

NETHERLANDS

A – Corporate Taxation

INTRODUCTION

Corporate taxpayers are subject to a national corporate income tax. Employers must make social security contributions. A VAT system applies.

For tax purposes, Aruba and the Netherlands Antilles are regarded as separate jurisdictions. This means that Netherlands tax legislation does not apply in those autonomous areas. A tax treaty is in force between the Netherlands, Aruba and the Netherlands Antilles.

The currency is the euro (EUR).

1. CORPORATE INCOME TAX

1.1. Type of tax system

The Netherlands corporate income tax is based on the classical system, which means that corporate profits are fully taxed and distributions from the taxed profits are again fully taxed in the hands of the shareholders. However, in the case of qualifying distributions to corporate shareholders, double taxation is eliminated through the participation exemption (see 2.2.). In the case of individual shareholders with a substantial shareholding (generally, at least 5%), economic double taxation is mitigated through a lower flat rate of income tax on dividends. Dividends and other profit distributions are subject to dividend withholding tax (with many exceptions), which is fully creditable against the shareholders' income tax liability. For non-resident shareholders, see 6.3.1.

1.2. Taxable persons

Corporate income tax is levied on entities listed in the Corporate Income Tax Law. These include:

- public companies (NV) and private companies (BV);
- open limited partnerships, i.e. the limited partners can dispose of their share without the permission of all other limited or general partners (the profit share of the general partners is deductible);
- cooperative societies and other associations based on the cooperative principle;
- mutual insurance companies and other associations which act as insurance or credit organizations on the principle of mutuality;
- associations with or without legal personality and foundations to the extent that they conduct a business;

- funds for joint account;
- building corporations; and
- a number of government-owned companies.

The above entities are subject to unlimited tax liability as residents. Non-resident entities of similar description are subject to tax only insofar as they derive certain types of Netherlands-source income (see 6.2.).

Limited partnerships, other than the above-mentioned open limited partnerships, and general partnerships are not taxed as companies. Their partners are taxed separately on their share of the profits.

This survey is restricted to Netherlands-incorporated public and private companies, as well as to foreign-incorporated entities of similar description, whether resident or non-resident. For this survey these entities are referred to as companies.

1.2.1. Residence

Entities that are incorporated under Netherlands law are generally deemed to be resident in the Netherlands for corporate income tax and dividend withholding tax purposes. Exceptions to this rule are provided, inter alia, for the purposes of the participation exemption regime.

In the case of companies incorporated under foreign law, the place of residence of a company is to be determined according to the circumstances, the most important being the place where the company is effectively managed.

1.3. Taxable income

1.3.1. General

Generally speaking, resident companies are taxed on their worldwide income. Taxable business profits are defined as the sum of all profits and gains of whatever description or nature. Companies, regardless of their activities, are deemed to conduct a business by using all of their assets. Therefore, a company's taxable income includes income from portfolio investments and any capital gains.

1.3.2. Exempt income

The only important items of exempt income are domestic and foreign dividends and capital gains qualifying for the participation exemption regime (see 2.2.).

1.3.3. Deductions

1.3.3.1. Deductible expenses

Expenses directly or closely connected with the conduct of a business are deductible. Interest on a bona fide loan granted by a founder or shareholder to his company is deductible, subject to thin capitalization legislation and other anti-abuse provisions dealing with interest deductibility (see 7.). Royalties and service fees are, in principle, deductible as business expenses, except to the extent they hide a distribution of profits or to the extent they do not conform with the arm's length principle.

Costs of acquisition and alienation of a participation in a resident or non-resident company qualifying for the participation exemption (see 2.2.) may not be deducted.

Directors' remuneration is fully deductible, unless such remuneration is considered as a hidden profit distribution to a shareholder. Remuneration paid to members of the supervisory board is also deductible; restrictions apply if a member of the supervisory board is an individual who has a substantial interest in the company (generally at least 5% of the issued share capital).

1.3.3.2. Non-deductible expenses

Dividend distributions, including hidden distributions, are not deductible. Consideration paid for funds contributed by founders, shareholders or other participants as such are not deductible. Interest expenses and currency exchange losses are not deductible if paid for, or relating to, various types of loans from related companies (shareholding of at least 33.33%), unless the contract was proven to be mainly based on business reasons. Furthermore, deduction of interest paid is denied if the taxation of the interest in the hands of the recipient is restricted by a tax treaty.

In addition, expenses in respect of yachts and all other vessels used for business entertaining are not deductible. The corporate income tax itself, most criminal fines and tax penalties are not deductible.

Mixed costs (costs that have both a business and a private character, e.g. food and representation) are only deductible within certain limits. Such expenses are fully deductible if the company adds to its taxable income an amount equal to 0.4% of the total taxable wages paid to all employees, with a maximum of EUR 4,100. Upon request, this amount is not added to taxable income, in which situation the deduction of the total of such expenses is limited to 73.5% thereof.