

Netherlands Releases Tax Treaty Interpretation Decree

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Report from Dr René Offermanns, Principal Associate, IBFD

The State Secretary for Finance published a decree on how the Netherlands views selected issues arising in tax treaty practice. These issues cover, among others, hybrid entities, corporate tax residence, dividends, interest, royalties and entitlement to treaty benefits. The decree concerns both tax treaty practice as well as domestic law.

The main topics covered by the decree are set out below.

Tax treaty application

Persons covered

- treatment of hybrid entities under the [Netherlands – United States Income Tax Treaty \(1992\)](#), as amended by the 1993 and 2004 protocols

Resident

- corporate entities – mutual agreement procedure
- residence of exempt entities under the [Netherlands - South Africa Income and Capital Tax Treaty \(2005\)](#), as amended by the 2008 protocol

Permanent establishment

- windfarms
- (the impossibility of) "sub-permanent establishments"

Income from Immovable property

- exempt income of a "frontier farmer" (*grensboer*) under the [Belgium – Netherlands Income and Capital Tax Treaty \(2001\)](#), as amended by the 2009 protocol
- exempt income of a "frontier farmer" under the [Germany - Netherlands Income Tax Treaty \(2012\)](#), as amended by the 2016 and 2021 protocols

International shipping and air transport

- short-term storage of containers in the Netherlands

Dividends

- holding period for qualifying dividends under the [Japan – Netherlands Income Tax Treaty \(2010\)](#), as amended by the 2012 exchange of letters
- holding period for qualifying dividends under the [Netherlands – United States Income Tax Treaty \(1992\)](#), as amended by the 1993 and 2004 protocols
- trusts and qualifying dividends under article 10(3)(c) of the [Netherlands - United States Income Tax Treaty \(1992\)](#), as amended by the 1993 and 2004 protocols
- application of the transitional regime of article 30 of the [Curaçao – Netherlands Income, Inheritance and Gift Tax Arrangement \(2013\)](#) (BRNC) in relation to qualifying dividends as described in article 10(8) of the BRNC
- definition of "carrying on a trade or business" (*bedrijfsmatige activiteiten*) as contained in article 35 of the [Netherlands – United States Income Tax Treaty \(1992\)](#), as amended by the 1993 and 2004 protocols
- comparison between the main purpose test in the [Netherlands - United Kingdom Income Tax Treaty \(2008\)](#), as amended by the 2013 protocol and the [OECD Multilateral Convention \(MLI\) \(2017\)](#) principal purpose test

Interest

- payment of accrued interest upon the transfer of a loan under the [Netherlands - Singapore Income and Capital Tax Treaty \(1971\)](#), as amended by the 1994 and 2009 protocols
- withholding tax on interest paid or credited on a long-term loan under the [Malaysia - Netherlands Income Tax Treaty \(1988\)](#), as amended by the 1996 and 2009 protocols
- the definition of "enterprise" (*onderneming*) of article 11(3) of the [Belgium - Netherlands Income and Capital Tax Treaty \(2001\)](#), as amended by the 2009 protocol

Royalties

- the qualification of a payment that relates to both a royalty and for a service provided under the [Indonesia - Netherlands Income Tax Treaty \(2002\)](#), as amended by the 2015 protocol
- subscription fees are not royalties

Capital gains

- moment upon which the existence of a real estate (investment) company is determined under the [Netherlands - United States Income Tax Treaty \(1992\)](#), as amended by the 1993 and 2004 protocols

Methods for elimination of double taxation

- tax sparing credit and imputed interest

Entitlement to benefits

- application of anti-abuse measures contained in the Dividend Withholding Tax Law under the [Germany - Netherlands Income Tax Treaty \(2012\)](#), as amended by the 2016 and 2021 protocols

Domestic law

Deemed residence

- conversion of an entity incorporated under foreign law to one under Dutch
- open-ended limited partnerships

Deductible expenses

- deduction of Swiss withholding tax withheld on qualifying dividends

Corporate emigration

- release of a revaluation reserve upon transfer of the corporate seat

Object exemption

- qualification of British overseas territories as a "state" in the context of article 15e of the corporate income tax law (CITL)
- the application of the object exemption in cases of unresolved tiebreakers
- attribution of interest on debts to a permanent establishment in fiscal entity situations
- the year in which a cessation loss is considered when applying article 15j of the CITL

Foreign tax liability

- establishment of a reinvestment reserve when the foreign tax liability ends

Loss compensation

- loss set off and transfer to subsequent permanent establishments

Dividend withholding tax

- dividend licenses under a treaty with an MLI principal purpose test

[Decree No. 2023-11648](#) of 16 June 2023 was published in Official Gazette No. 17534 of 28 June 2023 (in Dutch).