Andorra; Netherlands

Tax Treaty Between Andorra and Netherlands – Details

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Details of the Andorra - Netherlands Income and Capital Tax Treaty (2023), signed on 12 October 2023, have become available. The treaty was concluded in the Catalan, Dutch and English languages, all texts being equally authentic. In case of divergences, the English text prevails. The treaty does not apply to the BES islands. The treaty generally follows the OECD Model (2017).

The maximum rates of withholding tax are:

- 15% on dividends generally, but 0% if (i) the beneficial owner is a company (other than a partnership) which holds directly at least 5% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend or (ii) a recognized pension fund. Changes of ownership resulting from a corporate reorganisation such as a merger or divisive reorganisation are not taken into account (article 10(2) and (3) of the treaty). Article VII of the protocol provides that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares;
- 0% on interest (article 11(1) of the treaty); and
- 5% on royalties (article 12(2) of the treaty).

Deviations from the OECD Model include that:

- article 4(2) of the treaty provides that a person, other than an individual, will be regarded to be liable to tax:
  a) in the Netherlands, if the person is a resident of the Netherlands for the purposes of the company tax;
  b) in Andorra, if the person is a resident of Andorra for the purposes of corporate income tax;

  The rule applies if the income derived by that person is treated under the tax laws of that state as income of that person and not as the income of the person's beneficiaries, members or participants. This rule applies even if all or part of it is exempt from tax;

- article 4(3) of the treaty provides that the term "resident of a Contracting State" does not include any person who is liable to tax in that state in respect only of income from sources in that state or capital situated therein;
- article 8(2) of the treaty provides that, if the place of effective management of a shipping enterprise is aboard a ship, it will be deemed to be situated in the contracting state in which the home harbour of the ship is situated, or, if there is no such home harbour, in the contracting state of which the operator of the ship is a resident;
- article 10(8) of the treaty contains an exit tax provision under which dividends paid by a company to an individual who is a resident of the other contracting state and who upon emigration is taxed on capital gains, may also be taxed in the source state, but only insofar as the assessment on the capital gains is still outstanding;
- article 12(5) of the treaty provides that royalties will be deemed to arise in a contracting state when the payer is a resident of that state. If the person paying the royalties, whether he is a resident of a contracting state or not, however, has in a contracting state a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties will be deemed to arise in the state in which the permanent establishment is situated;
- article 13(4) regulates that the provision on the sale of shares deriving more than 50% of their value directly or indirectly from immovable property does not apply to:
  a) shares of a company listed on a recognised stock exchange of one or both contracting states or a European Union or European Economic Area member state, where the alienator at all times during the 12-month period preceding such alienation held directly or indirectly not more than 25% of the capital of the company whose shares are alienated; and
  b) shares of a company which is a resident of the other contracting state and benefits from tax deferral in the first-mentioned state under its domestic law within the framework of a special tax regime which applies to reorganizations which takes places between companies within the same group. For the purposes of determining the gain on a subsequent alienation, the cost of the shares for the acquirer shall be determined on the basis of the cost that they had for the alienator. This provision shall not preclude the obligation of informing of the reorganization under domestic law of the contracting states.
- article 13(6) of the treaty contains an exit tax provision on capital gains allowing the source state to tax gains realized by an individual in the period of residence in a contracting state;
- article 18(2) of the treaty provides that pensions, annuities and social security payments may be taxed in the source state; and
- the treaty does not contain a provision on the assistance in the collection of taxes.

Based on article 22(1)-(6) of the treaty, the Netherlands applies both the exemption with progression and the treaty method for the avoidance of double taxation. The exemption with progression method does, however, not apply to income which is exempt in Andorra or subject to a withholding tax on dividends or royalties.

Article 22(7)(a) and (b) of the treaty provide that Andorra applies both the credit and exemption with progression method.

Article 23 of the treaty contains a provision on the entitlement to treaty benefits under which those benefits are denied if one of the principal purposes of an arrangement or construction was to obtain those benefits unless granting the benefits is in accordance with the object and purpose of the relevant treaty provision. The treaty benefits will also be granted if the benefits would have been granted in the absence of the transaction or arrangement. Profits derived from the other contracting state which by the state where an enterprise is established are allocated to a third country PE will not be entitled to treaty benefits if the tax rate in third country is less than the lower of 10% or 60% of the tax that would be imposed on those profits in the state where the enterprise is established. In such case the profits remain taxable under the laws of the other contracting state. The benefits are granted if profits result from the active conduct of a business carried on through the permanent establishment.

Article 1 of the protocol authorizes the contracting states to initiate negotiations to amend the treaty in any of the following cases:

1) the statutory corporate income tax rate in any of the treaty states become lower than 9%;
2) any of the states decides to exempt all foreign source income of companies; or
3) a treaty state is placed on the EU list of non-cooperative tax jurisdictions.

If these negotiations do not succeed, either state may decide to no longer apply the provisions of articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13(5)("Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident") and 20 (Other income).

Article VIII of the protocol authorizes the Netherlands to tax income of exempt investment institutions, but if the beneficiary is resident of Andorra the tax may not exceed 15%.