) income tax purposes. Instead, the underlying participants are taxed for their participation in a VOF. Distributions by a VOF are not subject to Dutch dividend withholding tax.

CVs and FGRs

With respect to a CV and an FGR, up to and including 2024, the Dutch corporate income tax treatment depended on whether the entity was considered open or closed. An open CV/FGR was subject to Dutch corporate income taxation as such, whereas in the case of a closed CV/FGR, the underlying participants were taxable for the income derived from their interest in the CV/FGR. A CV or FGR was (in short) deemed to be closed (ie, transparent) if all limited and general/managing partners separately and upfront had to approve each accession, resignation or replacement of participants (the *"unanimous consent requirement"*). Alternatively, an FGR was also considered closed if participations could be transferred exclusively to the FGR itself.

However, on 1 January 2025, new classification rules for (among other entities) Dutch CVs and FGRs entered into force. These rules entail the abolition of all Dutch non-transparent partnerships by revoking the *"unanimous consent requirement"*. Consequently, Dutch CVs are by default transparent for Dutch tax purposes as of 1 January 2025. The tax classification rules for the FGR have also changed as of that date. An FGR can be either transparent or non-transparent for Dutch corporate income tax purposes. An FGR may maintain its non-transparent status only if it is regulated following the Dutch Financial Supervision Act and if the participations in the FGR are tradeable. Participations are not considered tradeable if the sale can only be to the FGR – ie, where it acts as *"repurchase fund"*.

Foreign Vehicles

Specific guidance is in place, by way of a decree, to classify foreign vehicles (both transparent and non-transparent) for Dutch tax purposes. New tax classification rules for foreign entities have also entered into force as of 1 January 2025. Under the new rules, it must still first be determined whether a foreign entity is sufficiently similar to a Dutch entity (the similarity approach). If so, the tax classification of the entity's Dutch equivalent will be applied. If this is not the case, two additional methods to classify foreign entities have been introduced. First, foreign entities without a clear Dutch equivalent that are resident in the Netherlands are deemed to be non-transparent (the fixed method). Second, for foreign entities located outside of the Netherlands, the symmetrical approach generally applies, meaning that the tax classification of the jurisdiction where the entity is located, will be followed for Dutch tax purposes.

As the similarity approach will continue to apply to foreign legal entities which can be compared

to Dutch legal entities and given the above-mentioned amendments to the classification rules for CVs/FGRs, the Netherlands will in principle also classify foreign partnerships that are similar to Dutch partnerships as transparent for tax purposes from 2025 onwards. Nonetheless, provided conditions are met (which still need to further crystalise in practice) a foreign partnership may also qualify as an FGR and thus still qualify as non-transparent for Dutch tax purposes under the qualification rules as applicable to FGRs.

1.3 Determining Residence of Incorporated Businesses

For Dutch corporate income tax purposes (with the exception of certain provisions, such as the fiscal unity regime and the participation exemption), a BV, NV or co-operative is deemed to be a corporate income tax resident in the Netherlands (regardless of the place of effective management of the entity) if it is incorporated under the laws of the Netherlands (the *"incorporation principle"*). If a double tax convention is applicable that includes a tie-breaker rule and both treaty-contracting states consider a company to be a resident of their state, typically the place of effective management of a company is conclusive for the place of residence for tax treaty purposes, which is the place where the strategic commercial and management decisions take place. Important elements for determining this place are, for example, the residency of board members and the location of board meetings.

In several treaties, the residency is determined on the basis of a mutual agreement procedure (MAP) between the two states if both treaty-contracting states consider a company a resident of their state.

1.4 Tax Rates

Corporate income taxpayers are subject to a corporate income tax rate of 25.8% (2025) with a step-up rate of 19% for the first EUR200,000 of the taxable amount.

An individual who is a personal income tax resident of the Netherlands is liable for personal income taxation on their taxable income, including business income, at the following progressive rates (brackets and rates for 2025):

- EUR0 to EUR38,441 – 8.17% tax rate, 27.65% social security rate, which equals 35.82% combined rate;
- EUR38,441 to EUR76,817 – 37.48% tax rate; and
- EUR76,817 upwards – 49.50% tax rate.

The social security rate applied to individuals who are retired is 9.75%, resulting in a combined rate of 17.92%. The official retirement age in the Netherlands in 2025 is 67 years. The retirement age will be raised to 67 years and three months in 2028.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

The business income of personal income taxpayers and corporate income taxpayers is determined on the basis of two main principles, which have been shaped through extensive case law. The first is the at arm's length principle (which serves to establish the correct overall amount of profit or the *totaalwinst*) and the second is the sound business principle also known as sound business practice (*goed koopmansgebruik*,

which serves to attribute the profit to the correct financial year, the *jaarwinst*).

It should be noted that the Dutch fiscal concept of business income is, strictly speaking, independent of the statutory accounting rules. In practice, both regimes overlap to a certain extent.

Based on the at arm's length principle, business income is adjusted to the extent that it is not in line with arm's length pricing. Thus, both income and expenses can be imputed in a group context for Dutch tax purposes, regardless of whether the accounting system is statutory or commercial. For corporate income taxpayers this can result in informal capital or hidden dividends. As of 1 January 2022, legislation has entered into force targeting transfer pricing mismatches resulting from the application of the arm's length principle (eg, no imputation of arm's length expense without inclusion of the corresponding income). The legislation aims, inter alia, to render the arm's length principle ineffective between related parties in cross-border situations to the extent that it will deny the deduction of at arm's length expenses, so that the corresponding income is not included in the basis of a (local) profit tax at the level of the recipient.

2.2 Special Incentives for Technology Investments

The Two Main Tax Incentives

Innovation box

The first main tax incentive is the innovation box which, subject to certain requirements, taxes income in relation to qualifying income from intangible assets against an effective tax rate of 9%, instead of the statutory rate of 25.8%. Only R&D activities that take place in the Netherlands are eligible for the beneficial tax treatment (eg, the *"nexus approach"*). Qualifying intangible assets are R&D activities for which a so-called R&D certificate has been issued or that have been patented (or for which an application to this effect has been filed). Software can also qualify as an intangible asset.

Wage withholding

The second main tax incentive is the wage withholding tax credit. This allows employers to reduce the amount of wage withholding tax that has to be remitted to the tax authorities, with 36% up to an amount of wage expenses in relation to R&D activities of EUR380,000, and 16% for the remainder in 2025. The wage withholding tax credit for start-up entrepreneurs in 2025 is, under certain conditions, 50% up to an amount of wage expenses in relation to R&D activities of EUR380,000.

Tax Incentives for Sustainability

In addition, special tax incentives apply to stimulate sustainability. For example, businesses that invest in energy-efficient assets, technologies or sustainable energy may benefit from the Energy Investment Allowance (*Energie, Investeringsaftrek* or EIA). As for environmentally sustainable investments, the Environment Investment Allowance (*Milieu Investeringsaftrek* or MIA) and the Arbitrary Depreciation of Environmental Investments (*Willekeurige afschrijving milieubedrijfsmiddelen* or VAMIL) may apply.

2.3 Other Special Incentives

Shipping companies can apply for the so-called tonnage tax regime, whereby the income from shipping activities is essentially determined on the basis of the tonnage of the respective vessel, which should result in a low effective corporate income tax rate. Qualifying income from shipping activities is, for example, income earned from the exploitation of the vessel in relation to

the transportation of persons and goods within international traffic.

2.4 Basic Rules on Loss Relief

Before 1 January 2022, taxable losses could in principle be carried back one year and carried forward six years. From 1 January 2022, tax loss carry-forwards are limited to 50% of the taxable income exceeding EUR1 million for that year. At the same time, the six-year tax loss carry-forward period has been abolished so that tax losses can be carried forward indefinitely (but limited to 50% of the taxable income in a financial year).

A waiver of debt may lead to taxable income at the level of a Dutch debtor. Dutch tax law provides for a debt waiver exemption if certain specific conditions are met. The concurrence between the above-mentioned loss relief rules from 2022 and the so-called debt cancellation profit exemption (*kwijtscheldingswinstvrijstelling*) meant that tax would still have to be paid if the taxable income exceeded EUR1 million, even if this profit stemmed from a debt cancellation profit. This levy impeded the restructuring of companies and therefore, from 1 January 2025 onwards, new legislation has entered into force to fix this unintended outcome for situations in which the taxpayer has past-year tax losses available that exceed EUR1 million. In such a case, the adverse effect for taxpayers should be removed by a full debt waiver exemption (ie, the requirement to first utilise past-year tax losses will be removed and only in-year losses should be taken into account). However, the available loss carry forward will be reduced by the amount of the debt waiver exemption. If the tax losses available for carry forward do not exceed EUR1 million, nothing will change for taxpayers.

Specific anti-abuse rules may apply in some cases, due to which, losses cease to exist in the case of a substantial change of ultimate ownership of the shares in the company which suffered the tax losses. For financial years starting on or after 1 January 2019, the so-called holding and financing losses regime has been abolished. Until that date, such losses are ring-fenced and can only be offset against holding and financing income.

2.5 Imposed Limits on Deduction of Interest

As a starting point, at arm's length interest expenses should in principle be deductible for Dutch corporate income tax purposes. A remuneration only classifies as *"interest"* if the financial instrument is considered *"debt"* for tax law purposes. In addition, a number of interest deduction limitation rules have to be observed to determine if interest expenses are deductible in the case at hand. The most important rules are detailed below.

- If a loan agreement economically resembles equity (eg, since the loan is subordinated, the interest accrual is dependent on the profit and the term exceeds 50 years), the loan may be requalified as equity for Dutch corporate income tax purposes, as a consequence of which the interest would be requalified as a dividend, which is not deductible.
- If a granted loan is considered to be a non-businesslike loan (*onzakelijke lening*) from a tax perspective, it may effectively result in limitation of deductible interest because of a possible (downward) adjustment of the applied interest rate for Dutch tax purposes.
- Interest expenses due on a loan taken on from a group company that is used to fund capital contributions or repayments, dividend distributions or the acquisition of a sharehold-

ing may, under certain circumstances, not be deductible (irrespective of the presence of a Dutch tax group).
- Interest expenses due on loans taken on from a group company should not be deductible, if the loan has no fixed maturity or a maturity of at least ten years, while de jure or de facto no-interest remuneration or an interest remuneration that is substantially lower than the at arm's length remuneration has been agreed upon.
- For financial years starting on or after 1 January 2019, as part of the implementation of the EU's Anti-Tax Avoidance Directive (ATAD), the deduction of interest expenses is limited to the highest of 30% of a taxpayer's EBITDA or EUR1 million (so-called *"earnings stripping rules"*). Since 1 January 2022, this has been further limited to the highest of 20% of a taxpayer's EBITDA or EUR1 million. As of 1 January 2025, the EBITDA cap has been increased to 24.5%.
- As a result of ATAD 2, interest deductions may be limited or denied in case of hybrid mismatches resulting in mismatch outcomes between associated enterprises (ie, in short, situations with a double deduction or a deduction without inclusion).
- For Dutch corporate income tax purposes, interest deductions for banks and insurers are limited where the debt financing (*vreemd vermogen*) exceeds more than 89.4% of the total assets (in 2025). The equity ratio is determined on 31 December of the preceding book year of the taxpayer.

2.6 Basic Rules on Consolidated Tax Grouping

For Dutch corporate income tax purposes, corporate taxpayers that meet certain requirements can form a so-called fiscal unit. The key benefits of forming a fiscal unit are that losses can be settled with positive results within the same year (horizontal loss compensation) and only one corporate income tax return need be filed, which includes the consolidated tax balance sheet and profit-and-loss account of the entities consolidated therein. The main requirements for forming a fiscal unit are that a parent company should have 95% of the legal and economic ownership of the shares in a given subsidiary.

Moreover, the Dutch legislature has newly responded to the obligations following from further EU case law to arrive at an equal tax treatment of cross-border situations when compared to domestic situations, by means of limiting the positive effects of fiscal unity in domestic situations (instead of extending those positive effects to cross-border situations). Mostly with retroactive effect to 1 January 2018, several corporate income tax regimes (ie, various interest limitation rules, elements of the participation exemption regime and anti-abuse rules in relation to the transfer of losses) are applied to companies included in a fiscal unit (ie, a Dutch tax group) as if no fiscal unit has ever existed. This emergency legislation should be followed up by a new, future-proof Dutch tax group regime that is expected to replace the current regime in several years' time.

2.7 Capital Gains Taxation

Capital gains (and losses) realised on the assets of a Dutch corporate income taxpayer are in principle considered taxable income that is taxable at the statutory tax rate, unless it concerns a capital gain on a shareholding that meets all the requirements to apply the participation exemption. Based on the participation exemption, capital gains and dividend income from qualified shareholdings are fully exempt from the Dutch corporate income tax base.

Essentially, the participation exemption applies to shareholdings that amount to at least 5% of the nominal paid-up capital of the subsidiary, the capital of which is divided into shares while these shares are not held for portfolio investment purposes. The latter should generally be the case if a company has substantial operational activities and no group financing or group leasing activities are carried out, or a company is sufficiently taxed with a profit-based tax.

In relation to the application of the Dutch participation exemption by Dutch intermediary holding companies with little or no substance, the Dutch government has decided (for the time being) not to introduce legislation to enable the exchange of information with other jurisdictions. A possible amendment of the Dutch rules on exchange of information will be reviewed by taking into consideration the proposed directive on the misuse of shell entities that was published by the European Commission at the end of 2021(*"ATAD 3"*). In December 2022, an amended proposal was published, which was approved by the European Parliament in January 2023. Multiple alternative approaches have been suggested since 2023 (including one in June 2024 that focussed on the exchange of information, where the fiscal implications would be at the discretion of the member states), which are currently still being discussed and which are under review for a final decision by the European Council.

Liquidation Loss

Under the former rules, a shareholder that held at least 5% of the shares in a Dutch company was allowed to deduct a so-called liquidation loss, upon the completion of the dissolution of such company and provided certain conditions were met. This liquidation loss broadly equals the total capital invested in that company by the shareholder minus any liquidation proceeds received.

As of 1 January 2021, additional requirements (eg, the residence of the liquidated company should be within the EU/EEA and the Dutch shareholder of the liquidated company must have decisive control to influence the decision-making of the company that is liquidated) need to be met in order to deduct liquidation losses exceeding the threshold of EUR5 million.

2.8 Other Taxes Payable by an Incorporated Business

An enterprise, be it transparent or opaque, may become subject to value added tax (VAT) when selling services or goods in the Netherlands.

Real estate transfer tax (RETT) at a rate of 10.4% should, in principle, be due upon the transfer of real estate or shares in real estate companies. For residential real estate, a rate of 2% applies and, since 2021, this rate can only be applied by individuals to the acquisition of their primary residence. As a result of the foregoing, real estate investors can no longer apply the 2% rate. As of 2021, there is a RETT exemption for *"starters"* (ie, persons between the ages of 18 and 35 buying their first primary residence). From 1 January 2025, this RETT exemption only applies to real estate worth less than EUR525,000.

2.9 Incorporated Businesses and Notable Taxes

The transfer of shares in companies that predominantly own real estate as portfolio investment may, under certain conditions, become taxable at 10.4% RETT.

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Typically, but not always, only small businesses and self-employed entrepreneurs, partially including small independent businesses without staff (*zelfstandigen zonder personeel* or ZZP), operate through non-corporate forms while medium and large businesses manage their activities via one or more legal entities (eg, BVs).

3.2 Individual Rates and Corporate Rates

There are no particular rules that prevent individual professionals from earning business income at corporate rates. For tax purposes, an individual is free to conduct a business through a legal entity or in person. However, despite the legal and tax differences between those situations, the effective tax burden on the business income will often largely align. The combined corporate income tax rate and the personal income tax rate for substantial shareholders almost equals the personal income tax rate for individuals.

Broad Balance Between Taxation of Incorporated and Non-Incorporated Business Income

Under the current substantial shareholding regime (which roughly applies to individuals holding an interest in a company of at least 5% of the share capital), dividend income (as well as capital gains) is subject to personal income tax at a rate of 26.9% up to EUR 67,804 and 31% on amounts exceeding this threshold (2025). The corporate income taxation on the underlying profit currently amounts to 19% for the first EUR200,000 and 25.8% beyond that. This is a combined effective tax rate of approximately 48.88% (2025).

The top personal income tax rate amounts to 49.50% in 2025 (applied to a taxable income exceeding EUR76,817 per annum). Due to the application of several exemptions for individuals earning non-incorporated business income, the effective tax rate is substantially lower.

3.3 Accumulating Earnings for Investment Purposes

It is mandatory for substantial shareholders to earn a minimum salary from the BV of which they are a substantial shareholder, to avoid all earnings remaining undistributed and due to which the substantial shareholder may unintendedly benefit from social security benefits. In principle, the mandatory minimum salary amounts to the highest salary of the most comparable job, that is, the highest salary earned by an employee of a company or a related entity, or EUR56,000 (2025).

If it can be demonstrated that the highest amount exceeds the salary of the most comparable job, the minimum salary is set to the salary of the most comparable job, with a minimum of EUR56,000 (2025).

On 1 January 2023, new legislation was introduced to prevent entities from granting excessive loan amounts (in 2025, EUR500,000 or more) to individual shareholders.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Typically, individuals can conduct business activities in person or as a substantial shareholder of a legal entity (eg, a BV). In the case of business activities that are carried out in person (either alone or as a participant in a tax-transparent partnership), the net result of the enterprise is taxed with Dutch personal income taxation at a top rate of 49.50% in 2025, to the extent that the

amount of taxable profits exceeds EUR76,817. Note, however, that a base exemption of 12.70% (2025) applies, which lowers the effective tax rate. The gain on the transfer of the enterprise (eg, the transfer of the assets, liabilities and goodwill) is also taxable at the same rates as regular profits.

Where business activities are carried out via a BV, the shares of which are owned by substantial shareholders, the business income is subject to corporate income taxation. To the extent that the profit after tax is distributed to a substantial shareholder in the Netherlands, personal income tax is due at a rate of 26.9% on amounts up to EUR 67,804 and 31% on amounts exceeding this threshold. A capital gain realised by a substantial shareholder will also be taxed at these rates in 2025.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

Dividend income that is not considered part of business income and is received by individuals that do not qualify as a substantial shareholder (essentially shareholders who are not entrepreneurs and who hold less than 5% of the shares in the relevant companies) is not taxed as such.

In 2021, the Dutch Supreme Court ruled that the Dutch income tax levy on savings and investments in 2017 and 2018, under specific circumstances, violated the European Convention on Human Rights and the First Protocol thereto. In response to this, the Dutch government amended the Dutch regime for income from savings and investments for the years 2023, 2024 and 2025. Under this amended regime, the income from portfolio investments (including portfolio dividends) is deemed to be 5.88% of the fair market value of the underlying shares (and other investments held by the taxpayer) minus 2.62% (preliminary percentage, subject to final determination at the end of the year) of the value of the debts owed by it in 2025. This deemed income is taxable at a rate of 36%, to the extent that the net value of the underlying shares exceeds the exempt amount of EUR57,684 (2025).

However, in June 2024, the Dutch Supreme Court ruled that the above-mentioned amended regime still violates the prohibition of non-discrimination and property rights if the deemed return exceeds the actual return. In this ruling, the Dutch Supreme Court also provided further guidance for calculating actual returns.

In September 2023, the Dutch government published a legislative proposal (*"Wet werkelijk rendement box 3"*) outlining a new tax regime for income received by individuals who do not qualify as a substantial shareholder. Unlike the previous and existing systems, the newly proposed capital gains taxation (*"Box 3"*) will assess an individual's actual return, allowing for the deduction of related expenses. These returns may encompass both realised and unrealised income from various assets. While currently unspecified, it is anticipated that the specific tax rate will fall within the range of 33% to 37%. This revised taxation system could enter into force not earlier then 2028.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

The Netherlands has a withholding tax on profit distributions that, in principle, taxes dividends at a rate of 15%. Based on the EU Parent-Subsidiary Directive, a full exemption should be applicable for shareholders (entities) with a shareholding of at least 5%, subject to certain requirements

(see below). If all requirements are met, under Dutch domestic law, a full exemption should also be available if the shareholder is a resident of a state with which the Netherlands has concluded a double taxation treaty, even in cases where the double taxation treaty would still allow the Netherlands to levy dividend withholding tax. An exemption is only available if the structure or transaction, in line with EU case law, is not abusive and is entered into for valid commercial business reasons.

Anti-Dividend-Stripping Cases

The Dutch dividend withholding tax exemption is denied in so-called dividend-stripping cases (ie, in cases where it appears that the person receiving the dividend is not considered the beneficial owner of the dividend). Dividend stripping may, for example, occur in cases where a shareholder transfers its shares to a third party which is entitled to a more beneficial withholding tax treatment, thereby holding its interest in the shares. As the current Dutch measures to avoid dividend-stripping have not always proved to be effective in practice, new legislation was introduced as of 1 January 2024 containing several measures to counter dividend-stripping more adequately (eg, a shift in the burden of proof from the tax inspector to the individual seeking tax benefits, and the codification of the dividend record date for publicly traded shares in Dutch tax law). Recent case law of the Dutch Supreme Court has made it clear that the anti-dividend stripping rules do not leave room for an *"extensive"* interpretation.

Apart from national measures, it is the opinion of the Dutch government that dividend-stripping could be addressed most effectively in a European and international context. In this regard, the Dutch government has expressed support for the European Commission's proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (the *"FASTER Directive"*). The Faster Directive was adopted by the European Counsel on 10 December 2024 and aims to simplify withholding tax procedures for dividend and interest payments on publicly traded instruments and to prevent tax fraud and abuse. EU member states have until 31 December 2028 to transpose the FASTER Directive into domestic law, with the rules to apply from 1 January 2030.

In 2020, the first version of an initiative legislative proposal for a conditional final-dividend withholding tax levy emergency act was proposed. The proposal introduced a taxable event (ie, a DWT exit levy) in the case of, for example, a cross-border relocation of the (corporate) tax seat or a cross-border merger of a Dutch company, provided certain conditions have been met. The proposal is currently still pending. However, the Dutch Council of State and the Cabinet both advised the House of Representatives against adopting the initiative legislative proposal.

Conditional Withholding Tax

As of 1 January 2021, a conditional withholding tax was implemented on interest, royalty and (as of 1 January 2024) on dividend payments made to related entities in so-called *"low-tax jurisdictions"*, to hybrid entities and in certain abusive situations. The low-tax jurisdictions are listed in a ministerial decree and concern jurisdictions:

- with a profit tax applying a statutory rate of less than 9% (updated annually based on an assessment as per 1 October of the year prior to the tax year); or
- included on the EU list of non-cooperative jurisdictions.

The tax rate is equal to the highest corporate income tax rate (ie, 25.8%). The payer and payee of the interest, royalties and dividends are considered to be related where there is *"qualifying interest"* (a qualifying interest generally being an interest that provides a controlling influence on the decision-making and activities).

4.2 Primary Tax Treaty Countries

The largest foreign investor in the Netherlands is the United States, followed by the United Kingdom, Germany, Luxembourg and Belgium. The Netherlands has concluded double taxation treaties with all these countries.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

So far, the Dutch tax authorities have not in general challenged the use of treaty country entities by non-treaty country residents. Only in the case, for example, of specific anti-conduit/anti-abuse rules being breached are the tax authorities expected to challenge such a structure.

Targeting Abuse

It should be noted, however, that in light of the ongoing international public debate on aggressive international tax planning in the context of the G20/OECD, the Inclusive Framework on BEPS and recent case law of the ECJ, the Dutch tax authorities are increasingly monitoring structures and investments more closely and will target those that are perceived as constituting *"abuse"*. In this respect, the importance of business motives, commercial and economic considerations and justification, and relevant substance seems to be rapidly increasing.

From 1 January 2020, the presence of substance will only play a role in the division of the burden of proof between the taxpayer and the Dutch tax authorities. If the substance requirements are met, this will lead to the presumption of *"non-abuse"*, which in principle is respected, unless the tax authorities provide evidence to the contrary. If the substance requirements are not met, the taxpayer is allowed to provide other proof that the structure at hand is not abusive. See **6.6 Rules Related to the Substance of Non-Local Affiliates**.

Furthermore, the Netherlands, as a member of the Inclusive Framework and a party to the Multilateral Instrument (MLI), agrees to the minimum standards included in Articles 6 and 7 of the MLI, which among other things, prohibit the use of a tax treaty by – effectively – residents of third states.

The Dutch government aims to discourage the use of so-called letterbox companies (ie, companies with no or very limited activities that add no value to the real economy). As part of this policy, among others, the Dutch tax authorities are more closely monitoring whether companies that claim to be a resident of the Netherlands can indeed be considered as such based on their substance. In 2021, a report on letterbox companies was published, providing an overview on the (mis)use of letterbox companies. The report also contains (tax-related) recommendations which have not yet led to legislative proposals.

4.4 Transfer Pricing Issues

The Dutch tax authorities strictly apply the at arm's length principle as included in Dutch tax law, in Article 9 of most double taxation treaties and elaborated on in the OECD's Transfer Pricing Guidelines, as amended under BEPS. Therefore, transactions between affiliated companies should be at arm's length, while proper documentation should be available to substantiate the at arm's length nature of the transactions.

4.5 Related-Party Limited Risk Distribution Arrangements

Where a remuneration is based on a certain (limited risk) profile, the Dutch tax authorities scrutinise whether the services and risks of that company do indeed match the remuneration. For example, if a limited-risk distributor has, in fact, a stock risk, the remuneration should be increased to reflect coverage of that risk.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

The Netherlands generally follows the OECD's Transfer Pricing Guidelines.

4.7 International Transfer Pricing Disputes

International transfer pricing disputes are, in some cases, resolved through a MAP process. At the beginning of 2023 there were 650 MAPs outstanding, 209 of which were international transfer pricing disputes. In 2023, 323 MAPs were closed, 79 of which were international transfer pricing disputes. There is no data with respect to international transfer pricing disputes being resolved through double taxation treaties. Generally, the Dutch tax authorities are open to MAPs and willing to co-operate in these procedures. MAPS are becoming more common on the back of more inquiries and disputes in the Netherlands.

In practice, the Dutch tax authorities perform audits during which the transfer pricing methodology applied by a Dutch company is also reviewed for many years.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Generally speaking, if a transfer pricing claim is settled, the Dutch tax authorities act in accordance with the settlement. Hence, if a downward adjustment of the Dutch income has been agreed, it will in principle be allowed. However, since 1 January 2022, legislation has been in force targeting mismatches resulting from the application of the at arm's length principle. The legislation aims to render the at arm's length principle ineffective in cross-border situations and will, in that respect, deny the deduction of at arm's length expenses, to the extent that the corresponding income is not included in the basis of a local profit tax at the level of the recipient.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-Local Corporations

Local branches (permanent establishments in fiscal terms) are generally taxed on the basis of the same rules and principles as subsidiaries of non-local corporations. However, due to the fundamental difference between a permanent establishment and a legal entity, in practice, differences may occur.

5.3 Capital Gains of Non-Residents

Dutch tax law includes so-called substantial shareholding rules that enable taxation of capital gains on shareholdings realised by non-residents of the Netherlands in the case of abuse. Based on the current domestic tax rules, capital gains are taxable if a shareholder holds an interest of at least 5% of the capital in a Dutch BV with the main purpose, or one of its main purposes, being to avoid personal income tax and, in this case, the structure should be considered

artificial, having not been created for legitimate business reasons that reflect economic reality.

In the case where the shareholder is resident in a country with which the Netherlands has concluded a double taxation treaty, depending on the specific treaty, the Netherlands may be prohibited from levying capital gains taxation.

5.4 Change of Control Provisions

The change of control due to the disposal of shares by a holding company at a tier higher in the corporate chain (eg, above the Netherlands) as such should, in principle, not trigger corporate income taxation (unless the substantial shareholding rules apply, as referred to in **5.3 Capital Gains of Non-Residents**). However, Dutch tax law includes anti-abuse rules that lead to the cancellation of tax losses in the case of a change of control of certain companies (which, broadly speaking, have or are going to have limited activities). Also see **5.3 Capital Gains of Non-Residents** in relation to capital gains realised on the (indirect) sale of shares in a related Dutch entity.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

The Netherlands typically does not determine the income of (foreign-owned) Dutch taxpayers based on formulary apportionment. Instead, remuneration for the rendering of services or the sale of goods between related companies is governed by the at arm's length principle.

5.6 Deductions for Payments by Local Affiliates

Regarding the deduction of cross charges by foreign group companies to the Netherlands, the at arm's length principle applies. For example, head office charges should be deductible by a Dutch corporate income taxpayer, provided the expenses are at arm's length. It should be noted that in some cases a mark-up is allowed. Cross-charged shareholder costs are not deductible.

5.7 Constraints on Related-Party Borrowing

Other than the interest deduction limitations discussed in **2.5 Imposed Limits on Deduction of Interest**, there are no other/specific rules that particularly constrain the borrowings of a Dutch subsidiary from a foreign subsidiary as such.

As discussed in **4.1 Withholding Taxes**, since 1 January 2021, a conditional withholding tax has applied on interest, royalty and (since 1 January 2024) dividend payments to related entities in low-tax jurisdictions, to hybrid entities and in certain abusive situations.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

If a permanent establishment (PE) is recognised to which the assets, risks and functions that generate the foreign income can be allocated, the foreign income should in principle be fully exempt from the Dutch corporate income tax base. Currency translation results between the head office and the PE are not exempt.

If certain conditions are met, losses that a PE has suffered on balance may be deductible, provided (among other things) that the losses are not utilised in any way in the PE state by the taxpayer (eg, the head office) or a related entity of the taxpayer. Since 2021, losses resulting from the dissolution of a PE in excess of EUR5 million

are generally also limited to EU/EEA situations, similar to the rules that apply to participations.

6.2 Non-Deductible Local Expenses

As a starting point, the income that is allocated to a PE is determined based on a functional analysis, taking into account the assets, risks and functions carried out by the PE. Because of the outcome of the functional analysis, expenses are allocated to the PE and are, as such, exempt (eg, non-deductible) from the Dutch corporate income tax base. Furthermore, in some cases, expenses charged by the PE to the head office in consideration for services provided to the head office by the PE may be ignored. Other than that, there are no specific rules due to which local expenses are treated as non-deductible.

6.3 Taxation on Dividends From Foreign Subsidiaries

Dividend income distributed to a Dutch company is in principle fully exempt if the participation exemption is applicable. The participation exemption should, broadly speaking, be applicable to shareholdings of 5% of the paid-up capital, divided into shares that are not held as a portfolio investment company. A shareholding should essentially not be held as a portfolio investment if the company has operational activities and has no substantial group financing or group leasing activities, or the company is taxed at an effective tax rate of at least 10% based on Dutch standards.

The Dutch rules on exchange of information may have to be amended as a result of the proposed directive on the misuse of shell entities that was published by the European Commission at the end of 2021 (ATAD 3), but the ATAD3 proposal is currently still in flux. See **2.7 Capital Gains Taxation**.

6.4 Use of Intangibles by Non-Local Subsidiaries

Group transactions in the Netherlands adhere to the at arm's length principle (including amendments to the transfer pricing guidelines under the BEPS project, such as in relation to hard-to-value intangibles), so the use of locally developed intangibles by non-local subsidiaries should trigger Dutch corporate income taxation.

If the intangibles are going to be developed under the innovation box, the qualifying income (a capital gain or a licence fee) may be taxable at an effective tax rate of 9%.

6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules

As part of the implementation of ATAD, the Netherlands introduced a controlled foreign companies (CFC) regime on 1 January 2019.

Under a somewhat CFC-like rule, in the case of shareholdings of at least 25% in foreign companies that are not taxed reasonably according to Dutch standards and in which the assets of the company are portfolio investments or assets that are not related to the operational activities of the company, the shareholding should be revalued at fair market value annually. The gain recognised as a result of this is subject to corporate income tax at the standard rates. See also **9.1 Recommended Changes**.

Assuming that passive activities led to the recognition of a PE, the income that can be allocated to that PE should not be exempt, as the object exemption is in principle not applicable to low-taxed passive investments.

6.6 Rules Related to the Substance of Non-Local Affiliates

In general, no specific substance requirements apply to non-local affiliates (except for the CFC rules). In a broader sense, low substance of non-local affiliates could trigger anti-abuse rules (eg, non-application of the participation exemption due to which inbound dividend income may be taxable, the annual mandatory revaluation of low-substance participations against fair market value, etc).

Furthermore, under certain corporate income tax and dividend withholding tax anti-abuse rules, shareholders of Dutch intermediary holding companies, subject to certain requirements, should have so-called relevant substance and perform relevant economic activities, including that shareholders must use an office space for at least 24 months that is properly equipped to perform holding activities, and wage expenses of at least EUR100,000 should be incurred by the shareholder.

Abuse of EU Law

It must be emphasised that following the CJEU cases of 26 February 2019 on the EU Parent-Subsidiary Directive (PSD) and on the Interest and Royalties Directive (IRD), the Netherlands, being an EU member state, is obliged to target *"abuse of EU law"*. The assessment of whether a structure or investment may be considered *"abusive"* is made based on an analysis of all relevant facts and circumstances. There are no legal safe harbour or irrefutable presumptions.

Consequently, from 1 January 2020, the presence of substance will only play a role in the division of the burden of proof between the taxpayer and the tax authorities. If the substance requirements are met, this will lead to the presumption of *"non-abuse"*, which is respected, unless the tax authorities provide evidence to the contrary. If the substance requirements are not met, the taxpayer is allowed to provide other proof that the structure at hand is not abusive.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Capital gains derived from the alienation of a qualifying shareholding in a foreign company by a Dutch company are fully exempt from Dutch corporate income tax if the participation exemption is applicable.

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

Apart from specific anti-abuse rules, the Dutch Supreme Court has developed the doctrine of abuse of law (fraus legis) as a general anti-abuse rule. Under this rule, transactions can be ignored or re-characterised for tax purposes if the transaction is predominantly driven by tax reasons and not driven by commercial considerations while the object and purpose of the law are being breached. So far, the Supreme Court has been reluctant to apply the doctrine in cases where a tax treaty is applicable.

As part of the implementation of ATAD, the legislature did originally state that the doctrine of abuse of law (fraus legis) is very similar to the general anti-abuse rule included in the directive, so that effectively no additional provision has to be included in Dutch law in this respect. However, as part of the Tax Plan 2025 and at the request of the European Commission, the General Anti-Abuse Rule (GAAR) has now been codified into Dutch corporate income tax legislation. The statutory implementation of the GAAR is not intended to effect any material change in

the Dutch fraus legis doctrine, nor does it aim to affect any other (Dutch) taxes or the currently existing special anti-abuse provisions.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

The Netherlands has no periodic routine audit cycle. Tax audits are typically carried out at the discretion of the tax authorities but some companies (eg, those active in the oil and gas industry) are typically audited on a regular basis. Tax audits are extraordinary in the sense that the Dutch tax inspector, upon the filing of the corporate tax return, has the opportunity to scrutinise the filed tax return, raise questions, ask for additional information and, if necessary, make an adjustment upon issuing a final assessment. Provided certain conditions are met the tax authorities may also have impose additional tax assessments on taxpayers.

9. BEPS

9.1 Recommended Changes

Some of the developments most relevant to Dutch taxpayers that have taken place since the outcomes of the BEPS Project are set out below in chronological order.

Dividend Income Deductibility

Following the amendment of the EU Parent-Subsidiary Directive to counter abuse, the Dutch participation exemption regime was amended, as a result of which, broadly speaking, dividend income is no longer exempt from the Dutch corporate income tax base if the dividend is deductible at the level of the entity distributing the dividend.

ATAD

To adopt ATAD, the Netherlands implemented the earnings stripping rule on 1 January 2019, and also implemented a CFC regime. Furthermore, as of 1 January 2025 the Netherlands has also implemented ATAD's General Anti-Abuse Rule into its domestic tax law.

Earnings stripping rules

The earnings stripping rules of EBITDA were further tightened from 2022 onwards as the deduction of the balance of interest amounts was limited to the highest of 24.5% (2025) of the adjusted profit or EUR1 million. The Dutch earnings stripping rules are more restrictive than required under ATAD which prescribes a threshold of 30% or EUR3 million. The Dutch government has investigated the implementation of a budget neutral introduction of a deduction on equity, accompanied by the tightening of the Dutch earnings stripping rules, in order to achieve a more balanced tax treatment of capital (equity) and debt. The Dutch government concluded that a unilateral introduction of a deduction on equity is not desirable in respect of tax avoidance and that it should therefore wait for a multilateral introduction of a deduction on equity.

CFC regime

Under the Dutch CFC regime, in certain cases, undistributed passive income (eg, interest, royalties, dividends, capital gains on shares) derived by a CFC will be subject to corporate income tax. A foreign entity qualifies as a CFC if the Dutch taxpayer directly, or together with related companies, has an interest of more than 50%, provided that the entity is a tax resident in a low-tax jurisdiction (statutory rate of less than 9%) or a state included on the EU list of non-cooperative jurisdictions. Undistributed passive income derived by a CFC that is a tax resident of a jurisdiction mentioned on the list

can be excluded from Dutch taxation if: (i) the CFC's income usually consists of 70% or more non-passive income; (ii) the CFC qualifies as a financial undertaking; or (iii) the CFC carries out meaningful economic activity. A list of substance elements has been published to determine whether a CFC carries out a meaningful economic activity. If all of the substance elements are met, the meaningful economic activity test is deemed to be satisfied unless the Dutch tax inspector can prove that this is not the case. See 6.6 Rules Related to the Substance of Non-local Affiliates.

GAAR

The Netherlands initially opted not to incorporate the GAAR into the Dutch Corporate Income Tax Act, as the Dutch State Secretary considered the GAAR to be sufficiently embedded in Dutch tax law through the fraus legis doctrine. However, at the request of the European Commission, the Netherlands formally codified the GAAR into Dutch corporate income tax legislation, effective as of 1 January 2025.

MLI

The Netherlands has signed and ratified the MLI that includes the BEPS measures that require amendment of (Dutch) bilateral double taxation treaties. The Netherlands has taken the position that all material provisions of the MLI should be included in the Dutch double taxation treaties, except for the so-called savings clause included in Article 11 of the MLI. As such, a general anti-abuse provision (in most cases, the so-called principal purpose test) should likely be included in many Dutch double taxation treaties, as well as a range of specific anti-abuse rules.

Dividend Withholding

The Dividend Withholding Tax Act 1965 has been amended whereby co-operatives that are mainly involved in holding and/or financing activities (and that up to now were able to distribute profits without triggering dividend withholding tax except in cases of abuse) become subject to Dutch dividend withholding tax upon distributing profits. If the recipient of the profit distribution is a tax resident in a country with which the Netherlands has concluded a comprehensive double taxation treaty, an exemption from that tax should be available provided that the relevant structure is not abusive. The Corporate Income Tax Act 1969 has also been amended in relation to the above (ie, the substantial shareholding rules).

Country-by-Country Reporting and Exchange of Information

A law has been enacted to meet the obligations of the Netherlands in respect of country-by-country reporting (BEPS Action 13).

A law has been enacted to meet the obligations of the Netherlands in respect of the automatic exchange of rulings. Furthermore, the Dutch innovation box regime has been amended to align it with BEPS Action 5 (countering harmful tax practices).

Interest and/or Royalty Conduits and Withholding Tax applies on Royalties, Interest and Dividends

Further enhancement of the substance requirements for interest and/or royalty conduit companies has been introduced, due to which, information is automatically exchanged with the respective foreign tax authorities in the case of interest and/or royalty conduit companies not meeting these enhanced substance requirements (eg, a minimum of EUR100,000 salary expenses and the availability of a properly equipped office space for at least 24 months).

As from 1 January 2021, a conditional withholding tax applies on royalties, interest and (as of 1 January 2024) dividends paid to group companies in low-tax jurisdictions, to hybrid entities or in certain abusive situations.

Safe Harbours, Economic Nexus, Permanent Establishments and Opknippen

The minimum substance requirements no longer function as a safe harbour.

The Dutch practice regarding international tax rulings was revised on 1 July 2019. To obtain an international tax ruling from the Dutch tax authorities, among other things, a sufficient *"economic nexus"* with the Netherlands is required.

The national definition of a permanent establishment has been brought in line with the 2017-OECD Model Tax Convention (which reflects the BEPS outcomes).

Furthermore, the government has investigated the extent to which group companies are breaking up (*opknippen*) activities in order to obtain tax benefits, specifically the benefit arising from the multiple application of the low tax rate levied on the first part of a taxpayer's profit. As a result, the first bracket on which Dutch corporate income tax is levied was lowered in 2023 (and still applies for 2025) to 19% over the first EUR200,000 (instead of 15% over the first EUR395,000 in 2022).

9.2 Government Attitudes

The central aim of the Dutch government is to find a balance between, on the one hand, ending aggressive international tax planning by promoting transparency and making rules abuse-proof, and, on the other, not harming the Dutch economy and thus seeking to take measures that are in step with international developments, thus avoiding unilateral measures that might disproportionately harm Dutch corporations, and to establish favourable Dutch tax regimes to safeguard the attractive business and investment climate.

The Dutch government has announced that it will fully commit to the rules of Pillar One and Pillar Two. Pillar One may substantially impact the allocation of tax revenues to jurisdictions. Pillar Two, as implemented in Dutch domestic law as of 1 January 2024 following an EU Directive on Pillar Two, introduces certain technical rules to ensure the effective tax rate of 15%, the so-called *"Income Inclusion Rule"*, the so-called *"Undertaxed Payments Rule"* and the so-called Qualified Domestic Minimum Top-up Tax (QDMTT) rule.

Pillar Two

The Income Inclusion Rule

In short, the Income Inclusion Rule applies to a parent entity in the Netherlands in respect of low-taxed group entities (*"constituent entities"*) to bring taxation in line with the minimum effective tax rate of 15%. Under the Income Inclusion Rule, the minimum effective tax rate is paid at the level of the ultimate parent entity, in proportion to its ownership rights in subsidiaries that are taxed at a low effective tax rate (ie, lower than 15%). Briefly stated, the effective tax rate is calculated by dividing the corporate tax due by the net qualifying income.

The Undertaxed Payments Rule

The Undertaxed Payments Rule functions as a backstop rule, in addition to the Income Inclusion Rule. The Undertaxed Payments Rule applies in situations where, for example, a group is based in a non-EU country and that country does not impose the minimum rate. The share of the top-up tax is calculated based on a formula

proportionate to the relative share of assets and employees.

The Qualified Domestic Minimum Top-up Tax

In addition, the Netherlands opted to include the Qualified Domestic Minimum Top-up Tax, whereby any top-up tax to be paid by Dutch resident entities with an effective tax rate of less than 15% that are part of an in-scope group, will be collected by the Netherlands (instead of by the ultimate parent entity in another jurisdiction).

Pillar Two may substantially impact the sovereignty of states as regards the taxation of business profits and their ability to employ an international tax policy based on the principle of *"capital import neutrality"*. In addition, the implementation of Pillar Two will most likely lead to a higher administrative burden as the effective tax rate should be determined in each jurisdiction in which a multinational is active.

9.3 Profile of International Tax

International taxation, especially over the last decade, has gained a high public profile due to extensive coverage of – alleged – aggressive tax planning in leading Dutch newspapers and other media, as well as the exposure generated by NGOs such as Oxfam Novib and Tax Justice.

Over the last decade, members of parliament have raised their concerns on a regular basis regarding the attitude of multinational corporations and their supposed unwillingness to contribute their fair share. This is, for example, also reflected in the notifications made by the Dutch government for the application of the MLI, which reflect the Dutch position to apply nearly all anti-abuse measures included in the MLI.

9.4 Competitive Tax Policy Objective

The Netherlands has a competitive tax policy, driven by the fact that the Dutch economy relies for a large part on foreign markets, as the domestic market is relatively small. In a letter from October 2022, the Dutch government set out its (updated) international tax policy. As a starting point, the Dutch government considers it to be important that the Netherlands is not out of line with other countries when it comes to the area of taxation. Therefore, the approach of tax avoidance should be accompanied by (satisfactory) international agreements. At the same time, the Dutch government strives for a stable tax business climate in which tax legislation does not change every few years. When implementing new legislation for corporate entities, the Dutch government seeks to find a balance between mitigating the risk of abuse by international taxpayers while avoiding unnecessary hindrance of real corporate activities.

9.5 Features of the Competitive Tax System

The Dutch government generally takes a balanced approach to each measure it employs; consideration will therefore be given to the pros and cons of existing practices, and their relevance for real business activities, including the accounting and legal services industry. Thus, it is difficult to say which areas are vulnerable to scrutiny, except for structures with low substance and structures that are clearly tax driven while bearing little or no relevance to the real economy. Dutch law does not restrict state aid in general with a specific rule, except for the state aid rules as laid down in EU law.

9.6 Proposals for Dealing With Hybrid Instruments

The BEPS and ATAD proposals addressing hybrid instruments have been implemented by

the Dutch government and as such are included in Dutch tax law and/or Dutch double taxation treaties.

9.7 Territorial Tax Regime

The Netherlands has no territorial tax regime. As a starting point, it taxes resident (corporate) taxpayers on their worldwide income, subject to the application of double taxation treaties and unilateral rules for relief for double taxation.

It is difficult to make a general prediction as to the impact of the interest limitation rules for Dutch taxpayers, as this is to a large extent fact driven, while the Netherlands already has a range of interest limitation rules and it has been proposed to abolish two of the existing interest limitation rules.

9.8 Controlled Foreign Corporation Proposals

A cornerstone of Dutch international policy for decades has been to avoid economic double (including juridical double) taxation within corporate structures, which is why the Netherlands has exempted dividend income received from foreign group companies (under the so-called participation exemption regime). Furthermore, the Netherlands has so far been advocating the principle of so-called capital import neutrality, by which a resident state should exempt foreign-sourced income from taxation to allow its corporations to make foreign investments on a level playing field (in terms of taxation).

The Netherlands therefore used to be reluctant to let go of its position to exempt foreign income. However, as part of the implementation of the ATAD, CFC rules were introduced in the Netherlands on 1 January 2019. See **9.1 Recommended Changes**.

9.9 Anti-Avoidance Rules

The Netherlands favours (as reflected in the Dutch notification to Article 7 of the MLI) a principal purpose test as opposed to a limitation on benefits provision, mainly because the principal purpose test is thought to work out proportionately in most situations. Thus, truly business-driven structures, either inbound or outbound, should not be harmed. Nevertheless, the principal purpose test is principle driven rather than rule driven, which makes it less clear which structures will be affected by the principal purpose test.

In other words, there may be legal uncertainty, especially in the beginning when there is also little practical experience. Furthermore, some countries might apply the principal purpose test liberally, which might make corporations decide to avoid the Netherlands. However, this remains to be seen, especially as in other countries the same issues should come up.

9.10 Transfer Pricing Changes

Aside from the introduction of country-by-country reporting and, to a lesser extent, the documentation requirements (eg, master file and local file), the Netherlands has already applied the at arm's length principle as a cornerstone of its transfer pricing regime. As such, these changes should not lead to a radical change, and this should also apply to intangibles.

However, as stated before, legislation that entered into force on 1 January 2022, targeted mismatches resulting from the application of the at arm's length principle. Among other things, this legislation aims to render the arm's length principle ineffective between related parties in cross-border situations to the extent that it will deny the deduction of at arm's length expenses if the corresponding income is not included in

the basis of a local profit tax at the level of the recipient.

9.11 Transparency and Country-by-Country Reporting

The Netherlands is in favour of increasing transparency in international tax matters, provided an agreement can be reached on an international level that is as broad as possible to avoid national economies being harmed by multinational corporations' decisions to avoid jurisdictions that have transparency requirements.

In addition to the BEPS country-by-country reporting obligation, in 2024, the Netherlands introduced mandatory public country-by-country reporting rules for large multinationals. This additional reporting obligation stems from the EU Public Country-by-Country Reporting Directive of 2021 and adds a new angle to the reporting obligation by making such data publicly available to a wider audience.

9.12 Taxation of Digital Economy Businesses

No legislative proposals have been published in this area yet.

9.13 Digital Taxation

The State Secretary for Finance favours an international, co-ordinated (unified) approach, rather than jurisdictions implementing domestic legislation independently, such as Pillar One and Pillar Two. Consequently, the Dutch government has already implemented Pillar 2 in Dutch domestic law as of 1 January2024.

It should also be noted that as of 1 January 2023, the Directive on Administrative Cooperation (DAC7) has been implemented into Dutch law. DAC7 contains rules on information exchange regarding digital platforms. Furthermore, the Dutch Ministry of Finance published a new draft bill in October 2024 implementing the EU Directive amending EU rules on Administrative Cooperation (DAC8). DAC8 introduces rules on information exchange regarding crypto-assets and advance tax rulings for the wealthiest individuals. The new rules should be transposed into national law by 31 December 2025 with first application for most provisions from 1 January 2026. In 2024, the European Commission published another proposal again amending the Directive on Administrative Cooperation (DAC9), this time to facilitate the filing and exchanging of Pillar Two-related information in the EU. If adopted, these rules should be transposed into national law by 31 December 2025.

9.14 Taxation of Offshore IP

The Netherlands has no specific provisions as to the taxation of offshore intellectual property. It is worth noting however that, since 1 January 2021, a conditional withholding tax has applied to interest and royalty payments to states qualified as low-tax jurisdictions. Furthermore, in the case of passive offshore IP structures, the Dutch CFC rules may apply and would require a review from a transfer pricing perspective.

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