Belgium; Netherlands

Tax Treaty Between Belgium and Netherlands – Details

28 June 2023

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Details of the Belgium - Netherlands Income Tax Treaty (2023), signed on 21 June 2023, have become available. Once in force and effective, the new treaty will replace the Belgium - Netherlands Income and Capital Tax Treaty (2001), as amended by the 2009 protocol. The treaty was concluded in the Dutch and French languages. Article 1(1) of the first protocol to the treaty provides that the treaty will be interpreted in line with the OECD Model (2017).

The maximum rates of withholding tax are:

- 15% on dividends, but 0% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend and recognized pension funds;
- 0% on interest; and
- 0% on royalties.

Deviations from the OECD Model (2017) include that:

- article 4(5) of the treaty provides that the residence of a company is determined by means of the place of effective management;
- article 5(4) of the treaty contains an offshore PE provision. Such PE is deemed to exist if the offshore activities are carried out for at least 30 days in a period of twelve months. Article 5(5) of the treaty specifies that offshore activities do not include auxiliary activities, towing or anchoring by ships and the carriage of supplies or personnel by ships or aircraft in international traffic;
- article 5(6) contains the MLI provision on splitting-up of contracts. This means that for determining the duration of a building site or construction or installation project, activities carried out by an enterprise of a contracting state in the other contracting state at a building site or construction or installation project for periods exceeding 30 days without exceeding twelve months are combined with connected activities carried on at the same building site or construction or installation project during different periods of time exceeding 30 days by one or more closely related enterprises. The same rule applies to offshore activities;
- articles 10(9) and 11(7) of the treaty contain an exit tax provision under which dividends and interest 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 for a period of 10 years, but only insofar as the assessment on the capital gains is still outstanding. The maximum rate is equal to half the domestic withholding tax rate of the other contracting state;
- article 11 of the first protocol to the treaty provides that income from the (partial) liquidation of a company is treated as dividends;
- article 13(5) 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 14(3) of the treaty provides that remuneration derived from an employment exercised aboard a ship, inland vessel or aircraft operated in international traffic will be taxable only in the contracting state in which the place of effective management of the enterprise is situated;
- article 16(1)(a) and (b) and article 16(8) of the treaty regulates that pensions, annuities, alimony and other (periodic) payments as a main rule are taxable only in the residence state;
- article 16(2) of the treaty, however, provides that pensions, annuities and social security (pension) payments exceeding EUR 25,000 in a calendar year may also be taxed in the source state if:
    - the pension or annuity is exempt in the residence state or the pension contributions were deductible or had been eligible for tax relief in the source state; and
    - the pension, annuity or social security is not taxed at the general rate for employment income or the gross income is taxed for less than 90%;
    - article 16(3) provides that lump-sum payments may also be taxed in the source state if those payments are received before the periodical pension or annuity should have been received;
- article 19(3) of the treaty provides that any income not covered by another treaty article may be taxed in the source state if it is not effectively taxed in the residence state;
- article 22(2) of the treaty provides that non-residents are entitled to the same personal allowances, reliefs and reductions on account of marital status or family composition as residents of that other state if they are otherwise in the same circumstances as residents of that state;
- article 23 of the treaty contains a compensation regulation for Dutch frontier workers who in Belgium are subject to higher social security contributions than in the Netherlands;
- the treaty does not contain an arbitration clause; and
- articles 25(6) and 26(9) of the treaty provide that the provisions on exchange of information and assistance in collection of taxes apply to the income-related regulations under the laws of the

Netherlands.

Article 20 of the treaty provides that Belgium and the Netherlands apply both the credit and exemption with progression method for the avoidance of double taxation. Article 20(1)(d) of the treaty exempts dividends received by a Belgian company from a Dutch company under the conditions of Belgian domestic law. Article 20(1)(e) of the treaty regulates that Belgium does not grant an exemption to other taxable periods of a PE where Dutch PE losses incurred by an enterprise carried on by a resident of Belgium have actually been deducted from the profits of that enterprise to the extent that those profits are also exempt from tax in the Netherlands by deduction of those losses.

Article 21 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.

Based on article 28(4) of the treaty, the compensation provisions under the 2001 treaty will remain applicable with respect to remuneration which Belgium is authorized to tax.

Article 1(4) of the first protocol to the treaty provides that the tax treaty does not prevent the application of the EU Directive 2022/2523 on the global minimum tax.

Article 2(1) of the first protocol to the treaty provides that the treaty provisions on dividends, interest, royalties, capital gains and other income do not apply to exempt investment institutions.

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