

# Netherlands Country Profile

EU Tax Centre

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

**EU Member State** Yes.

**Double Tax Treaties** With the following countries, territories and jurisdictions:

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

**The Netherlands has ratified the OECD Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS (the MLI) with effect as of January 1, 2020. Out of the 98 tax treaties in force (as at the end of July 2020), the Netherlands notified 81 of its double tax treaties as Covered Tax Agreements (in bold above).**

\* Tax treaties to which the MLI applies for both withholding taxes and other taxes as from January 1, 2020\*.

\*\* Tax treaties which the MLI for withholding taxes as from 1 January 2020 and other taxes as of from January 1, 2021.

\*\*\* Tax treaties to which the MLI applies for both withholding taxes and other taxes as from January 1, 2021.

\*\*\*\* Tax treaties which the MLI for withholding taxes as from 1 January 2021 and other taxes as of from January 1, 2022.

**Most important forms of doing business**

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

**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**

Change of tax rates:

	<b>2019</b>	<b>2020</b>	<b>2021</b>
Tax rate EUR 0-200.000	19%	16,5%	15%
Tax rate > EUR 200.000	25%	25%	21.7%

Note that the corporate tax rate in 2021 does not decrease to 20.5% as previously announced, but to 21.7%.

## **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. From January 1, 2020 the role of substance requirements for the purposes of the dividend withholding tax exemption has changed. Substance requirements no longer function as safe harbor rules (i.e. when satisfied there is no risk of being abusive), but only play a role in determining where the burden of proof lies between the taxpayer and the tax authority. Therefore, it is the taxpayer's responsibility to prove that substance requirements are met and where this is the case, the onus for determining potentially abusive situations lies with the tax authorities. Under the previous approach (pre-January 1, 2020), a taxpayer that met the substance requirements was deemed not abusive. Where substance requirements are met, the taxpayer thus no longer automatically satisfies the subjective test and/or the objective test.

Furthermore, the Deputy Minister of Finance announced that as of January 1, 2024, dividend flows to low tax jurisdictions will be subject to a new withholding tax, with the intention of preventing that dividends within a group flow untaxed to low tax countries. The new withholding tax will be levied in addition to the existing dividend tax.

Moreover, on July 10, 2020 a private member's bill was presented to the Lower House of Parliament which proposes the introduction of a final settlement obligation for dividend withholding tax purposes in the event of a cross-border relocation of the registered office, a cross-border merger, a cross-border division and a cross-border share merger. This concerns cross-border reorganizations by companies (head offices) resident in the Netherlands that are members of a group, as referred to in the Dutch Civil Code or similar foreign rules, with a consolidated net turnover of at least EUR 750 million. No dividend withholding tax is payable insofar as the protected profit distribution is deemed to have been distributed in a shareholder structure for which an exemption applies. Therefore, the proposal above all covers the dividend withholding tax claim on the (deferred) profit reserves to which the portfolio shareholders of a listed company are entitled. It has been proposed to

introduce the measures with retroactive effect to July 10, 2020. It is unclear whether the bill will be supported by a parliamentary majority.

#### 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). See, however, in the next paragraph for application of a new withholding tax.

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

No withholding tax is levied on royalty payments. Note, however, that a withholding tax will apply from January 1, 2021 on intra-group interest and royalty payments to (i) jurisdictions with a low statutory tax rate and (ii) jurisdictions included on the EU list of non-cooperative jurisdictions.

#### On fees for technical services

No.

#### On other payments

No.

### Holding rules

#### Branch withholding taxes

No.

#### 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, but test should be met at all times.
- 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.

In this regard, please note that the Dutch Deputy Minister of Finance announced that during the year 2020 he wishes to investigate on how the participation exemption regime can be changed, in a way that the Netherlands does not allow a participation exemption if the presence of a multinational enterprise in the Netherlands is limited to a practically "substance-free" (intermediate) holding.

### 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 six 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 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 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 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).

The bill has retroactive effect to January 1, 2018. It is envisaged that these measures will be complemented by group relief rules that are in line with EU law. 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.

**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 considered 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.

As of January 1, 2019, an earnings stripping rule implementing ATAD I 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.

## ATAD II

With effect from January 1, 2020 the EU Anti-Tax Avoidance Directive II (ATAD II) was implemented in the Netherlands. As a result of this implementation, Dutch law now combats hybrid mismatches in relationships with affiliated entities in EU Member States and third countries.

Hybrid mismatches concern situations in which differences in the qualification of entities, instruments or permanent establishments in different tax systems result in a tax deduction whereby the corresponding income is not taxed anywhere, or whereby the same payment is deducted several times.

The law distinguishes between the following hybrid mismatches:

- hybrid entities;
- hybrid financial instruments;
- hybrid permanent establishments;
- hybrid transfers;
- imported hybrid mismatches;
- situations involving dual domicile.

In line with ATAD II, the consequences of these hybrid mismatches will be neutralized. Depending on the mismatch and the treatment outside the Netherlands, this is achieved by refusing the deduction or taxing the corresponding income. The neutralization will only take place to the extent necessary to neutralize the mismatch (pro rata).

In the case of mismatches that result in a deduction without the corresponding payment being subject to tax (deduction, no inclusion), the primary rule is to disallow the deduction. If the primary rule is not applied, the payment must be taxed in the hands of the recipient (secondary rule).

In the case of mismatches that trigger a double deduction, neutralization will take place by refusing the deduction in one of the countries. The deduction must primarily take place in the payer's country and be refused in the investor jurisdiction. If the primary rule does not offer a solution, then the payer's country must refuse the deduction.

ATAD II links the Dutch corporate income tax to the tax systems of other countries. As a result, international arrangements will become even more sensitive to regulatory changes in the various countries. The hybrid mismatch rules apply to financial years commencing on or after January 1, 2020.

Also, with effect from January 1, 2020, the policy statement on hybrid entities under the tax treaty with the United States has been withdrawn (Policy Statement of July 6, 2005, IFZ2005/546M). In short, this policy statement provided for the reduced rate on dividends in the tax treaty with the United States to be applied to CV/BV (limited partnership/private limited liability company) structures.

**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: amendment of liquidation loss rules**

The government intends to amend the liquidation and cessation loss rules for corporate income tax purposes as of 2021.

An exception is made for liquidation losses to the basic assumption of exempt benefits and losses where the participation exemption applies. Under certain conditions, these losses can be deducted. This prevents situations where losses cannot be deducted anywhere. Under the draft bill, a liquidation loss on a participation will only be deductible if:

- 1) The participation is established in the Netherlands or in another EU/EEA state (territorial limitation); and
- 2) The Dutch taxpayer holds a qualifying interest in the subsidiary (material limitation).

There is a qualifying interest if the parent company is a shareholder of more than one-fourth of the nominal paid-in capital and/or the taxpayer convincingly demonstrates that as a parent company it can determine the activities of the subsidiary due to the influence it exercises on decision-making.

**Excessive borrowing**

On June 17, 2020, the Deputy Minister of Finance presented the bill on the Excessive Borrowing from Own Companies Act to the Lower House of Parliament. In the case of substantial interest holders who borrow more than EUR 500,000 from

their company, it is proposed to tax the excess as income derived from a substantial interest for individual income tax purposes (Box 2). Home acquisition debt is excluded. The measure will apply for the first time for the calendar year 2023. The government intends to use the measure to combat the deferral of tax in Box 2 and to bring taxation more in line with the time at which the substantial interest holder, or any person related to such holder, actually has the funds at their disposal.

### **Mandatory Disclosure Rules Updates**

For country specific information and updates on the EU Mandatory Disclosure Rules please visit KPMG's EU Tax Centre's [MDR Updates page](#).

### **COVID-19 Resources**

An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available [here](#). For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated [KPMG page](#).

Source: Dutch tax law and local tax administration guidelines, updated 2020.

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