Netherlands

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1. Types of tax

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

1. Gift tax
2. 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 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 rights 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

1.2 Gift tax

Gift tax is due on the value of all gifts made by a person who was a resident or 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. Persons who do not have Dutch nationality are deemed to be a resident of the Netherlands for a one-year period after departure. The concept of a gift can be summarized as follows: every act (or probable omission) that results in an enrichment of the donee and in an impoverishment of the donor and which was caused by the intention of the donor to enrich the donee. This description not only covers the contract that is explicitly called donation in the Dutch Civil Code, but also covers transactions that are not donation contracts (i.e., a sale at an undervalue, a partition of co-owned property under which one of the co-owners is favored over the other or third-party contracts that result in an enrichment of the third-party beneficiary).

Gifts may be shaped as revocable or irrevocable.

Gifts acquired from the same donor within a calendar year are treated as one gift.

Spouses and unmarried partners are deemed to be one and the same person for gift tax purposes. Parents are considered as one donor with regard to all gifts to their children within one calendar year. These rules should be taken into account when calculating the gift tax due.

The code contains some provisions whereby a gift is deemed to have taken place. Apart from gifts received from irrevocable discretionary trusts (see hereafter), these provisions are the following:

- If an obligation (a debt) can be called in at any time and bears no interest or an interest lower than 6%, then during the time the debt is not called in by the creditor, it is assumed that the creditor gifts a usufruct of the debt to the debtor.
- For gifts under a suspensive condition (e.g., a gift by way of *fideïcommissum*), it is assumed that the gift has taken place at the time when the suspensive condition becomes fulfilled. If the donor has died when the condition becomes fulfilled, it is assumed that the donee received the donated property out of the inheritance of the donor.

1.3 Real estate transfer tax

In principle, real estate transfer tax (not an inheritance tax) is payable upon any transfer of (deemed) real estate. Acquisitions by way of inheritance and matrimonial regime are not regarded as transfers and, therefore, are tax-exempt.

1.4 Endowment tax

Endowment tax, separate from gift tax, is not part of the Dutch tax system.

1.5 Net wealth tax

Net wealth tax as such is nonexistent in the Dutch system, but income tax is levied on the value of net wealth (excluding the family home and substantial interests in companies). As of 2018, the effective rate varies from 0.61% up to 1.61% each year, depending on the value of the net wealth on 1 January of the calendar year.

2. Who is liable?

2.1 Residency/domicile

The Dutch regulation does not make a difference between residency and domicile.

As mentioned, IHT is levied on all assets (located worldwide) of a decedent who was a resident or who 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 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 2018.

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., he or she is 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[1]	10% up to 20% for acquisitions above €123,248
Grandchildren	18% up to 36% for acquisitions above €123,248
Other persons	30% up to 40% for acquisitions above €123,248

[1] 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 adult person with whom the adult 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. Persons related in a direct line cannot be partners for IHT/gift tax purposes.
- 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 2018.

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

- Acquisition by the surviving partner: minimum exemption of €166,161 and maximum exemption of €643,194, depending on the value of any pension rights, half of which is subtracted from the exempt amount of €643,194 (but the mentioned minimum exemption always remains)
- For sick and disabled children: €61,106
- Exemption for children and grandchildren: €20,371
- Exemption for parents: €48,242
- Exemption in all other cases: €2,147

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: €5,363

  In addition, there is a general one-off exemption of €25,731 for a gift to a child whose age is between 18 and 40. This exemption may be raised to €53,602 if the gift is used to fund an expensive education.
- Other gifts up to an amount of €2,147
- Gifts received from a charity resident in the Netherlands in accordance with the statutes of the charity and gifts received by such a charity
- Gifts received by an entity that contributes to the social welfare of the community

The basic exemptions mentioned after the second, third and fourth bullet points above may be raised to €100,800 if the gift is used for the purchase of a home or payment of a loan related to the acquisition of a home. This general one-off exemption is granted to all donees aged between 18 and 40, regardless of their relationship to the donor.

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 €1,071,987 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, the acquirer must keep the shares for at least five years.

An inheritance tax assessment will be prepared for the nonexempt 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 as 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 FMV, although certain depreciating factors will be taken into consideration. Generally, a 20% to 40% discount on the FMV applies.

The allowances mentioned are available only if the acquirer retains ownership for 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).

As an anti-abuse measure, 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.

7. Trusts, foundations and private purpose funds

7.1 Trusts and foundations

The concept of the trust is unknown in Dutch civil law. Dutch law is familiar with the distinction between real rights and personal rights (e.g., applied in the distinction between legal ownership and economic ownership), but is unfamiliar with a distinction between legal interests in property and beneficial interests in property.

Apart from this, the way in which ownership can be split up into different legal interests differs widely from the way in which such a division occurs under Anglo-American law.

Since 1 February 1996, however, the Netherlands is a party to the 1985 Hague Treaty on the law applicable to trusts and their recognition.

In some civil law jurisdictions, foundations are widely used in family estate planning. The concept of the foundation is known in Dutch civil law; however, the opportunities to use a Dutch foundation for family estate planning are limited. This is due to a provision in the Dutch Civil Code that states that the purpose of the foundation cannot be to benefit the person who establishes the foundation or any person who belongs to the board of directors of the foundation. Other persons can only benefit from the foundation if the character of the distributions made by the foundation could be categorized as being of a social character or is acknowledged to have an idealistic tendency.

As of 1 January 2010, irrevocable discretionary trusts and other entities of functional similarity, such as family foundations, are regulated in the areas of income tax, gift tax and inheritance tax.

7.2 Private purpose funds

As of 1 January 2010, fiscal rules for private purpose funds (PPFs) entered into force. PPFs include Anglo-American trusts and family foundations. According to the law, a PPF is a fund that "serves private interests more than incidentally."

The tax rules regarding PPFs do not apply to all kinds of trusts (and foundations), but do apply to those entities that can be characterized as irrevocable and discretionary in character. When such entities are used, there is no individual that owns enforceable rights against the trust (or the foundation). When the trust (or foundation) can be qualified as fixed, these legal rules do not apply and the enforceable rights need to be qualified in accordance with Dutch tax law, and as such, those qualified interests are subsequently taxable.

For income tax, IHT and gift tax purposes, the assets, liabilities, income and costs of the PPF are attributed to the settlor. When the settlor has died, the attribution is made to the heirs of the settlor. A person who is disinherited in the settlor's will, but is nevertheless a beneficiary of the PPF, is also considered as an heir. If an heir is not a beneficiary of the PPF, the heir can avoid the attribution of assets, etc., of the PPF by proving to the tax authorities that he or she is excluded as a beneficiary and has no opportunity whatsoever to become a beneficiary in the future.

Upon the death of the person to whom the assets and liabilities are attributed, the assets and liabilities of the PPF are treated as part of his inheritance. As a result, the net value is taxed with inheritance tax. Inheritance tax will only become due when this person is considered to be a (deemed) resident of the Netherlands at the time of his or her death.

When distributions are made out of the assets of the PPF to the beneficiary, the law assumes they are a gift by the settlor to the beneficiaries. If the settlor has passed away, the law assumes they are a gift from the heirs of the settlor to the beneficiaries.

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 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, 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.

10.4 Forced heirship

As of 2003 the inheritance law provides for a compulsory share for the descendants of the deceased, but the persons entitled to the compulsory share are not considered as heirs but as creditors of the heirs.

The compulsory share of a child is half of the share that the child would acquire according to the rules that apply to intestate succession. In order to calculate this share, the value of the estate plus gifts made within five years of death are taken into account. However, older gifts are taken into consideration when those gifts were made to persons who are entitled to a compulsory share.

The surviving spouse does not have a compulsory share, but when the surviving spouse is left behind without any means, the Civil Code provides for certain maintenance provisions.

10.5 Matrimonial regimes and civil partnerships

If the couple did not conclude a prenuptial agreement prior to the marriage, up to 2018 the Dutch regime of the universal community of property became applicable at the moment the marriage was concluded. Under this regime, all assets and all debts of both spouses become part of the community of property regime. Both spouses participate equally in the community. Gifts and inheritances also become part of the community regime regardless of whether they were acquired before or during the marriage. An exception applies only to a gift or bequest that was made subject to an exclusion clause. In that case, the donor or the deceased explicitly provides that the acquired property will not become a part of the community of property regime of the couple.

As of 1 January 2018, a new Dutch standard regime of a more limited community of property applies. Under this regime, only assets and liabilities acquired by the spouses during the marriage become part of the community of property regime, in which both partners participate equally. Premarital assets and liabilities only become part of the community of property if the partners already had joint ownership of assets/liability before the community became applicable. Gifts and inheritances are also excluded from the community of property regime. The law contains a provision, however, that if inheritances and gifts are given by donor or deceased, subject to a so-called inclusion clause, they may become part of the community of property. In that case, however, the spouses are entitled to definitely exclude inheritances and gifts from the community by notarial deed. The new regime applies to all spouses who marry after 1 January 2018, or to spouses who introduce the new regime after their marriage by way of notarial deed.

In the field of matrimonial property, freedom of contract is an important principle. Almost any arrangement the parties desire is possible but all arrangements need to be made by notarial deed. It is also possible to change an existing regime during the marriage. When parties are married under separation of property and subsequently opt for some form of community of property regime (either the pre-2018 regime or the new regime or another arrangement), it is to some extent accepted that no gift tax or inheritance tax becomes due. This opens up possibilities for tax planning between spouses. It can be of importance because only a limited exemption between spouses applies in inheritance tax, and only the general exemption of €2,147 applies between spouses in regard to gifts made between them.

10.6 Probate

Probate proceedings do not apply under Dutch law because the inheritance passes to the heirs by way of universal succession.

10.7 EU Regulation 650/2012

As of 17 August 2015, the EU Succession Regulation (known as Brussels IV), which provides uniform rules on jurisdiction, applicable law, recognition and enforcement of decisions, applies to matters of succession. It also covers the acceptance and enforcement of authentic instruments in matters of succession and also includes the creation of a European Certificate of Succession.

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 and Dutch real estate makes up at least 30% of these assets) in the year of acquisition or the preceding year.

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.