

# Netherlands

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## 1. Types of tax

Based upon the Succession Code 1956 (the Code), two types of tax are levied:

- Gift tax
- Inheritance tax

Before 1 January 2010, transfer duty was levied from the person who acquired Dutch *situs* property by way of gift or bequest in case the donor or the deceased was not (deemed) resident in the Netherlands at the time of the gift or at the time of the bequest. The transfer tax (gift/inheritance tax regarding Dutch *situs* property) was abolished in 2009.

Technically, neither tax is considered an estate tax because the tax is not levied on the estate as such, but each tax is levied on the person who acquires property by way of gift or bequest. Some *inter vivos* transactions may also be liable to inheritance tax. This applies to *inter vivos* transactions that actually take effect upon death (e.g., life insurance contracts and third-party contracts). This will be explained further below.



## 1.1 Inheritance tax

Inheritance tax (IHT) is levied on all assets (located worldwide) of a decedent who was a resident or was deemed to be a resident of the Netherlands at the time of his or her death. Whether that person was a resident of the Netherlands at the time of his or her death is based on an evaluation of all the facts and circumstances. For further explanation on the Dutch residency concept, see Section 2.

As mentioned briefly above, the Dutch Succession Code 1956 contains a number of provisions under which the results of certain *inter vivos* transactions are deemed to have occurred by the application of inheritance law. As a consequence, everything that is acquired by way of that *inter vivos* transaction is subject to IHT.

In general terms, the most important of these provisions are the following:

- ▶ Receipt of property based on a provision in a (prenuptial) agreement that provides for a transfer of the property upon death
- ▶ Receipt of property on condition that the person who receives it is alive at the time of demise of the donor
- ▶ Property transferred during the lifetime of the deceased subject to a usufruct in his or her favor that lasts until death
- ▶ Property of which the deceased acquired the usufruct when the usufruct is financed out of the property of the deceased
- ▶ All gifts received within a period of 180 days before death
- ▶ Receipt of the proceeds of a life insurance if the deceased was legally obliged to contribute to the premiums paid for such insurance
- ▶ Property acquired by way of third-party contract, if the property is received at the time of death or after the death of the promisor, unless no consideration has been paid for the property received by the promisor/deceased

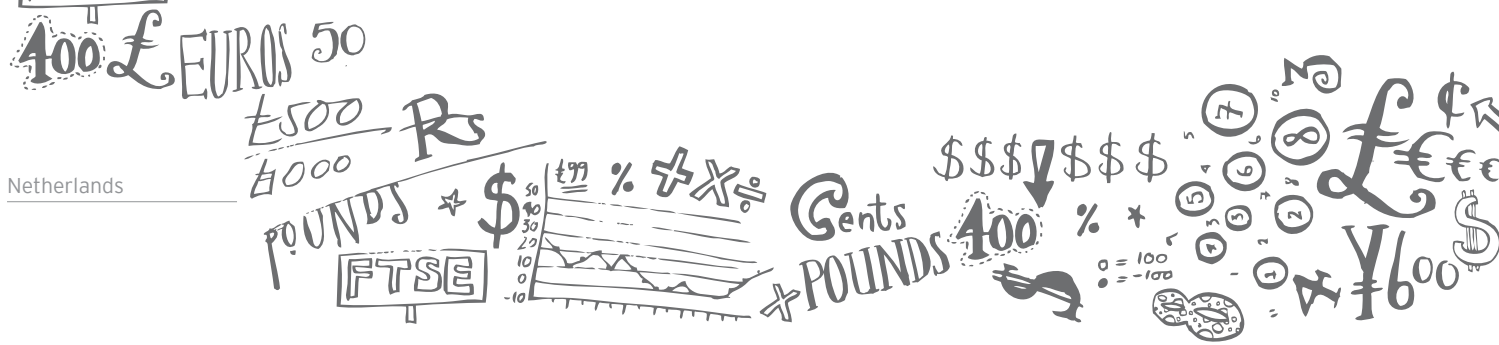
Another provision holds that the increase in value of the shares in a closely held company (which shares are not owned by the deceased) as a result of the demise of the deceased, is deemed a taxable acquisition for IHT purposes. This applies only to the shares owned by certain close family members of the deceased. Normally, the increase in value is caused by the fact that the company no longer has any obligations with respect to the pension right of the deceased.

The sum subject to inheritance tax is the fair market value (FMV) of the bequest at the time of death. Generally, the heirs are obliged to pay the debts of the deceased. A sum representing the obligation of the heirs to pay the liabilities (if any) of the deceased can be subtracted from the value of the acquisition. The FMV is determined based on objective standards (i.e., the price an independent third party is willing to pay for the property concerned). Special provisions apply for the valuation of a right of usufruct, annuities and residential property.

All enforceable debts of the deceased (including funeral costs) are tax deductible.

Deferred income tax liabilities can be taken into account up to the following amounts:

- ▶ 30% of the value of the reserves of a company, made to provide for pension obligations
- ▶ 20% of the hidden reserves included in acquired business assets
- ▶ 30% of the value of an acquired right to receive periodic payments
- ▶ 6.25% of the difference between the fair market value and the acquisition price of substantial interest shares





Whether that person was a resident of the Netherlands at the time of his or her death is based on an evaluation of all the facts and circumstances. For example, such circumstances are place of work, location of a dwelling house and the center of somebody's family and social life/friends. The applicable criteria to establish a person's residence for inheritance and gift tax purposes are generally the same as the applicable criteria for establishing residence for income tax purposes.

Persons who have Dutch nationality are deemed to be resident in the Netherlands for inheritance and gift tax purposes during a period of 10 years after having emigrated from the Netherlands. The Court of Justice of the European Union (CJEU) has ruled that the "10-year rule" does not violate EU law.

Gift tax is due on the value of all gifts made by a person who was a resident or who was deemed to be resident in the Netherlands at the time of the gift. As with the rules for levying inheritance tax, when determining whether the donor was a resident of the Netherlands at the time of the gift, all facts and circumstances are taken into account (see above). Persons who do not have Dutch nationality are deemed to be a resident of the Netherlands for a one-year period after departure.

The person who acquires property by way of bequest or gift is liable to pay the taxes due. If an executor is appointed, he or she is required to fulfill all obligations imposed by the Succession Code 1956 in the same way as the heirs and the executor is liable for the inheritance tax due towards the tax authorities.

### 3. Rates

The rates for inheritance tax and gift tax are the same. The following rates are all based on figures that apply in 2016.

A so-called double progressive system applies. The applicable tax rate depends on the relationship in existence between the person who acquires property and the deceased person or the donor (e.g., is he or she a child or a brother or sister). Furthermore, the amount of tax due also depends on the size of the acquisition.

The rates are split into three categories:

Partner and the children <sup>1</sup>	10% up to 20% for acquisitions above €121,903
Grandchildren	18% up to 36% for acquisitions above €121,903
Other persons	30% up to 40% for acquisitions above €121,903

<sup>1</sup> Only one person can be designated as the partner for purposes of the Inheritance Tax Act. This partner is:

- The spouse
- The registered partner
- The person with whom the donor or deceased had a municipally registered joint household at least six months before death (for gifts, two years at the moment of the gift) and with whom a notarial cohabitation agreement was drawn up, which contained a mutual duty of care
- If a notarial agreement with a mutual duty of care is not available, the person with whom the donor or deceased kept a municipally registered joint household for a period of at least five years

### 4. Exemptions and reliefs

Several exemptions apply for inheritance tax and gift tax. The following amounts are all based on figures that apply in 2016.

The most important exemptions for inheritance tax are:

- Acquisition by the state, a province or a municipality of the Netherlands
- Acquisition by a charity (acts for 90% or more in the public interest) or an entity that contributes to the social welfare of the community



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- Acquisition by the surviving partner: minimum exemption of €164,348 and maximum exemption of €636,180, depending on the value of any pension rights, half of which is subtracted from the exempt amount of €636,180 (but the mentioned minimum exemption always remains)
- For sick and disabled children: €60,439
- Exemption for children and grandchildren: €20,148
- Exemption for parents: €47,715
- In all other cases the exemption: €2,122

All exemptions apply regardless of the amount of the acquisition.

The most important exemptions for gift tax are:

- Gifts received from the King or other members of the Royal Family, from the state, a province or a municipality of the Netherlands
- Gifts from parents to their children: €5,304  
In addition, there is a general one-off exemption of €25,449 for a gift to a child whose age is between 18 and 40. This exemption may be raised to €53,016 if the gift is used for the purchase of a home or to fund an expensive education
- Other gifts up to an amount of €2,122
- Gifts received from a Dutch charity in accordance with the statutes of the charity and gifts given to such a charity
- Gifts received by an entity that contributes to the social welfare of the community

All exemptions apply regardless of the amount of the acquisition.

### Exemptions and reliefs for business property

If business property is donated by way of gift or acquired by way of bequest, an important exemption applies (business succession facility). This facility also applies to the acquisition of shares that constitute (in the hands of the donor or deceased) directly or indirectly a substantial interest (5% or more) in an active trading company.

If all legal requirements for application of the business succession facility are satisfied, the value of the total business up to €1,060,298 is exempt. For the possible remainder value of the business (assets), an exemption of 83% applies. In addition, 5% of the value of the business assets is exempt when the company is holding investments to that amount that cannot be qualified as business assets.

The deceased must have been an entrepreneur during the entire year prior to his or her death, so as to avoid the situation where taxable assets are converted into exempt assets (business property) while death is imminent. For gifts, this period is five years.

After the acquisition of the business property, the acquirer must continue the business for at least five years.

When the acquisition concerns shares, he or she must keep the shares for at least five years.

An inheritance tax assessment will be prepared for the non-exempt acquisition only. With regard to this nonexempt acquisition, the option exists to obtain a 10-year postponement of payment of the tax. During this period, interest becomes due in regard to the tax payable in the future.

A lower Dutch court decision stated in 2013 that this business succession facility should also be applied to nonbusiness property because this facility is contrary to the principle of equality. However, the Supreme Court decided that the business succession facility does not violate this principle. The legislator is allowed to make a distinction between taxing business assets and taxing private equity, according to the Supreme Court. The judgment of the Supreme Court was confirmed by the European Court of Human Rights in 2014.



## Exemptions and reliefs for country estates

A country estate qualifies as such if real estate located in the Netherlands (possibly wholly or partially covered by living accommodation) is of such a general public interest that its preservation is considered to be of importance to the natural/scenic beauty of the countryside.

In its judgment (case number C-133/13) of 18 December 2014, the CJEU held that an estate also qualifies as a country estate if the estate is located outside the Netherlands and contains an element of Dutch cultural heritage. This extension should be applied retroactively as from 18 December 2014. The judgment applies to estates located in EU Member States as well to estates located in European Economic Area (EEA) member countries and third countries, although it is limited to EEA member countries and third countries with which a treaty has been concluded regarding the exchange of information.

The status of a country estate is granted on application by the Ministries of Agriculture and Finance.

A distinction is made between property that is open to the public and property that is not open to the public. If the property is open to the public, the entire amount of inheritance or gift tax due is not collected. If the property is not open to the public, inheritance tax or gift tax will be collected with regard to a reduced tax base.

The value of the property is in principle determined on the basis of the economic value, although certain depreciating factors will be taken into consideration. Generally, a 20% to 40% discount on the economic value applies.

The allowances mentioned are available only if the acquirer retains ownership during at least 25 years, during which period the country estate needs to remain qualified. However, the allowances remain applicable if the qualifying country estate is transferred during the 25-year period without consideration (i.e., by way of gift or bequest).

By means of anti-abuse, the exemption or relief is not available if the deceased buys the country estate from his or her heir(s) and dies within five years of the acquisition.

## 5. Filing procedures

An inheritance or a gift must be declared. For inheritance tax purposes, a tax return needs to be filed within eight months after the time of death of the deceased. For gift tax, a two-month period starting at the end of the calendar year in which the gift was made applies. After the tax return has been filed, the tax authority will impose a tax assessment stating the tax due. Payment of the tax is due six weeks after the date of the tax assessment.

## 6. Assessments and valuations

As mentioned earlier, the sum subject to inheritance tax is generally the FMV of the bequest at the time of death. The FMV is determined based on objective standards (i.e., the price an independent third party is willing to pay for the property concerned). Several exemptions on this general rule are mentioned hereafter.

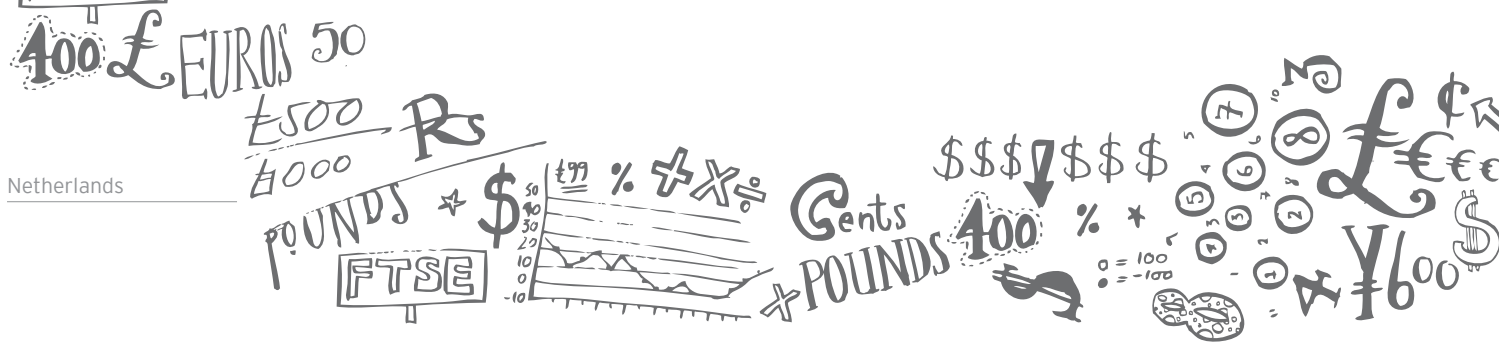
The value of the dwellings is determined on the basis of the (Dutch) Real Estate Appraisal Act, which can differ from the FMV.

Special provisions apply for the valuation of a right of usufruct and for annuities.

The (fictitious) value of the lifetime right of usufruct is calculated considering an actuarial interest rate of 6% and the age of the acquirer.

The (fictitious) value of lifelong annuities is calculated considering the age of the acquirer and the amount of the annuity.







The law contains provisions that give the tax authorities power to execute PPF assets for a tax debt of the person to whom the property of the PPF is attributed. The code also provides for a possibility for the tax authorities to execute assets that belong to a legal entity in the Netherlands of which the PPF owns more than 5% of its shares. This means that when the holding of the PPF amounts to, say, 5%, the tax authorities are empowered to execute assets of the company directly or indirectly held by the PPF that correspond to the value of the 5% holding.

## 8. Grants

There is no specific concept of grants under Dutch tax law.

## 9. Life insurance

As mentioned earlier, the receipt of the proceeds from a life insurance is taxable as if it were an acquisition by way of inheritance if the deceased was legally obliged to contribute to the premiums paid for such insurance. This rule does not apply if the premiums are financed out of the private property of the beneficiary.

## 10. Civil law on succession

### 10.1 Estate planning

Generally speaking, estate planning concerns the practice in which civil law concepts and tax law are combined to achieve an optimal tax situation in regard to the transfer of family wealth between the members of a family.

### 10.2 Succession

Normally the succession is regulated by way of a will. Mutual wills are void in the Netherlands. The same applies in regard to agreements on succession. Although the possibility of a holographic will exists, normally wills are made by notarized deed. To the extent the deceased had not disposed of the inheritance, the intestacy rules apply.

### 10.3 Intestacy

If a person dies without a will, the decedent's estate passes under the rules set out in the Civil Code. The order of succession is based on four groups whereby the persons that belong to a subsequent group do not benefit until all the members of a preceding group are exhausted. The heirs are classified in the following order:

- The surviving spouse together with the deceased's children and further descendants
- The parents together with the deceased's brothers and sisters and their descendants
- The grandparents of the deceased
- The great-grandparents of the deceased

Descendants of children, brothers, sisters and grandparents and great-grandparents benefit per stirpes. All heirs of a group are entitled to equal shares.

If a deceased leaves a spouse and one or more children as heirs, the law provides that all assets in the estate pass to the surviving spouse absolutely. However, the children as heirs then receive a monetary claim equal to their portion (statutory partition). Under certain circumstances (e.g., remarriage of the surviving spouse), the children can call in their monetary claim. The statutory partition is applicable automatically, unless the deceased excluded this by means of a last will.







## 11. Estate tax treaties

### 11.1 Unilateral rules

When no tax treaty applies (see hereinafter), Dutch unilateral law for the avoidance of double taxation applies. Double taxation, however, is not always completely avoided.

As was previously mentioned, transfer duty (inheritance and gift tax based exclusively on the principle of *situs*) was abolished per the first of January 2010. Hereafter we describe the Dutch *situs* concept because it can still be relevant in applying Dutch unilateral law to avoid double taxation. The following assets are considered as *situs* assets:

- ▶ The value of a domestic enterprise or a part of a domestic enterprise (which is determined by a permanent establishment)
- ▶ Real estate and limited rights over real estate
- ▶ Economic ownership of real estate and economic ownership of limited rights over real estate
- ▶ Shares in a real estate company (where real estate makes up 50% of the assets)

### 11.2 Estate tax treaties

The Netherlands has concluded estate tax treaties with the following countries: Austria, Finland, Israel, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, a tax arrangement applies between the Netherlands and the Caribbean islands of Curaçao, Aruba and St. Maarten.

All treaties cover inheritance tax and transfer duty with respect to bequests. Dutch transfer duty was abolished on 1 January 2010.

The only treaties that cover gift tax are the treaties with the United Kingdom and Austria. The tax arrangement that applies between the Netherlands and Curaçao, Aruba and St. Maarten also applies to gifts.