

Netherlands Updates Decree on Avoidance of Double Taxation Under Tax Treaties and Other Regulations

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Report from Dr René Offermanns, Principal Associate, IBFD

On 2 May 2023, the State Secretary for Finance issued a decree (Decree No. 2023-2897 of 18 April 2022) updating the Decree on the Avoidance of Double Taxation under Tax Treaties and Other Regulations.

Overall method and order of credits

The updated Decree clarifies the method and order of credits if the foreign withholding tax (WHT) exceeds the corporate or personal income tax due in the Netherlands.

Accordingly, credits based on tax treaties or other regulations in order to avoid double taxation take precedence over credits based on the unilateral method to avoid double taxation.

Credits are granted in the order of their size or line on a pro-rata basis if they are equal.

Credits for a non-qualifying foreign investment participation, a low-taxed foreign investment company, and a controlled foreign company (CFC) are granted last.

The credit order can be summarized as follows:

- claims under a treaty:
 - exemption for carried forward profits before 2012;
 - credit dividends, interest, royalties; and
 - credit with innovation box royalties.
- credits under the unilateral Decree on the Avoidance of Double Taxation for 2001:
 - exemption for carried forward profits before 2012;
 - credit for dividends, interest, royalties; and
 - credit for innovation box royalties.
- entitlements under the Corporate Income Tax Act:
 - credit for a non-qualifying foreign investment participation;
 - credit with a low-taxed foreign investment company, unless the profit is exempt under a treaty; and
 - a credit for CFC profits.

In the overall method, the credits for WHT and innovation box royalties under the tax treaties and the unilateral method have the same order.

Income of foreign sportsmen and artists

The unilateral method does not elaborate on how to avoid double taxation of the income from sportsmen and artists derived by a Dutch company.

The State Secretary approves that a credit applies if two cumulative conditions are met:

- the activities are subject to a tax on profits by the other state or source; and
- the provisions on the maximum credit, a credit carry-forward, a cost deduction, emigration, and remigration, and a change of ownership under the unilateral method apply accordingly.

The overall method applies to the credit for WHT for income from activities by an artist or sportsman attributable to a company, provided that the credit takes place separately from the credit granted to avoid double taxation for dividends, interest and royalties, and innovation box royalties.

Avoidance of double taxation for income not explicitly mentioned in a tax treaty

If an income is not mentioned explicitly in the treaty due to an omission or incorrect reference, the avoidance of double taxation is granted under the unilateral decree.

[Decree No. 2023-2897 of 18 April 2022](#) – which applies from 3 May 2023 and updates and replaces Decrees No. [CPP2007/664M](#) of 18 July 2008 and [No. IFZ2002/357](#) of 16 April 2022 – were published in Official Gazette No. 12301 of 2 May 2023 (in Dutch only).

For an earlier report, see [New Decree on avoidance of double taxation under tax treaties published \(14 August 2008\)](#).

Note: Originally, the per country method applied to tax treaties and the overall method to the unilateral Decree. However, the new Decree authorizes the application of the overall method also under tax treaties.