Corporate Taxation

Netherlands

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Netherlands – Corporate Taxation

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Latest Information:

This chapter is based on information available up to 23 September 2015. Please find below the main changes made to this chapter up to that date:

Implementation of EU Parent-Subsidiary Directive amendments, applicable from 1 January 2016.

Introduction of country-by-country reporting from 1 January 2016.

Introduction of a step-up facility for cross-border mergers or divisions from 1 January 2016.

Abbreviations, Terms and References

Abbreviations

AEX	Amsterdam Stock Exchange
ANW	Algemene nabestaandenwet (General Surviving Relatives Law)
AOW	Algemene ouderdomswet (General Old Age Pension Law)
APA	Advance pricing agreement
ATR	Advance tax ruling
Awb	Algemene wet bestuursrecht (General Administrative Law)
AWBZ	Algemene wet bijzondere ziektekosten (General Law on Extraordinary Medical Expenses)
AWF	Algemeen werkloosheidsfonds (General unemployment fund)
AWR	Algemene wet inzake rijksbelastingen (General Law on Taxation)
BBBB	Besluit Bestuurlijke Boeten Belastingdienst 1998 (Decree on Administrative Fines of 1998)
BES	Bonaire, St. Eustatius and Saba (the BES Islands)
BFB	Besluit fiscaal bestuursrecht (Decree on Fiscal Administrative Law)
BLKB	Belastingdienst Landelijk Kantoor Belastingregio's (National office of tax authorities for the tax regions)
BNB	Beslissingen in belastingzaken Nederlandse belastingrechtspraak (unofficial tax reporter)
BPM	Wet op de belasting van personenauto's en motorrijwielen 1992 (Law on Tax on Passenger Cars and Motorcycles of 1992)
BRK	Belastingregeling voor het Koninkrijk (Tax Regulation for the Kingdom of the Netherlands)
BRN	Belastingregeling voor het land Nederland (Tax Regulation for the Netherlands)
BV	Besloten vennootschap met beperkte aansprakelijkheid (Private limited liability company)
Bvdb	Besluit voorkoming dubbele belasting 2001 (Decree on Avoidance of Double Taxation of 2001)
BW	Burgerlijk Wetboek (Civil Code)
CV	Commanditaire vennootschap (Limited partnership)
DB	Wet op de dividendbelasting 1965 (Dividend Withholding Tax Law of 1965)
DGB	Directoraat-generaal Belastingdienst (General Directorate of Tax Authorities)
ECJ	European Court of Justice
EEA	European Economic Area (EU Member States and Iceland, Liechtenstein and Norway)
EU	European Union
EEIG	European Economic Interest Grouping
HR	Hoge Raad der Nederlanden (Supreme Court of the Netherlands)

IB	:	Wet op de inkomstenbelasting 2001 (Individual Income Tax Law of 2001)
Iw	:	Invorderingswet 1990 (Tax Collection Law of 1990)
LB	:	Wet op de loonbelasting 1964 (Wage Withholding Tax Law of 1964)
NSV	:	Nederlands standaardverdrag 1987 (Netherlands model treaty of 1987)
OB	:	Wet op de omzetbelasting 1968 (VAT Law of 1968)
NV	:	Naamloze vennootschap (public company)
OECD	:	Organisation for Economic Co-operation and Development
PE	:	Permanent establishment
SE	:	Societas Europaea (European Company)
SCE	:	Societas Cooperativa Europea (European Cooperative Society)
Stb.	:	Staatsblad van het Koninkrijk der Nederlanden (Official Gazette)
Stcrt.	:	Staatscourant van het Koninkrijk der Nederlanden (Official Daily Gazette)
TFEU	:	Treaty on the Functioning of the European Union
USD	:	United States dollar
Uitv. besch.	:	Uitvoeringsbeschikking (implementing ordinance)
Uitv. besl.	:	Uitvoeringsbesluit (implementing decree)
Uitv. reg.	:	Uitvoeringsregeling (implementing regulations)
VAT	:	Value added tax
V-N	:	Vakstudie Nieuws (unofficial Tax Reporter)
VOF	:	Vennootschap onder firma (general partnership)
Vpb	:	Wet op de vennootschapsbelasting 1969 (Corporate Income Tax Law of 1969)
WBR	:	Wet op belastingen van rechtsverkeer 1970 (Law on Taxation of Various Legal Transactions)
WFSV	:	Wet financiering sociale verzekeringen (Law on Financing of Social Security)
WIA	:	Wet werk en inkomen naar arbeidsvermogen (Work and Income (Capacity for Work) Law)
WOR	:	Wet op de ondernemingsraden (Law on Works Councils)
WOZ	:	Wet waardering onroerende zaken (Law on Valuation of Immovable Property)
WVA	:	Wet vermindering afdracht loonbelasting en premie volksverzekeringen (Law on the Reduction of Wage Tax and Social Security Premiums)
WvK	:	Wetboek van Koophandel (Commercial Code)
ZVW	:	Zorgverzekeringswet (Health Insurance Law)

Terms

* Afsplitsing: split-off
* Algemene vergadering van aandeelhouders: general meeting of shareholders
* Bankenbelasting: bank tax
* Besloten vennootschap met beperkte aansprakelijkheid: private limited liability company (BV)
* Commanditaire vennootschap: limited partnership
* Coöperatie: cooperative
* Deelnemerschapslening: participation loan
* Energie-investeringsaftrek: energy investment deduction
* Fonds voor gemene rekening: mutual fund
* Geplaatst kapitaal: issued share capital
* Gerechtshof: Court of Appeals
* Gestort kapitaal: paid-up share capital
* Informele kapitaalstorting: informal capital contribution

* Investeringsaftrek: investment deduction
* Maatschap: civil partnership
* Maatschappelijk kapitaal: authorized share capital
* Naamloze vennootschap: public company (NV)
* Nederlandse Mededingingsauthoriteit: Netherlands Competition Authority
* Onderlinge waarborgmaatschappij: mutual insurance company
* Rechtbank: lower court
* SER-fusiegedragsregels: Merger Code of Conduct of the Socio-Economic Council
* Statuten: articles of association
* Stichting: foundation
* Stichting administratiekantoor: Share trust office
* Structuurregime: regime for large companies
* Structuurvennootschap: large NV or large BV
* Vennootschap onder firma: general partnership
* Vereniging: association
* Willekeurige afschrijving: arbitrary depreciation
* Zuivere splitsing: split-up

References

Table of Contents

0. Business Entities

0.1. General

The Netherlands is a civil law country. The main sources for company law are the Civil Code (*Burgerlijk Wetboek*, BW) and the Commercial Code (*Wetboek van Koophandel*, WvK). The BW comprises several books, which deal with separate matters. For company law, books 2 and 7A are the most important. Specific parts of company law can be found in separate laws.

The Netherlands is a member of the European Union. The EU Council Directives on company law have a strong impact on company law and have been implemented in Netherlands law.

There is a wide variety of business entities available. A distinction can be made between entities with legal personality (legal entities) and entities without legal personality (non-legal entities). In this respect, legal entities include the association, the cooperative, the mutual insurance association, the public company, the private limited liability company and the foundation. European Economic Interest Groupings (EEIGs) also have legal personality in the Netherlands. Non-legal entities include two types of entity: a general partnership and the limited partnership. Public companies, private limited liability companies and partnerships are the most frequently used entities for business activities.

Business entities situated in the Netherlands must be registered with the trade registry of the local chamber of commerce.

Unless stated otherwise, the term “company” is used hereinafter to refer to public and private companies.

SE legislation effective as from 1 April 2005

The changes required to align Netherlands company law with Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European Company (Societas Europaea, SE), which entered into force on 8 October 2004, were included in the Law of 17 March 2005 and a related Decree of 17 March 2005 on the entry into force (Law 150, published in the Official Gazette of 24 March 2005 and Decree 151, published in the Official Gazette of 31 March 2005). Furthermore, Council Directive 2001/86 of 8 October 2001 supplementing the Statute for European Company with regard to the involvement of employees was implemented by Law of 17 March 2005 and a related Decree of 17 March 2005 (Law 166, published in the Official Gazette of 30 March 2005 and Decree 167, published in Official Gazette of 31 March 2005). The above-mentioned laws apply as from 1 April 2005.

The Law on the implementation of the SE contains provisions on the establishment of an SE in the Netherlands, the conversion of a public company (NV) into an SE, and the transfer of the statutory seat of an SE to another EU Member State. A proposal to transfer the statutory seat of an SE to another Member State must be deposited at the trade register which deposition must be announced in a national newspaper. Within 2 months after such announcement each creditor can oppose such transfer until sufficient guarantee is provided. Furthermore, the transfer will not take effect if the Minister of Justice objects for reasons of general interest within 2 months after the deposition of the proposal. Furthermore, a Netherlands company with a statutory seat in the Netherlands cannot participate in the establishment of an SE by means of a merger if the Minister of Justice objects for reasons of general interest within 1 month after the deposit of the proposal at the trade register.

SCE legislation effective as from 27 September 2006

The changes required to align Netherlands company law with Council Regulation 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (Societas Cooperativa Europaea, SCE), which entered into force on 18 August 2006, were included in the Law of 14 September 2006 and a related Decree of 26 September 2006 on the entry into force (Law 425, published in the Official Gazette of 26 September 2006 and Decree 465, published in the Official Gazette of 12 October 2006).

The Law on the implementation of the SCE contains provisions on the establishment of an SCE in the Netherlands and the transfer of the statutory seat of an SCE to another EU Member State. A proposal to transfer the statutory seat of an SCE to another Member State must be deposited at the trade register, which deposition must be announced in a national newspaper. Within 2 months after such announcement each creditor can oppose such transfer until sufficient guarantee is provided. Furthermore, the transfer will not take effect if the Minister of Justice objects for reasons of general interest within 2 months after the deposition of the proposal.

0.2. Forms of business organization

0.2.1. Public company

0.2.1.1. General

A public company (*naamloze vennootschap*, NV) is defined as an entity with legal personality, the authorized share capital (*maatschappelijk kapitaal*) of which is divided into transferable shares. Shareholders are not personally liable for the NV's obligations. Their liability is limited to the issued share capital. Therefore, they do not have to contribute additional capital in the case of a deficit due to losses (article 2:64(1) of the BW).

The name of the NV must include the words "Naamloze Vennootschap" or the abbreviation "NV". The legal seat must be located in the Netherlands (article 2:66 of the BW). There are no requirements with respect to the nationality or residence of the shareholders, directors or members of the supervisory board.

The structure of the NV consists of a general meeting of shareholders and a board of directors. Next to these bodies, the structure may also include other bodies, such as a supervisory board and a works council. As per 1 January 2013, it is possible for the NV to have a one-tier board structure (a single board comprising both executive and non-executive directors) as an alternative to the two-tier board structure comprising a management board and a separate supervisory board. The non-executive directors are, however, obliged to supervise the board of directors (article 2:129a of the BW).

The internal rules and managerial structure of the NV can be found in the articles of association (*statuten*), which must be in conformity with corporate law. The articles of association must contain, among other things, the name, purpose, authorized share capital, classes of shares and the legal seat of the company (articles 2:66 and 2:67 of the BW). The financial year coincides with the calendar year, unless otherwise provided by the articles of association (article 2:10a of the BW).

A distinction must be made between ordinary NVs and large NVs (*structuurvennootschappen*). An NV is deemed to be a *large NV* if the following conditions are met (article 2:153(2) of the BW):

- the issued share capital (including reserves) amounts to at least EUR 16 million;
- the NV or one of its subsidiaries is obliged to have a works council (*see* section 0.2.1.1.2.); and
- the NV, together with all its subsidiaries, employs at least 100 persons in the Netherlands.

For this purpose, the term "subsidiary" is defined as a company in which a direct or indirect holding of at least 50% is held (article 2:152(1) of the BW).

An NV qualifying as a *large* NV must be registered as such with the trade registry of the local chamber of commerce. After 3 consecutive years of registration, the regime for large NVs (*structuurregime*) applies. If an NV no longer qualifies as a large NV, the regime remains applicable until the NV fails to register for 3 consecutive years (article 2:154 of the BW). The main differences relate to the structure and powers of the supervisory board (*see* section 0.2.1.1.2.).

Exempt from the obligation to register as a large NV are (article 2:153(3) of the BW):

(1) subsidiaries whose parent company is subject to the regime for large NVs (or BVs);

(2) NVs whose sole purpose is to administer and finance either their own subsidiaries or subsidiaries of other companies belonging to the same group; the majority of the employees of such subsidiaries and group companies must be employed outside the Netherlands; or

(3) NVs rendering administrative and/or financial services to a company described in (2) above.

Unless stated otherwise, the term "NV" is used hereinafter to refer to ordinary NVs.

0.2.1.1.1. Shareholders' meeting

According to mandatory provisions, the general meeting of shareholders must decide on amendments of the articles of association (article 2:121 of the BW) and on liquidation and dissolution of the company (article 2:19 of the BW).

Unless an NV falls under the regime for large NVs (*see* section 0.2.1.1.), the general meeting of shareholders may also decide on:

- the appointment, suspension and dismissal of members of the board of directors (articles 2:132-2:134 of the BW);
- the appointment, suspension and dismissal of at least two thirds of the members of the supervisory board (articles 2:142-2:144 of the BW);
- the adoption of the annual report (article 2:101 of the BW); and
- the appointment and dismissal of an auditor (article 2:393 of the BW).

In general, within the limits set by the law and the articles of association, all powers which are not conferred upon the board of directors, the supervisory board or others, are vested in the general meeting of shareholders (article 2:107 of the BW).

The general meeting of shareholders must convene at least once every year, within 6 months after the end of the company's financial year. The articles of association may provide a shorter period (article 2:108 of the BW). The board of directors or the supervisory board may call the general meeting (article 2:109 of the BW). In addition, the general meeting of shareholders must be called by the board of directors within 3 months after the board of directors is convinced that the equity capital of the company is reduced to one half or less of the amount of the issued share capital (article 2:108a of the BW).

The general meeting must be held in the Netherlands either at a place named in the articles of association or at the registered office of the company. If a meeting is held at another place, legal resolutions can be made only if the entire share capital is represented at the meeting (article 2:116 of the BW).

Each shareholder may attend the meeting or send his representative with written power of attorney to act on his behalf. Each shareholder may exercise his right to vote and may address the meeting (article 2:117 of the BW). If the authorized share capital is divided into shares of equal value, each shareholder is entitled to as many votes as he has shares (article 2:118 of the BW). Different classes of shares with different rights may, however, be created.

Although resolutions made by the general meeting of shareholders generally require an absolute majority of the votes, the law or the articles of association may require a qualified majority for certain resolutions (article 2:120 of the BW).

Holders of certificates representing shares issued with the approval and cooperation of the company may attend the meeting or send their representative with written power of attorney. A holder of certificates may address the meeting, but may not vote (article 2:117 of the BW).

Resolutions made by the general meeting must be recorded by the board of directors. Shareholders are entitled to inspect the annotations and to obtain a copy or summary of these annotations (article 2:120(4) of the BW).

0.2.1.1.2. Management and supervisory bodies

Board of directors

The day-to-day management of an is performed by the board of directors (), unless the articles of association provide otherwise (article 2:129 of the). The board is appointed and dismissed by the general meeting of shareholders or by the supervisory board of large NVs (section) (articles 2:132-2:162 of the BW). There are no requirements for the nationality or residence of a director. Both individuals and legal entities may be appointed as directors.

The NV is represented by each member of the board separately or jointly. The articles of association may provide that certain functions are the primary responsibility of an individual director or directors acting together (article 2:130 of the BW).

The members of the board of directors must act in a reasonable and proper manner in handling the NV's affairs (articles 2:8 and 2:9 of the BW). The board of directors must maintain an administration from which all rights and duties of the NV can be known. Within 6 months after the closure of the financial year, the balance sheet and profit and loss account must be drawn up. The accounting records must be kept for a period of at least 7 years (article 2:10 of the BW). In addition, the annual accounts must be filed with the trade registry of the local chamber of commerce (article 2:394 of the BW).

In general, an NV is liable for its actions. The directors, however, are jointly and severally liable for acts performed on behalf of the NV before the first registration with the trade registry or before meeting the minimum capital requirements (article 2:69 of the BW). In the case of a bankruptcy of the company, directors and other persons with influence on the decision-making process may be held jointly and severally liable for the company's unpaid debts if it can be substantiated that the bankruptcy is caused by their gross negligence or wilful misconduct. Gross negligence is presumed if the board failed to comply with its obligations to maintain a sufficient administration during the 3 years preceding the bankruptcy, keep the accounting records for at least 7 years or timely draw up and file the annual accounts (article 2:138 of the BW). In addition, directors are presumed liable for any damage caused by misleading information provided in the annual accounts or other accounts published by the company (article 2:139 of the BW). The director are also liable if the company or its subsidiaries become insolvent as a result of a repurchase of shares against consideration or a dividend distribution, provided that the director(s) knew about or should have reasonably foreseen the insolvency.

For wage withholding tax, social security contributions, value added tax, excise duties, customs duties and certain minor taxes (e.g. ecotax) due, directors and other persons with influence on the decision-making process may also be held jointly and severally liable by the tax collector or social security authorities (article 36 of the Iw; article 60 of the WFSV). This can take place, in particular, in the case of the failure to report immediately the expected non-payment of such debt to the competent authorities.

If an NV has only one shareholder, all transactions between the shareholder and the NV, if represented by that shareholder, must be made in writing. An exception applies to acts performed within the scope of the ordinary course of the NV's business, under the conditions stipulated (article 2:137 of the BW).

The NV is bound by the acts of its directors and all other persons authorized to represent the company, unless the NV can prove that the third party was actually aware or should have been aware that the representative was acting against the statutory purpose of the NV or exceeding his powers (article 2:6 of the BW).

Supervisory board

The articles of association may provide that an has a supervisory board (), consisting of one or more members. A supervisory board is required by law for large NVs (below). The supervisory board has the duty to supervise the policy of the board of directors and the general affairs of the company's business. The articles of association may set out additional powers and responsibilities (article 2:140 of the). There are no requirements for the nationality or residence of a member of the supervisory board. Only individuals may be appointed as members of the supervisory board.

Members of the supervisory board are appointed by the general meeting of shareholders, unless the NV is a large NV (*see* below) (article 2:142 of the BW). The articles of association may provide that at least one third of the members be appointed by others.

In the case of a bankruptcy of the company, members of the supervisory board may be held jointly and severally liable for the company's unpaid debts if it can be substantiated that the bankruptcy is caused by their gross negligence or wilful misconduct (article 2:149 of the BW). In addition, members of the supervisory board together with the directors are presumed liable for any damage caused by misleading information provided in the annual accounts or other accounts published by the company. The liability is rebuttable (article 2:150 of the BW).

Members of the supervisory board are, in general, not liable for taxes and social security contributions.

With respect to *large NVs* (for definition, *see* section 0.2.1.1.), a supervisory board of at least three members is required by law (article 2:158 of the BW). In general, the board appoints its own members, after consultation with the general meeting of shareholders, the works council and the board of directors. Members are appointed for a maximum period of 4 years. Persons employed by the NV itself (including directors), its subsidiaries (*see* section 0.2.1.1.) or trade unions cannot be members of the supervisory board (article 2:160 of the BW).

In addition to the duties described above, the supervisory board of a large NV appoints and dismisses directors and adopts the annual report. The board of directors of a large NV needs prior approval of the supervisory board for a number of important decisions. These include the issue of new shares and the purchase or sale of an at least 25% participation (articles 2:162-2:164 of the BW). Thus, the powers of the shareholders of a large NV are considerably limited.

If a large NV forms part of an international group of companies, however, the general meeting of shareholders retains the authority to appoint and dismiss members of the board of directors and adopt the annual report. The NV is deemed to be part of an international group of companies if at least 50% of its share capital is held by a group company, the majority of employees of which are employed outside the Netherlands (article 2:155 of the BW).

Works council

Enterprises with at least 50 employees are required to have a works council () (article 2 of the). The works council consists of 3 to 25 members, depending on the number of employees. The members must be employees of the company and are elected by their fellow employees. Directors are not represented (article 6 of the WOR).

The works council and the board of directors meet on a regular basis to discuss matters concerning the general affairs of the company (articles 23 and 24 of the WOR). With respect to a number of important matters involving the structure and activities of the company, the works council must be consulted for advice before a decision is made by the board of directors. If the advice is not followed, the board of directors must notify the works council of the grounds for not doing so (article 25 of the WOR). In addition, the works council's agreement is required on matters concerning employees, such as working conditions (article 27 of the WOR).

0.2.1.2. Capital

The minimum issued and paid-up share capital (*geplaatst en gestort kapitaal*) of an NV is EUR 45,000 (article 2:67 of the BW). The issued share capital must be at least 20% of the nominal value of the authorized share capital (*maatschappelijk kapitaal*), which is the maximum nominal value of shares which can be issued by the NV. Each share must have a nominal value; the law does not provide a minimum value.

On 1 January 2002, the Netherlands guilder was replaced by the euro as currency. NVs incorporated prior to this date do not have to amend their articles of association with respect to the denomination of their authorized share capital or the nominal value of their shares. However, if such an NV amends its articles of association with respect to any amount of Netherlands guilders mentioned in these articles, the authorized share capital and nominal value of the shares must be converted into euro. Special rules apply with respect to rounding off differences upon the conversion (articles 2:67(5) and 2:67a-2:67c of the BW).

The NV may have registered shares or bearer shares or both (article 2:82 of the BW). The shares are generally freely transferable, but the transferability of registered shares may be restricted to a certain extent in the articles of association (article 2:87 of the BW). The articles of association may distinguish various classes of shares (article 2:82 of the BW). Special voting rights (e.g. for appointing members of the board of directors) and special profit-sharing rights (e.g. preference shares) may be attributed to different classes of shares. Shares that do not participate in profits and non-voting shares are not permitted (articles 2:64 and 2:118 of the BW). All classes of shares must be described in the articles of association (article 2:67 of the BW).

The capital contribution may be in cash or in kind. Contributions in kind must be valued at their economic value (articles 2:80a and 2:80b of the BW).

In general, the issue or legal transfer of registered shares or rights thereon requires a notarized deed (article 2:86 of the BW). Transfers of registered shares (or share certificates) issued by an NV listed on a stock exchange can be made through a written deed between the parties, which must be certified by the NV (article 2:86c of the BW). Bearer shares can be transferred without formalities. A shareholder, or a group of companies, owning at least 95% of the issued capital of an NV may force the other shareholders to transfer their shares (article 2:92a of the BW).

An NV may purchase its own fully paid-up shares up to a maximum of 10% of the nominal issued share capital (article 2:98 of the BW). The purchase of its own shares is not permitted to the extent the equity of the NV (less the purchase price) would become less than the paid-up share capital plus the legal reserves (*see* below). The repayment of the share premium (*agio*) to shareholders is permitted without a formal procedure; it is commonly believed, however, that, with respect to the minimum equity, a similar limitation applies as in the case of the purchase of own shares.

The issued share capital and reserves form the equity of an NV. Provisions for future costs are not part of the equity. Under civil law, there are no regulations on debt-equity ratios, except for companies engaged in banking activities. Dividends can only be distributed out of distributable reserves and after approval of the annual accounts. Under the rules in effect from 1 October 2012 on the repurchase of shares for consideration and dividend distributions, the board of directors must assess whether the company is reasonably expected to remain solvent (new article 2:216(2) of the BW) after the repurchase or the distribution. Similarly, in the case of a repurchase of shares (or depository receipts for shares) in the parent company's capital by a subsidiary against payment of consideration, the parent company's board of directors must assess the subsidiary's solvency. Consequently, the board of directors must perform a distribution test, which consists of a continuity test and a liquidity test. First, it must be assessed whether the equity of the company after the distribution is higher than the legal and statutory reserves. Secondly, it must be verified whether the company will be able to continue paying its debts after the payment. The timeline to be applied for the distribution test is 1 year. However, if aware of them, the directors should also take into account future matters that could impact the solvency when performing the distribution test.

Statutory and legal reserves are non-distributable (articles 2:104 and 2:105 of the BW). The articles of association may allow the distribution of interim dividends, but only from distributable reserves. Statutory reserves may be prescribed in the articles of association.

Legal reserves that must be maintained include:

- capitalized costs in respect of (i) the formation of the NV, (ii) the issue of new shares or (iii) research & development (article 2:365(2) of the BW);
- the balance of upward valuations of participations in other companies valued under the net asset valuation method, less dividends declared therefrom at the time of finalizing the annual accounts (article 2:389(6) of the BW); and
- the amount of the revaluation of assets, less subsequent allocable depreciation (article 2:390 of the BW).

0.2.1.3. Formation

A NV may be founded by one or more founders, who participate in the initial issued share capital. There are no requirements for the nationality or residence of a founder. Both individuals and legal entities may act as founders. The NV is incorporated by a notarial deed of incorporation which includes the articles of association. Unless the NV is incorporated in respect of a merger or division, the founders must participate in the initial share capital (article 2:64 of the BW).

The NV must be registered with the trade registry of the local chamber of commerce and deposit its articles of association together with a statement on the costs of formation (article 2:69 of the BW).

An NV with bearer shares may be quoted on the Amsterdam Stock Exchange (AEX). The conditions for being listed include, among other things, that at least 5% of the NV's issued share capital is available for trade.

0.2.1.4. Liquidation

An NV may be liquidated voluntarily by a resolution of the general meeting of shareholders or upon the occurrence of an event specified in the articles of association (article 2:19 of the BW). Liquidation may also occur by a decision of the local chamber of commerce on occasions specified in the Civil Code (articles 2:19 and 2:19a of the BW) or by a court order on request of the public prosecutor or any party whose direct interests are affected (articles 2:19-2:21 and 2:356(f) of the BW). In addition, if the NV fails to comply with the conditions of the Civil Code required for its existence (article 2:74 of the BW), the public prosecutor may file a request to the court for liquidation. An NV is deemed to be liquidated in the case of a legal merger.

Under the Civil Code, the conversion of an NV into another legal entity does not constitute the dissolution of the NV (article 2:18(8) of the BW).

Tax aspects of liquidation are discussed in section 9.5.

0.2.2. Private company

0.2.2.1. General

A private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*, BV) is defined as an entity with legal personality of which the share capital is divided into shares.

From 1 October 2012, the BV is no longer obliged to have an authorized share capital. If it does not have an authorized share capital, the articles of association must mention the issued share capital (new article 2:178 of the BW).

From 1 October 2012, it is sufficient if at least one share with voting rights is held by a party other than the BV itself or its subsidiary (new article 2:175(1) of the BW). Furthermore, the BV may issue shares without voting or profit-participation rights. Consequently, it is possible, for example, to issue a share without voting or profit-participation rights to the company director.

The shares are not freely transferable. Shareholders are not personally liable for the BV's obligations. Their liability is limited to the issued share capital. Therefore, they do not have to contribute additional capital in the case of a deficit due to losses (article 2:175(1) of the BW). However, the articles of association may include provisions which impose additional obligations on shareholders, such as the obligation to extend a loan to the BV.

From 1 October 2012, it is no longer mandatory to include share transfer restrictions in the articles of associations. However, the articles of association may include a lock-up clause which prohibits the transfer of shares for a limited period.

The name of the BV must include the words “Besloten Vennootschap” or the abbreviation “BV”. The legal seat must be located in the Netherlands (article 2:177 of the BW). There are no requirements with respect to the nationality or residence of the shareholders, directors or members of the supervisory board.

The structure of the BV consists of a general meeting of shareholders and a board of directors. Next to these bodies, the structure may also include other bodies, such as a supervisory board and a works council. With effect from 1 January 2013, it is possible for the BV to have a one-tier board structure (a single board comprising both executive and non-executive directors) as an alternative to the two-tier board structure comprising a management board and a separate supervisory board. The non-executive directors are, however, obliged to supervise the board of directors.

The internal rules and managerial structure of the BV can be found in the articles of association (*statuten*), which must be in conformity with the law. The articles of association must contain, among other things, the name, purpose, authorized share capital, classes of shares and legal seat of the company (articles 2:177 and 2:178 of the BW). The financial year coincides with the calendar year, unless provided otherwise by the articles of association (article 2:10a of the BW).

A distinction must be made between ordinary BVs and large BVs (*structuurvennootschappen*). A BV is deemed to be a large BV if the following conditions are met (article 2:263(2) of the BW):

- the issued share capital (including reserves) amounts to at least EUR 16 million;
- the BV or one of its subsidiaries is obliged to have a works council (*see* section 0.2.2.1.2.); and
- the BV, together with all its subsidiaries, employs at least 100 persons in the Netherlands.

For this purpose, the term “subsidiary” is defined as a company in which a direct or indirect holding of at least 50% is held (article 2:262(1) of the BW).

A BV qualifying as a *large BV* must be registered as such with the trade registry. After 3 consecutive years of registration, the regime for large BVs (*structuurregime*) applies. If a BV no longer qualifies as a large BV, the regime remains applicable until the BV fails to register for 3 consecutive years (article 2:264 of the BW). The main differences relate to the structure and powers of the supervisory board (*see* section 0.2.2.1.2.).

Exempt from the obligation to register as a large BV are (article 2:263(3) of the BW):

(1) subsidiaries whose parent company is subject to the regime for large BVs (or NVs);

(2) BVs whose sole purpose is to administer and finance either their own subsidiaries or subsidiaries of other companies belonging to the same group; the majority of the employees of such subsidiaries and group companies must be employed outside the Netherlands; or

(3) BVs rendering administrative and/or financial services to a company described in (2) above.

Unless stated otherwise, the term “BV” is used hereinafter to refer to ordinary BVs.

0.2.2.1.1. Shareholders’ meeting

According to mandatory provisions in the law, the general meeting of shareholders must decide on amendments of the articles of association (article 2:231 of the BW) and on liquidation and dissolution of the company (article 2:19 of the BW).

Unless a BV falls under the regime for large BVs (*see* section 0.2.2.1.), the general meeting of shareholders may also decide on:

- the appointment, suspension and dismissal of members of the board of directors (articles 2:242-2:244 of the BW);
- the appointment, suspension and dismissal of at least two thirds of the members of the supervisory board (articles 2:252-2:254 of the BW);
- the adoption of the annual report (article 2:210 of the BW); and

- the appointment and dismissal of an auditor (article 2:393 of the BW).

In general, within the limits set by law and the articles of association, all powers which are not conferred upon the board of directors, the supervisory board or others, are vested in the general meeting of shareholders (article 2:217 of the BW).

The general meeting of shareholders must convene at least once every year, within 6 months after the end of the company's financial year. The articles of association may provide a shorter period (article 2:218 of the BW).

From 1 October 2012, it is sufficient that a general meeting of shareholders is held once every year unless the shareholders decide otherwise (new article 2:218 of the BW).

The board of directors or the supervisory board may call the general meeting (article 2:219 of the BW).

From 1 October 2012, one or more shareholders or persons entitled to attend the meeting, who individually or jointly represent at least 1% of the issued and outstanding shares of the BV may request the board of directors to convene a meeting (new article 2:220 of the BW). This meeting is generally held within 4 weeks after the request.

The general meeting must be held in the Netherlands either at a place named in the articles of association or at the registered office of the company. If a meeting is held at another place, legal resolutions can be made only if the entire share capital is represented at the meeting (article 2:226 of the BW).

Each shareholder may attend the meeting or send his representative with written power of attorney to act on his behalf. Each shareholder may exercise his right to vote and may address the meeting (article 2:227 of the BW). If the authorized share capital is divided into shares of equal value, each shareholder is entitled to as many votes as he has shares (article 2:228 of the BW). Different classes of shares with different rights may, however, be created.

Although resolutions made by the general meeting of shareholders generally require an absolute majority of the votes, the law or the articles of association may require a qualified majority for certain resolutions (article 2:230 of the BW).

Holders of certificates representing shares issued with the approval and cooperation of the company may attend the meeting or send their representative with written power of attorney. A holder of certificates may address the meeting, but may not vote (article 2:227 of the BW).

Resolutions made by the general meeting must be recorded by the board of directors. Shareholders are entitled to inspect the annotations and to obtain a copy or summary of these annotations (article 2:230(4) of the BW).

0.2.2.1.2. Management and supervisory bodies

Board of directors

The day-to-day management of a is performed by the board of directors (), unless the articles of association provide otherwise (article 2:239 of the). The board is appointed and dismissed by the general meeting of shareholders or by the supervisory board of large BVs (below) (articles 2:242 and 2:272 of the BW). There are no requirements for the nationality or residence of a director. Both individuals and legal entities may be appointed as director.

The BV is represented by each member of the board separately and jointly. The articles of association may provide that certain functions are the primary responsibility of an individual director or directors acting together (article 2:240 of the BW).

The members of the board of directors must act in a reasonable manner in handling the BV's affairs (articles 2:8 and 2:9 of the BW). The board of directors must maintain an administration from which all rights and duties of the BV can be known. Within 6 months after the close of the financial year, the balance sheet and profit and loss account must be drawn up. The accounting records must be kept for a period of at least 7 years (article 2:10 of the BW). In addition, the annual accounts must be filed with the trade registry of the local chamber of commerce (article 2:394 of the BW).

In general, a BV is liable for its actions. The directors, however, are jointly and severally liable for acts performed on behalf of the BV before the first registration with the trade registry or before meeting the minimum capital requirements (article 2:180 of the BW). In the case of a bankruptcy of the company, directors and other persons with influence on the decision-making process may also be held jointly and severally liable for the company's unpaid debts if it can be substantiated that the bankruptcy is caused by their gross negligence or wilful misconduct. Gross negligence is presumed if the board failed to comply with its obligations to maintain a sufficient administration during the 3 years preceding the bankruptcy, keep the accounting records for at least 7 years or timely draw up and file the annual accounts (article 2:248 of the BW). In addition, directors are held liable for any damage caused by misleading annual accounts or other accounts published by the company (article 2:249 of the BW). The directors are also liable if the company or its subsidiaries become insolvent as the result of a repurchase of shares against consideration or a dividend distribution, provided that the directors knew about or should have reasonably foreseen the insolvency.

For wage withholding tax, social security contributions, value added tax, excise duties, customs duties and certain minor taxes (e.g. ecotax) due, directors and other persons with influence on the decision-making process may also be held jointly and severally liable by the tax collector or social security authorities (article 36 of the Iw; article 61 of the WFSV). This can take place, in particular, in the case of the failure to report the expected non-payment of such debt immediately, i.e. within 2 weeks from the final date on which the tax had to be paid, to the competent authorities (article 7 of the Uitv. besl. Iw).

If a BV has only one shareholder, all transactions between the shareholder and the BV, if represented by that shareholder, must be made in writing. An exception applies to acts performed within the scope of the ordinary course of the BV's business, under the conditions stipulated (article 2:247 of the BW).

The BV is bound by the acts of its directors and all other persons authorized to represent the company, unless the BV can substantiate that the third party was actually aware or should have been aware that the representative was acting against the statutory purpose of the BV or exceeding his powers (article 2:6 of the BW).

Supervisory board

The articles of association may provide that a has a supervisory board (), consisting of one or more members. A supervisory board is required by law for large BVs (below). The supervisory board has the duty to supervise the policy of the board of directors and the general affairs of the company's business. The articles of association may set out additional powers and responsibilities (article 2:250 of the). There are no requirements for the nationality or residence of a member of the supervisory board. Only individuals may be appointed as members of the supervisory board.

Members of the supervisory board are appointed by the general meeting of shareholders, unless the BV is a large BV (*see* below) (article 2:252 of the BW). The articles of association may provide that at least one third of the members be appointed by others.

In the case of a bankruptcy of the company, members of the supervisory board may be held jointly and severally liable for the company's unpaid debts, if it can be substantiated that the bankruptcy is caused by their gross negligence or wilful misconduct (article 2:259 of the BW). In addition, members of the supervisory board together with the directors are presumed liable for any damage caused by misleading annual accounts or other accounts published by the company. The liability is rebuttable (article 2:260 of the BW).

Members of the supervisory board are, in general, not liable for taxes and social security contributions.

With respect to *large BVs* (for definition, *see* section 0.2.2.1.), a supervisory board of at least three members is required by law (article 2:268 of the BW). In general, the board appoints its own members, after consultation with the general meeting of shareholders, the works council and the board of directors. Members are appointed for a maximum period of 4 years (article 2:271 of the BW). Persons employed by the BV itself (including directors), its subsidiaries (*see* section 0.2.2.1.) or trade unions cannot be members of the supervisory board (article 2:270 of the BW).

In addition to the duties described above, the supervisory board of a large BV appoints and dismisses directors and adopts the annual report. The board of directors of a large BV needs prior approval of the supervisory board for a number of important decisions. These include the issue of new shares and the purchase or sale of an at least 25% participation (articles 2:272-2:274 of the BW). Thus, the powers of the shareholders of a large BV are considerably limited.

If a large BV forms part of an international group of companies, however, the general meeting of shareholders retains the authority to appoint and dismiss members of the board of directors and adopt the annual report. The BV is deemed to be part of an international group of companies if at least 50% of its share capital is held by a group company, the majority of employees of which are employed outside the Netherlands (article 2:265 of the BW).

Works council

section

0.2.2.2. Capital

With effect from 1 October 2012, the minimum capital requirement upon incorporation of a BV was abolished. The BV is no longer required to have a minimum issued and paid-up share capital (*geplaatst en gestort kapitaal*). It is sufficient if at least one share with voting rights is held by a party other than the BV itself or its subsidiary (new articles 2:175(1) of the BW).

From 1 October 2012, the BV is no longer obliged to have an authorized share capital. If it does not have an authorized share capital, the articles of association must mention the issued share capital (new article 2:178 of the BW).

The BV can only have registered shares (article 2:175 of the BW). Shares may be transferred freely only to other shareholders, their spouses or next of kin (for individuals), or the BV itself. The articles of association must include provisions to restrict the transferability, although those provisions must not be so restrictive as to virtually prohibit the transfer of shares. The provisions must include either approval by a designated authorized body of the BV or the obligation for the shareholder to offer his shares first to his fellow shareholders. The selling shareholder is entitled to a sales price which reflects the value of his shares as determined by an independent expert (article 2:195 of the BW).

The articles of association may distinguish various classes of shares. Special voting rights (e.g. for appointing members of the board of directors) and special profit-sharing rights (e.g. preference shares) may be attributed to different classes of shares. Shares that neither participate in profits nor have voting rights do not qualify as shares (articles 2:175 and 2:228 of the BW).

From 1 October 2012, BVs are allowed to issue shares without voting or profit-participation rights (new articles 2:175 and 2:228 of the BW).

All classes of shares must be described in the articles of association (article 2:178 of the BW).

On 1 January 2002, the Netherlands guilder was replaced by the euro as currency. BVs incorporated prior to this date do not have to amend their articles of association with respect to the denomination of their authorized share capital or the nominal value of their shares. However, if such a BV amends its articles of association with respect to any amount of Netherlands guilders mentioned in these articles, the authorized share capital and nominal value of the shares must be converted into euro. Special rules apply with respect to rounding off differences upon the conversion (articles 2:178(5) and 2:178a-2:178c of the BW). From 1 October 2012, BVs are no longer obliged to have an authorized share capital.

The capital contribution may be in cash or in kind. Contributions in kind must be valued at the economic value (articles 2:191a and 2:191b of the BW). Furthermore, the articles of association may provide for a contribution in foreign currency (new article 2:191a of the BW).

The issue or legal transfer of registered shares or rights thereon requires a notarial deed (article 2:196 of the BW). A shareholder, or a group of companies, owning at least 95% of the issued capital and voting rights of a BV may force the other shareholders to transfer their shares (article 2:201a of the BW).

A BV may purchase its own fully paid-up shares up to the amount of the nominal issued share capital (article 2:207 of the BW). (Prior to 1 October 2012, this was limited to 50% of such capital.) The purchase of its own shares is not permitted to the extent the equity of the BV (less the purchase price) would become less than the paid-up share capital plus the legal reserves. Also, this is not permitted if the directors foresee the insolvency of the company (*see* below). The repayment of the share premium (*agio*) to shareholders is permitted without a formal procedure; however, it is commonly believed that, with respect to the minimum equity, a similar limitation applies as in the case of the purchase of own shares.

The issued share capital and reserves form the equity of a BV. Provisions for future costs are not part of the equity. There are no regulations on debt/equity ratios, except for companies engaged in banking activities. Dividends can only be distributed out of distributable reserves and after approval of the annual accounts. Under the rules in effect from 1 October 2012 on the repurchase of shares for consideration and dividend distributions, the board of directors must assess whether the company is reasonably expected to remain solvent (new article 2:216(2) of the BW) after the repurchase or the distribution. Similarly, in the case of a repurchase of shares (or depository receipts for shares) in the parent company's capital by a subsidiary against payment of consideration, the parent company's board of directors must assess the subsidiary's solvency. Consequently, the board of directors must perform a distribution test which consists of a continuity test and a liquidity test. First, it must be assessed whether the equity of the company after the distribution is higher than the legal and statutory reserves. Secondly, it must be verified whether the company will be able to continue paying its debts after the payment. The timeline to be applied for the distribution test is 1 year. However, if aware of them, the directors should also take into account future matters that could impact solvency when performing the distribution test.

Statutory and legal reserves are non-distributable (articles 2:215 and 2:216 of the BW). The articles of association may allow the distribution of interim dividends, but only from distributable reserves. Statutory reserves may be prescribed in the articles of association.

Legal reserves that must be maintained include:

- capitalized costs in respect of (i) the formation of the BV, (ii) the issue of new shares or (iii) research & development (article 2:365(2) of the BW);
- the balance of upward valuations of participations in other companies valued under the net asset valuation method, less dividends declared there from at the time of finalizing the annual accounts (article 2:389(6) of the BW);
- the amount of the revaluation of assets, less subsequent allocable depreciation (article 2:390 of the BW); and
- when the minimum issued and paid-in capital is increased by a decree of the Minister of Justice, existing BVs with an issued and paid-in capital lower than the new minimum must hold a legal reserve of such amount that the issued and paid-in capital plus the legal reserve will be equal to the new minimum capital (article 2:178(3) of the BW).

0.2.2.3. Formation

A BV may be founded by one or more founders, who participate in the initial issued share capital. There are no requirements for the nationality or residence of a founder. Both individuals and legal entities may act as founders. The BV is incorporated by a notarial deed of incorporation which includes the articles of association. Unless the BV is incorporated in respect of a merger or division, the founders must participate in the initial share capital (article 2:175 of the BW).

The BV must be registered with the trade registry of the local chamber of commerce and deposit its articles of association together with a statement on the costs of formation (article 2:180 of the BW).

0.2.2.4. Liquidation

A BV may be liquidated voluntarily by a resolution of the general meeting of shareholders or upon the occurrence of an event specified in the articles of association (article 2:19 of the BW). Liquidation may also occur by a decision of the local chamber of commerce on occasions specified in the Civil Code (articles 2:19 and 2:19a of the BW) or by a court order on request of the public prosecutor or any party whose direct interests are affected (articles 2:19-2:21 and 2:356(f) of the BW). In addition, if the BV fails to comply with the conditions of the Civil Code required for its existence (article 2:185 of the BW), the public prosecutor may file a request to the court for liquidation. A BV is deemed to be liquidated in the case of a legal merger.

Under the Civil Code, the conversion of a BV into another legal entity does not constitute the dissolution of the BV (article 2:18(8) of the BW).

Tax aspects of liquidation are discussed in section 9.5.

0.2.3. Holding company

There are no special provisions in Netherlands company law concerning holding companies. For “large companies”, however, *see* sections 0.2.1.1. and 0.2.2.1. For tax aspects, *see* section 11.1.

0.2.4. Partnership

0.2.4.1. General

The most important types of partnership are the general partnership (*maatschap* and *vennootschap onder firma*, VOF) and the limited partnership (*commanditaire vennootschap*, CV).

The VOF is mainly used for conducting a business under a common name, the partners each having unlimited liability for the debts and obligations. The *maatschap* is typically used for professions.

The CV is often used for joint business operations in which CV all the partners are limited partners and a commonly owned BV acts as the managing partner. The limited partners are each liable for the debts of the CV to the extent of their capital contributions.

Furthermore a distinction is made between an “open CV” and a “closed CV”. An “open CV” is defined as a limited partnership in which, except for transfers by inheritance or bequest, the admission or replacement of limited partners can occur without the consent of all limited and managing partners (article 2(3) of the AWR). A “closed CV” is a CV the shares of which cannot be transferred freely. It has managing partners (*beherende vennoten*) and limited partners (*commandieten* or *stille vennoten*).

Partnerships have no legal personality. Tax aspects are discussed in section 11.2.

0.2.4.2. Formation

There are no specific formalities for the formation of a VOF or a CV. It is common, however, that a partnership is formed through an authenticated deed, not necessarily notarially executed. The partnership must be registered with the trade registry of the local chamber of commerce.

There are no minimum capital requirements, but the partners must contribute something to the partnership. A contribution may consist of cash, property, goodwill and/or know-how. The capital of a partnership is not divided into shares. A CV may be formed by at least one managing partner and at least one limited partner. The partnership agreement may provide that the transfer of limited partnership rights needs the consent of the other partners.

0.2.4.3. Liquidation

A partnership may be liquidated upon an occurrence of an event specified in the partnership agreement.

Unless provided otherwise in the partnership agreement, a partnership is liquidated upon the occurrence of an event specified in the Civil Code. These events include:

- the expiration of the period for which the partnership was created;
- the loss of the property or the completion of the activities of the partnership;
- the delivery by one of the partners of notice of termination of the partnership agreement to each of the other partners; and
- the declaration of bankruptcy by a partner.

After the winding-up, the partnership is dissolved. This involves the collection of outstanding debts, the alienation of property and the payment of debts. Any capital remaining is to be divided between the partners.

0.2.5. Economic interest grouping

From 1 July 1989, the European Economic Interest Grouping (EEIG) was introduced in the Netherlands by virtue of the EU Regulation on the European Economic Interest Grouping (85/2137).

Additional provisions were issued in the Implementing Law on EEIGs. An EEIG with its legal seat in the Netherlands must register with the trade registry of the local chamber of commerce. An EEIG acquires legal personality upon registration. The formation of an EEIG does not require a notarial deed.

The taxation of EEIGs is discussed in section 11.3.

0.2.6. Association and cooperative

Associations, cooperative associations and mutual insurance associations are separate legal entities. These may be used for commercial purposes.

An association (*vereniging*) is formed by a legal act of two or more members. In general, the formation is effectuated through a notarial deed, but this is not necessarily required. If the articles of association are part of a notarial deed, then the association must be registered with the trade registry of the local chamber of commerce. The statutory purpose of an association may not be to satisfy the needs of its members. An association is not allowed to distribute profit to its members.

Special types of association, but separate legal entities on their own, are the cooperative (*coöperatie*) and the mutual insurance association (*onderlinge waarborgmaatschappij*). The same rules generally apply as for normal associations, but there are a few differences. Cooperative associations and mutual insurance associations must be formed through a notarial deed. They must be registered with the trade registry of the local chamber of commerce. The statutory purpose of a cooperative association must be to satisfy the needs of its members. Profit distributions are, therefore, allowed. Traditionally, these entities are used in the agricultural sector. For mutual insurance associations, the statutory purpose must be to conduct insurance agreements with its members.

If a cooperative association or a mutual insurance association lose their distinguishing features, then they are treated as normal associations. Vice versa, if an association adopts the distinguishing features of a cooperative association or a mutual insurance association, it is treated as such.

For large cooperative associations and mutual insurance associations, special rules apply similar to the rules for large companies (*see* sections 0.2.1.1. and 0.2.2.1.).

Tax aspects are discussed in section 11.4.

0.2.7. Other forms

A foundation (*stichting*) is a legal entity without members. It uses its designated equity to effect its purpose set out in the articles of formation. The statutory purpose may not be to make payments to the founders, members of the foundation's bodies or others, unless the payments to the latter have an idealistic or social tendency. If a pension fund is incorporated as a foundation, pension payments to the founders, members of the foundation's bodies or others from former employment are not restricted. A foundation is formed through a notarial deed.

Foundations may be used commercially, but are mainly used for idealistic, non-commercial or social purposes. Foundations are often used for holding shares of which certificates have been issued (e.g. *Stichting Administratiekantoor*, Share Trust Office). A foundation must be registered with the trade registry of the local chamber of commerce.

Mutual funds (*fonds voor gemene rekening*), e.g. investment funds, are non-legal entities. A mutual fund is defined as a fund which purpose is to gain profits for the benefit of its participants by means of investing for joint account, provided that the participants' entitlements to the proceeds are negotiable. The entitlement is deemed negotiable if the disposal of the entitlement, or part of it, does not require the consent of all other participants. If the entitlement can only be transferred to the fund itself or to the spouse or relatives in the direct line of consanguinity, the entitlement is deemed non-negotiable (article 2(2) of the Vpb).

0.3. Foreign investors

0.3.1. Subsidiary

Foreign investors may set up a subsidiary company (NV or BV). The general requirements for forming a company apply (*see* sections 0.2.1. and 0.2.2.). There are no special provisions for foreign ownership of Netherlands companies.

0.3.2. Branch

The requirements for setting up a branch are generally similar to those discussed in section 0.3.1. If the foreign company is going to engage in activities in the Netherlands, a licence or discretionary permit may be required depending on the type of activity. Information can be obtained from the local chamber of commerce.

0.3.3. Other forms of business

Non-residents may participate in partnerships established under Netherlands law. There are no separate provisions other than described above.

0.4. Corporate restructuring

0.4.1. Merger

In general, mergers are governed by the Merger Code of Conduct of the Socio-Economic Council (*SER-fusiegedragsregels*). Although this code of conduct has no force of law, its rules are highly authoritative. Failure to comply may result in a public announcement.

Large mergers (and acquisitions) between enterprises are regulated by the Competition Law of 1997 (*Mededingingswet 1997*). If the combined turnover of the previous calendar year of the enterprises involved exceeded EUR 113,450,000 and at least two Netherlands enterprises or groups of enterprises involved had a turnover of at least EUR 30 million each, a prior permission of the Netherlands Competition Authority (*Nederlandse Mededingingsauthoriteit*, NMa) may be required. The provisions are not applicable to concentrations of enterprises subject to the supervision of the European Commission based on EU Regulation 4064/89.

The unity of operation of one or more enterprises can be achieved by the following types of mergers:

- the business merger (transfer of assets), whereby the transferring company transfers assets and liabilities to another existing or newly incorporated company, in exchange for cash, for newly issued shares in the latter company or a combination of both;
- the share merger (exchange of shares), whereby the shareholders transfer their shares in a company to another existing or newly incorporated company, in exchange for cash, for newly issued shares in the latter company or a combination of both; and
- the legal merger, whereby the transferring company is dissolved without going into liquidation.

The mergers may qualify for special tax treatment (*see* section 9.2.).

With respect to business mergers and share mergers, the ordinary rules under company law or civil law for the legal transfer of the assets or liabilities apply. Legal entities incorporated under foreign law can be a party in an business merger or a share merger. The legal merger is regulated in the Civil Code (article 2:309 et seq. of the BW), following the provisions of the Third EU Council Directive on company law.

In general, only legal entities of the same type can be involved in a legal merger (article 2:310 of the BW). For this purpose, NVs and BVs are of the same type. From 15 July 2008, also a legal entity incorporated under foreign law may be part of a legal merger.

A legal merger is defined as the legal act of two or more legal entities whereby either one of the entities acquires all assets and liabilities of the other(s) under universal title or whereby a legal entity, newly incorporated by the merging companies, acquires all assets and liabilities of the merging entities under universal title. All merging entities, except the acquiring entity, are automatically dissolved upon the merger. If certain conditions are met, a cash payment or allotment of debt is permitted up to an amount not exceeding 10% of the nominal value of the issued shares (article 2:325(2) of the BW).

The changes required to align Netherlands company law with Directive 2005/56 on cross-border mergers of limited liability companies of 25 November 2005, were included in the Law of 27 June 2008, which entered into force on 15 July 2008 and was published in the Official Gazette of 10 July 2008.

The law provides for mergers between Netherlands public companies, private companies, European Cooperatives, and companies and cooperatives established under the laws of another EU Member State, or of an EEA country.

0.4.2. Division

Netherlands company law provides for the possibility of a legal division. The Merger Code of Conduct may be applicable. Legal divisions may qualify for special tax treatment (*see* section 9.2.).

In general, only legal entities of the same type can be involved in a division (article 2:334b of the BW). For this purpose, NVs and BVs are of the same type. To save the sound parts of an enterprise, legal entities which are declared bankrupt or are granted a suspension of payments can be divided. A legal entity incorporated under foreign law cannot be a direct party in a division.

The legal division can be distinguished into two basic forms (article 2:334 of the BW):

- the split-up (*zuivere splitsing*). A split-up is a legal act whereby all assets and liabilities of the company to be divided are transferred under universal title to two or more entities; and

- the split-off (*afsplitsing*). A split-off is a legal act whereby part of or all assets and liabilities of the company to be divided are transferred under universal title to one or more entities.

A cash payment or allotment of debt is permitted up to an amount not exceeding 10% of the nominal value of the issued shares (article 2:334x(2) of the BW).

0.4.3. Purchase/takeover of a company

Under Netherlands company law, a company may be purchased or taken over in exchange for shares or for cash. In general, this transaction is characterized as a share merger. Registered shares of an NV or BV can only be transferred through a notarial deed. Moreover, the purchase and transfer of registered shares may be restricted in the articles of association of the company (*see* sections 0.2.1.2. and 0.2.2.2.).

Special rules are applicable with respect to the acquisition of qualifying interests in the issued share capital or voting rights in an NV quoted on a stock exchange within the European Union or the European Economic Area.

The changes required to align Netherlands company law with Directive 2004/25 of 21 April 2004 on the public takeover bid, which had to be implemented by 20 May 2006, were included in the Law of 12 June 2007. That Law entered into force on 28 October 2007, by virtue of a decree of 16 October 2007 (published in the Official Gazette of 23 October 2007). In addition, the Merger Code of Conduct is applicable to public and certain other takeover bids on shares in stock exchange quoted Netherlands companies (*see* section 0.4.1.).

The purchase of a company in exchange for shares may qualify for special tax treatment (*see* section 9.3.).

0.4.4. Purchase of an existing business

There are no special provisions for this type of transaction under Netherlands company law. The Merger Code of Conduct may, however, be applicable (*see* section 0.4.1.). The purchase of an existing business in exchange for shares may qualify for special tax treatment (*see* section 9.4.).

0.5. Corporate immigration and emigration

0.5.1. Corporate immigration

The Netherlands recognizes the legal personality of foreign entities. Under the Law on International Private Law for Corporate Entities (*Wet conflictenrecht corporaties*), the law of the state of incorporation is, in general, applied to a foreign entity. If the legal seat is transferred to a third state and the transfer is recognized by both states, the law of that third state applies.

If the foreign legal person is subject to Netherlands corporate income tax and declared bankrupt in the Netherlands, in pertinent cases, the members of the board of directors and the supervisory board may be held liable for its debts as if it were a Netherlands legal entity (*see* sections 0.2.1.1.2. and 0.2.2.1.2.).

Foreign legal entities with no real ties with the state of incorporation and exercising all their activities in the Netherlands fall under the Law on Formally Foreign Corporate Entities (*Wet op de formeel buitenlandse vennootschappen*). Such companies and other legal entities must meet a number of requirements of Netherlands company law. The requirements include registration with the trade registry of the local chamber of commerce and depositing the annual statements with the chamber of commerce. Some exceptions apply for companies resident in an EU Member State or other country within the European Economic Area.

For tax aspects, *see* section 7.3.2.

0.5.2. Corporate emigration

The legal seat of a legal entity incorporated under Netherlands law, such as an NV or a BV, must be situated in the Netherlands. The effective management or head office of a legal entity may be situated outside the Netherlands.

Transfer of the legal seat of a Netherlands legal entity to a third jurisdiction is only possible in times of war or revolution by virtue of the Law on Voluntary Transfer of Legal Seat to Third States (*Wet vrijwillige zetelverplaatsing derde landen*), provided that the law of the third state recognizes the transfer. Such transfer in times of war or revolution is also possible within the parts of the Kingdom of the

Netherlands (i.e. the Netherlands, the Netherlands Antilles and Aruba) under the Kingdom Law on Voluntary Transfer of Legal Seat (*Rijkswet vrijwillige zetelverplaatsing rechtspersonen*).

Following a constitutional reform, the Netherlands Antilles ceased to exist with effect from 10 October 2010. With effect from that date, the above laws on the transfer of the legal seat apply to its successors, i.e. the BES Islands (Bonaire, St. Eustatius and Saba) and Curaçao and St. Maarten.

For tax aspects, *see* section 7.2.5.

1. Corporate Income Tax

Corporate income tax (*vennootschapsbelasting*) is levied on the net taxable income of entities specified in the Corporate Income Tax Law of 1969.

1.1. Introduction

Sections 1. and 2. discuss the taxation of domestic income of resident companies. The taxation of foreign income of resident companies is discussed in section 7.2., and the taxation of non-resident companies in section 7.3.

1.1.1. Geographical jurisdiction

The term “the Netherlands” is defined as the part of the Kingdom situated in Europe, including territorial waters and the Netherlands’ part of the continental shelf. Unless stated otherwise, the term “the Netherlands” is used in this chapter to mean the part of the Kingdom situated in Europe, thus excluding the former Netherlands Antilles and Aruba which are discussed below.

Until 10 October 2010, the Kingdom of the Netherlands comprised the Netherlands, the Netherlands Antilles and Aruba. Following a constitutional reform, the Netherlands Antilles ceased to exist with effect from 10 October 2010. Since that date, the Netherlands Antilles are divided into three parts, i.e. the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao and St. Maarten. The BES Islands have the status of a special Netherlands municipality, while Curaçao and St. Maarten have a partially separate status like that of Aruba. All provisions of Netherlands tax law, which applied to the Netherlands Antilles before 10 October 2010, continue to apply to the BES Islands, Curaçao and St. Maarten.

All parts of the Kingdom have their own jurisdiction in respect of taxation. Consequently, Netherlands tax law is, generally, not applicable in the other parts of the Kingdom. New tax legislation for the BES Islands, applicable from 1 January 2011, has been enacted, which deviates from the legislation of the Netherlands. Companies established under the BES Islands law are, as a main rule, however, deemed to be established in the Netherlands, and consequently are subject to Netherlands corporate income tax and dividend withholding tax.

Tax treaties concluded by the Netherlands are, generally, only applicable to the Netherlands. The majority of these treaties provide the possibility to extend the scope to the other parts of the Kingdom. For the policy regarding the application of tax treaties concluded by the Netherlands to the parts of the Kingdom, *see* section 7.4.1.1.

The Netherlands is a member of the European Union; Aruba, the BES Islands, Curaçao and St. Maarten are associated as overseas countries and territories according to Annex II of the Treaty on the Functioning of the European Union (TFEU).

1.1.2. Statutory framework

Corporate income tax is levied according to the provisions of the Corporate Income Tax Law of 1969 (*Wet op de vennootschapsbelasting 1969*, Vpb). Unless stated otherwise, the term “company” is used hereinafter to refer to all resident and non-resident entities that are subject to corporate income tax in the Netherlands.

The computation rules for arriving at the taxable amount are governed both by the Vpb and the Individual Income Tax Law of 2001 (*Wet inkomstenbelasting 2001*, IB). Taxation of the distributions in the hand of individual shareholders is governed by the IB.

Further clarifications are included in three general implementing decrees, i.e. the Implementing Decree on Corporate Income Tax Law of 1969 (*Uitvoeringsbesluit Wet op de vennootschapsbelasting 1969,* Uitv. besl. Vpb), the Implementing Regulation on Corporate Income Tax Law of 1969 (*Uitvoeringsbeschikking Wet op de vennootschapsbelasting*, Uitv. besch. Vpb) and the Exemption Decree on Corporate Income Tax Law of 1969 (*Vrijstellingsbesluit Wet op de vennootschapsbelasting 1969*). In addition, various specific decrees exist, the most important being the Decree on Fiscal Unity of 2003 (*Besluit fiscale eenheid 2003*), the Implementing Decree on Fiscal Unity and Avoidance of Double Taxation of 2003 (*Uitvoeringsregeling fiscale eenheid en voorkoming dubbele belasting 2003*) and the Decree on Investment Institutions (*Besluit Beleggingsinstellingen*). Finally, various standard conditions are issued for important tax regimes as they apply to the business merger, the legal split-up, the legal merger and the tax-exempt transformation of legal form.

Next to the legislature, clarifying case law of the Supreme Court (*Hoge Raad*) and advance tax rulings issued by the ruling team of the tax authorities (*Belastingdienst*) play an important role in the application and interpretation of tax laws. The advance tax ruling system is discussed in section 1.11.7.

1.1.3. Type of tax system

The Netherlands corporate income tax (*vennootschapsbelasting*, Vpb) is a classical system, which means that corporate profits are fully taxed and distributions from the taxed profits are again fully taxed in the hands of the shareholders. Profit distributions are not deductible from taxable income of the distributing company. In the case of qualifying distributions to corporate shareholders, however, double taxation is eliminated through the participation exemption. In the case of individual shareholders with a substantial shareholding, double taxation is mitigated through a lower flat rate of income tax on dividends.

Distributions of profit are subject to dividend withholding tax (*dividendbelasting*), which is creditable for resident shareholders against their individual or corporate income tax liability, as the case may be. The corporate income tax levied on the distributing company is not creditable for the shareholders.

For details, *see* section 6.1.

For the taxation of special types of entity and special types of activity, *see* sections 11. and 12. respectively.

1.1.4. Taxable persons

Corporate income tax is levied on entities listed in the Corporate Income Tax Law (article 2(1) of the Vpb). These include:

(1) public companies (*naamloze vennootschap*, NV), private limited liability companies (*besloten vennootschap,* BV), open limited partnerships (*open commanditaire vennootschap*) and other entities with capital wholly or partially dividend into shares;

(2) cooperatives and other associations based on the cooperative principle;

(3) mutual insurance associations and other mutual associations acting as insurance or credit organizations;

(4) associations (with or without legal personality) not mentioned above, foundations and other private legal entities, but only to the extent that they conduct a business;

(5) mutual funds;

(6) several public legal entities engaged in a business, such as agriculture, mining, trading and transportation;

(7) building associations and foundations; and

(8) government enterprises engaged in business activities (with effect from 1 January 2016).

The entities mentioned in (1), (2) and (3) are deemed to conduct a business using all their assets (article 2(5) of the Vpb). The term "business" is defined as any activity through which an entity mentioned in (4) competes or potentially competes with other enterprises (article 4 of the Vpb).

Article 2(8) of the Vpb states that public companies (*naamloze vennootschap*, NV) and private limited liability companies (*besloten vennootschap*, BV) established in the BES Islands are deemed to be established in the Netherlands if certain conditions are met. The most important conditions are:

- when the annual turnover of the company exceeds USD 80,000 and the value of the company's assets exceeds USD 200,000; or
- when more than 50% of the company's investments, participations and assets are at the disposal of non-residents.

Non-resident entities are subject to corporate income tax to the extent that they derive certain types of Netherlands-source income (*see* sections 7.4.1. and 7.4.2.).

For special types of entities, including exempt entities, *see* section 11.

1.1.5. Definition of residence

Companies and SEs incorporated under Netherlands law (*incorporatie-leer*) are deemed to be residents of the Netherlands for corporate income tax and dividend withholding tax purposes (article 2(4) of the Vpb; article 1(3) of the DB). This general rule does not generally apply for the application of the participation exemption (*see* section 6.1.3.), legal mergers and divisions (*see* section 9.2.) and the fiscal unity regime (*see* section 8.).

Further, entities established in the BES Islands and not subject to the BES regime (*see* section 1.1.4.), are deemed to be resident in the Netherlands (article 2(8) of the Vpb; article 1(6) of the DB).

In addition, companies may be treated as residents of the Netherlands for tax purposes if they are deemed to be “actually situated” there on the basis of “facts and circumstances”, whether they are incorporated in the Netherlands or not (article 4(1) of the AWR). These terms are not defined in the tax law, but extensive case law has provided a number of factors important for the determination. In general, a key factor is the place where the effective management is located. Other relevant factors include the place of residence of the directors and the members of the supervisory board, the place where general meetings of shareholders are held, the place of residence of an individual (majority) shareholder, the location of the company’s assets, the location of the bookkeeping and the nature and location of the business activities. An exception to the “facts and circumstances” rule is provided in article 4(3) of the AWR, which refers to the EU Merger Directive (2009/133), the EU Parent-Subsidiary Directive (2011/96) and the EU Interest and Royalties Directive (2003/49): a company is deemed to be a resident of an EU Member State if it is a resident under the tax law of that EU Member State.

For the application of the tie-breaker provision in a tax treaty concluded by the Netherlands, it is generally decisive whether a company is subject to tax in the Netherlands because its effective management is located there. Under some treaties, such as the treaty with the United Kingdom, the place of residence in case of dual resident companies is determined by mutual agreement. There is one exemption to the general rule of place of residence. As a result of the implementation of the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD), a provision was enacted in article 4(5) of the General Law of Taxation which contains a tie-breaker rule determining that an EU alternative investment fund is assumed to be a resident of its state of origin.

1.2. Taxable income

1.2.1. General

Generally speaking, resident companies are subject to corporate income tax on their worldwide income. With effect from 1 January 2012, income attributable to permanent establishments (PEs) of resident companies abroad are exempt from tax in the Netherlands. However, this income exemption does not apply to passive permanent establishments situated in low-tax jurisdictions. A foreign PE is considered a low-taxed, passive PE if the following cumulative conditions are met:

- the activities of the foreign PE, including activities of entities in which the taxpayer holds through the PE at least a 5% interest, primarily consist of passive investments, direct or indirect group financing or leasing activities; and
- the foreign PE is subject to a (statutory) profit tax that is lower than 10%.

Tax is imposed on the taxable amount (*belastbaar bedrag*), which is computed as the taxable profits less losses of other years. Taxable profits are computed as the annual business profits less deductible gifts (article 7 of the Vpb). For the calculation of the tax the income from all sources is generally aggregated and it includes business income, investment income, financial income and income from real estate.

Capital gains are included in ordinary income (*see* section 1.7.). Capital gains on the alienation of a qualifying participation in another company are exempt (*see* sections 1.2.3. and 6.1.3.).

The computation of the taxable amount is governed by the Corporate Income Tax Law (Vpb). Article 8(1) of the Vpb, however, refers to certain computation rules of the IB for computing business profits, which are applicable unless the Vpb prescribes otherwise or the inherent differences between individuals and companies prevent the use of the IB provisions.

The term “business profits” (*winst*) is defined by article 3.8 of the IB as the total sum of any type of profit and gain realized in conducting a business. Basically, corporate income tax is imposed on the worldwide income less allowable deductions during the entire period of tax liability of the company. This total profit is to be attributed to each taxable period. The annual business profit is computed according to the principle of sound business practice (*goed koopmansgebruik*) applied with consistency and with disregard of possible tax consequences (article 3.25 of the IB).

The principle of sound business practice is not defined by law. The Supreme Court has developed the main rule that a system of computing the annual business profits is in accordance with the principle of sound business practice if it is based on generally accepted accounting principles. Some of these principles are laid down in the Civil Code (*Burgerlijk Wetboek*, BW). In addition, the Supreme Court has decided that a system is deemed not to be in accordance with sound business practice if the principles employed are incompatible with any tax regulation or basic principles of the tax law. In other words this implies that, in practice, companies can elect their own computing system as far as this is in accordance with legal provisions and is commercially acceptable.

Some of the key elements of sound business practice are:

- profits cannot be taken into account until they are deemed realized, whereas reasonably expected unrealized losses are deductible (principle of prudence);
- changing the method of profit determination is permitted only if justified by sound business practice. This includes a change of fiscal period;
- unjustifiable shifts of profits and losses over the years are not allowed; and
- a system does not have to be completely perfect (principle of simplicity).

Article 15d of the Vpb provides for a final settlement by way of a fictitious termination profit when a company ceases to derive taxable income in the Netherlands.

The computation of the annual business profits is based on the balance sheet and profit and loss account, which are made up on an accrual basis. In general, the fiscal balance sheets and profit and loss accounts correspond to the commercial balance sheets and profit and loss accounts. The fiscal valuation may, however, deviate from the commercial valuation if the deviation corresponds to “sound business practice”, e.g. when a reinvestment reserve (*see* section 1.9.2.) has been applied with respect to the valuation of business assets. In addition, the annual taxable result computed from the profit and loss account is to be corrected with several applicable tax incentives (e.g. investment deduction, *see* section 1.6.2.) and/or non-deductible costs. For a full example of the computation of the annual business profits, *see* section 3.

Business income is computed on the accruals basis.

The Netherlands tax laws do not provide for any special regulations for long-term contracts. The company may record the profits and related costs either in the year the contract is completed or yearly as an estimate percentage until the contract is completed.

Business profits are determined in euro, without regard to future changes in the value of the euro or decreased purchasing power.

Currency losses may be taken even if they have not yet been realized, whereas profits only have to be included in taxable income if and to the extent that previous currency losses (on the “functionally” same currency amounts) had been taken into account.

Upon request, companies are allowed to compute their business profits in a foreign functional currency, provided that certain conditions are met (article 7(5) of the Vpb; Decree of 11 May 2011, BLKB 2011/392M). The request must be filed before the start of the first tax year of computation in foreign currency and must continue for at least 10 years. The computation in the foreign currency is allowed only if that currency is also used in the commercial accounts at least in the year following the year in which the request is filed. The functional currency may only be a currency of which the exchange rate is published by the Netherlands Central Bank (de Nederlandsche Bank NV). The corporate income tax due must always be paid in euro, based on the average exchange rate of the euro and the functional currency of the tax year.

For the special regimes for shipping and insurance companies, *see* section 12.

1.2.2. Taxable period

The taxable period for corporate income tax purposes is the tax year, which covers, in general, a period of 12 months. The tax year generally corresponds to the calendar year, but any 12-month period is permitted if the company’s articles of association so provide and if the company keeps its accounts in a proper and regular manner. Accounting and taxation are based on the same year. An accounting year (financial year) not corresponding to the calendar year is referred to as “broken accounting year” (financial year) (*gebroken boekjaar*).

If, during its tax year a subsidiary company is part of a fiscal unity (*see* section 8.) for only a part of this year, both periods are considered separate taxable periods (article 7(4) of the Vpb). If a subsidiary company joins a fiscal unity during a tax year and leaves this unity within the same tax year, the fiscal unity with respect to that company is deemed not to have existed (article 15(7) of the Vpb).

When a company is established or liquidated, its first or last tax year may cover a period less or more than 12 months. The tax year can be altered if so dictated by sufficient business reasons. The tax year preceding the altered tax year may also cover a period other than 12 months. Altering the tax year merely to obtain a one-off tax advantage is not permitted.

The taxable period for non-residents is the calendar year (article 17(2) of the Vpb).

Corporate income tax is imposed in the year following the preceding tax year. Preliminary assessments are normally made and are payable during the current tax year (*see* section 1.11.4.).

1.2.3. Exempt income

Several items of income are exempt for corporate income tax purposes. Corresponding losses are not deductible. The exemptions include:

- forestry exemption (article 3.11 of the IB): profits derived from a forestry business are exempt;
- agricultural exemption (article 3.12 of the IB): capital gains on agricultural land are exempt, if the the land is used for agricultural purposes by the buyer;
- waiver of debt exemption (article 3.13(1)(a) of the IB): profits arising from the waiver of bad debts by creditors are exempt to the extent that the profits exceed the losses available for loss set-off. This exemption may be unavailable for companies belonging to a fiscal unity (*see* section 8.1.);
- participation exemption (articles 13-13k of the Vpb): capital gains, dividends and other profit distributions received from a qualifying participation are exempt (*see* section 6.1.3.). This exemption also applies if the parent company and its subsidiary are treated as a fiscal unity (*see* section 8.1.) (article 15 of the Vpb);
- exemption in the case of a business merger (*bedrijfsfusie*) (article 14 of the Vpb): capital gains resulting from a qualifying exchange of a business or part of a business for shares are exempt (*see* section 9.2.);
- exemption in the case of a legal merger (*juridische fusie*) (article 14b of the Vpb): capital gains resulting from a qualifying transfer of assets of the absorbed company to the absorbing company are exempt (*see* section 9.2.);
- exemption in the case of a share merger (*aandelenfusie*) (article 3.55 of the IB): capital gains resulting from a qualifying exchange of shares are exempt (*see* section 9.2.); and
- foreign business profits attributable to permanent establishments situated in other states (articles 15e–15j of the Vpb).

For exempt foreign dividends, *see* section 6.1.3.; for exempt capital gains, *see* section 1.7.5.

1.3. Valuation

Valuation of assets takes place on the last day of the tax year, i.e. the date of the balance sheet. Once a method of valuation has been chosen, changing to a different method is only permitted if justified by sound business reasons.

1.3.1. Inventory

Inventory includes goods, merchandise, raw material and semi-manufactured and manufactured products whether or not made by the company itself. The sale of those items contributes to the turnover of the enterprise.

The method used to value inventory must be in accordance with sound business practice. The most common methods include (i) the cost price, (ii) the market value and (iii) the cost price or lower market value.

When a company manufactures its own inventory, the cost price includes all costs directly related to the manufacturing process. This means that costs for housing, administration and management do not necessarily have to be included (HR 30 May 1956, BNB 1956/222). The market value is the purchase market value on the last day of the tax year. Valuing at the sale market value is not deemed to be in accordance with sound business practice (HR 10 June 1959, BNB 1959/262).

For the calculation of the annual profits, the entrepreneur may use either the LIFO, FIFO or base-stock method. Any change of the method of valuation is to be based on sound business practice. The tax authorities may request a disclosure of the reasons for the change of method.

Work in progress is not deemed to be inventory as such, but the valuation methods are the same, with the exception of the base-stock method (HR 20 April 1966, BNB 1966/150).

1.3.2. Depreciable assets

Depreciable business assets (*bedrijfsmiddelen*) are capital assets used in a business for a period longer than 1 tax year. In general, the term refers to fixed assets whether tangible or intangible. The characterization of assets as depreciable business assets is governed by sound business practice. Some business assets, such as land, are not subject to wear and tear and are, therefore, not depreciable (*see* section 1.3.3.). Buildings together with the land on which they were established are deemed to be a single asset, unless the land is used for a different purpose (*see* section 1.5.3.).

Intangible fixed assets include goodwill, patents and concessions. Whether or not these assets are deemed to be depreciable is based on the factual circumstances according to extensive case law. Self-created goodwill and patents are considered not to be capital assets and need not be valued. If such assets are purchased for a lump sum, they are valued as normal depreciable assets and may be depreciated, provided that they are subject to wear and tear.

If the use of patents and concessions is subject to periodic payments, they are neither deemed to be capital assets.

Lease-purchase contracts and financial lease contracts are valued by the purchaser or lessee, respectively. The assets are valued as if they were purchased for a lump sum.

Assets that contribute to the company's turnover are not deemed to be depreciable business assets but part of inventory.

It is common practice to value depreciable assets at their cost of acquisition or production (also referred to as cost price) less cumulative depreciation (*see* section 1.5.). Their valuation at a proven lower going-concern value is also permitted. Should the going-concern value increase, revaluation is compulsory. According to case law (HR 18 March 1992, BNB 1992/186), the maximum increase is the cost price less depreciation.

Depreciable assets of minor value (i.e. below EUR 450) are written off in the year of purchase, i.e. the cost price is treated as a normal business expense (article 3.30(2) of the IB).

1.3.3. Non-depreciable assets

In general, non-depreciable assets are valued at their cost price or lower going-concern value. Assets which are not subject to wear and tear are deemed to be non-depreciable, such as land. Similar rules apply to participations and securities.

Participations are generally valued at historical cost price or lower going-concern value. Another method is valuation at cost price or lower fiscal intrinsic value, although in some situations the Supreme Court has denied application of this method. Valuation at face value is not allowed.

Changes in the value of participations qualifying for the participation exemption (*see* section 6.1.3.) do not affect the annual fiscal profits of the company.

The methods to value *securities* are (i) the cost price, (ii) the stock exchange value and (iii) the cost price or lower stock exchange value. If bonds are purchased for a higher price than the face value, the amount exceeding the face value (i.e. *agio*) may not be deducted in the year of purchase. The bonds must be recorded in the balance sheet at their purchase price. The *agio*, however, may be gradually set off against the annual profits (HR 13 November 1991, BNB 1992/109).

1.3.4. Debt claims and liabilities

Debt claims are valued at the end of the tax year. In general, the value is the face value of the debt claim. Where it is likely that a debt claim will not be fully received, however, the estimated amount to be received may be considered the value for profit calculation purposes. In such a case, a provision is set up (*see* section 1.6.1.). There is a difference between forming a provision for a bad debt claim and a waiver of debt claim: both may be set off against the annual profit, but a provision may be reclaimed if the debt claim becomes recoverable. Once a debt claim is waived, the claim itself ceases to exist. In addition, the waiver of a debt claim constitutes a profit for the debtor, whereas a provision for a bad debt claim does not. In the first instance a taxable profit realized due to a waiver of debt should be offset against losses of the debtor. Under certain conditions, however, the excess profit that is not offset against losses may be exempt.

If a long-term debt claim is purchased for a price higher than its face value, the amount exceeding the face value should be gradually set off against the annual profit (HR 13 November 1992, BNB 1992/109).

Accumulating interest on debt claims bearing interest payable on repayment increases the value of the underlying debt claim. The amount of the yearly increase is taxed as normal business profit.

Debt claims that are basically similar may be valued individually or collectively.

Liabilities are, in general, valued at their face value, but valuing at their actual value on the last day of the tax year is also in accordance with generally accepted accounting practice. Some kinds of liabilities, such as annuity provisions, are valued at the actuarial value.

1.3.5. Foreign currency assets and liabilities

Foreign assets and liabilities must be valued in euro (or in functional currency, *see* section 1.2.1.). Foreign exchange results may be converted at the official exchange rate or current market rate. Depending on which method of valuation is used, conversion may be made at the rate on the date of purchase or the last day of the tax year.

If a company has a permanent establishment abroad, the assets and liabilities pertaining to this permanent establishment must be valued individually. Valuation of the permanent establishment as a whole is not permitted.

From 1 January 2004 foreign exchange gains or losses on loans connected to the purchase of qualifying participations no longer fall under the scope of the participation exemption. This only applies to exchange gains and losses incurred after 1 January 2004. Exchange results prior to 1 January 2004 still fall under the scope of the participation exemption if they are related to non-EEA countries (*see* section 6.1.3.) and are, therefore, not exempt. Other foreign exchange gains or losses are treated according to sound business practice, which means that gains are recognized when they are realized and losses are recognized when they occur.

With effect from 8 April 2011, foreign exchange gains relating to qualifying participations are no longer exempt by application of the participation exemption if a foreign exchange loss is, or was, previously deducted from the corporate income tax due.

1.4. Deductions

1.4.1. General principles

All expenses incurred, even if not vital to the business, are deductible if they are based on sound business motives. Also, expenses incurred in respect of qualifying participations are generally deductible. Expenses that are not in line with the business are not deductible.

The company incurring the expenses must substantiate its business motives. Once the expenditure is proven to be based on business motives, the tax authorities are not allowed to question the amount of the expenditure. The company is entitled to its own business policy. Where the amount of an expenditure, however, is in such disproportion to the benefit for the company that a company would reasonably not have made such an expenditure, the excessive amount is not deductible as being not in line with the business activities of the company (HR 9 March 1983, BNB 1983/202). The excessive amount does not necessarily constitute a hidden business profit but is nevertheless not deductible.

Expenses related to the formation of a company as well as expenses related to the increase or the decrease of the share capital of the company are fully deductible (article 9(1)(d) of the Vpb).

Domestic and foreign taxes and duties imposed on the company, except for the corporate income tax, are deductible. Foreign taxes on profits, however, are deductible only to the extent that no tax treaty or unilateral provisions apply for the avoidance of double taxation (article 10(e) of the Vpb).

Certain business expenses that depend on the existence of profits are explicitly deductible in determining taxable income (article 9(1)(a)-(h) of the Vpb), although profit distributions are generally not deductible. Such expenses include:

- payments to managing directors and other personnel in return for services rendered to the company;
- payments in consideration for the granting of any concession or patent licence, except for payments to the company's founders, shareholders, members or participants as such;
- payments by an insurance company, contractually granted to the insured;
- incorporation costs and costs for the increase of a company's capital; and
- that part of the profits of an open limited partnership that is paid to the fully liable partners.

Some expenses are explicitly listed as non-deductible or only partially deductible (*see* sections 1.4.5. and 1.4.10., respectively).

As from February 2005, the law specifies that costs related to the acquisition and disposal of a participation are no longer deductible (article 13(1) of the Vpb). This legislative change was brought about by a decision of the Supreme Court, which decided on 24 May 2002 (HR 24 May 2002, V-N 2002/27.13) that costs of acquisition of a participation in a resident company qualifying for the participation exemption (*see* section 6.1.3.) may be deducted. Expenses that serve to make the participation functional form part of the costs of that participation. All remaining expenses are qualified as costs related to the acquisition of the participation and are therefore non-deductible. Examples of such costs are lawyers' and notary fees, underwriting fees, stock market tax and compensations. However, recent case law indicates that costs not resulting from an obligation entered into in relation to an acquisition or disposal of a participation are also deductible (Rechtbank Zeeland-West-Brabant, 27 June 2013, Case 13/568 and Rechtbank Gelderland, 22 August 2013, Case 12/423).

1.4.2. Employees' remuneration

In general, salaries and wages, whether in cash or in kind, are deductible, including wage withholding taxes (*see* section 1.11.9.) and employees' social security contributions (*see* section 4.2.). If the employee is a substantial shareholder (i.e. holds an interest of at least 5% in the capital of the company), special rules apply (*see* section 1.4.3.).

All fringe benefits that are deemed to be taxable income in the hands of the employee are fully deductible, unless the deductibility is explicitly denied (*see* section 1.4.10.). Expenses related to profit-sharing schemes, bonuses and stock option schemes, and the issuing costs incurred by companies with capital divided into shares are no longer deductible (article 10(1)(j) of the Vpb). The value of a stock option taxed as a wage in kind is deductible for corporate income tax purposes, as well as the wage withholding tax due. Compensation payments granted in the case of a dismissal are deductible.

1.4.3. Directors' fees

Fees, fringe benefits and other remuneration paid to a director are treated in the same way as remuneration paid to other employees (*see* section 1.4.2.). Even if the amount or part of the amount depends on the existence of profits, the payments are fully deductible. If the director is also a shareholder of the company or holding company, however, excessive remuneration may be deemed to be a hidden profit distribution (*see* section 6.1.5.).

In order to counteract artificial structures under which no income is received, a director who is a substantial shareholder (i.e. a shareholder who holds an interest of at least 5% in the capital of the company) is deemed to receive an income which may not deviate more than 30% from the income of employees in the same branch, with a minimum of at least EUR 44,000 (EUR 43,000 in 2013), unless the director is able to demonstrate that a lower wage is typical for the particular industry (article 12a of the LB). This provision does not apply if the typical annual wage for that industry does not exceed EUR 5,000.

With effect from 1 January 2015, however, the new customary wage rule no longer applies "similar employment" as a basis, but "the most comparable employment". In addition, the efficiency margin is set at 25%. This means that the wage amount to be taken into account must be at least set at the *highest* of the following amounts:

- 75% of the wage of the most comparable employment;
- the highest wage of employees of the company or related companies; or
- EUR 44,000.

As an exception to this general rule, rebuttal evidence may be presented. If the taxpayer is able to convincingly demonstrate that the wage of the most comparable employment is lower than the wage according to the general rule, 75% of the wage of the most comparable employment is still taken into account (with a minimum amount of EUR 44,000).

A transitional measure is introduced under which such directors are deemed to earn in 2015 a wage equal to 75/70 x their wage in 2013 (if their wage in 2013 was higher than EUR 43,000 – the minimum wage in 2013), unless it is made plausible that their actual wages in 2015 are higher or lower than this amount.

Remuneration paid to the members of the supervisory board is deductible. If, however, a member of the supervisory board is a substantial shareholder (*see* above), the deductibility is limited as follows (article 11 of the Vpb):

- remuneration up to EUR 1,815 is 100% deductible;
- remuneration ranging from EUR 1,815 to 3,630 is deductible for EUR 1,815; and
- remuneration exceeding EUR 3,630 is 50% deductible, but the maximum amount deductible is EUR 9,076.

1.4.4. Dividends

Distributions of dividends and other profit distributions, including hidden profit distributions (*see* sections 6.1.5. and 9.5.), are not deductible. Article 9(1) of the Vpb, however, provides for exceptions for profit distributions to, among others, non-shareholders (*see* section 1.4.1.).

For the definition of dividends, *see* section 6.1.1.

1.4.5. Interest

General

In general, interest payments on loans, bonds, debentures and other debts of the company are fully deductible as normal business expenses. Hybrid capital instruments ("Tier 1 capital instruments") that are issued by insurance companies are also treated as debt for tax purposes.

Interest deduction limitations

Case law and particular legal provisions, however, prevent interest deduction in a number of situations, which are discussed below. In addition, from 1 January 2004 through 31 December 2012, the deduction of interest paid in respect of excessive debt was denied under the thin capitalization provisions (section).

The Supreme Court has ruled that interest deduction is to be denied if the loan is granted under such conditions that:

- the loan is deemed to be an informal capital contribution for tax purposes (*see* below);
- the loan falls under the *just levy procedure* (article 31 of the AWR) or the *fraus legis* doctrine (*see* section 10.1.). If, however, the interest is subject to sufficient (compensatory) taxation in the hands of the recipient, the interest remains deductible; or
- the interest constitutes a hidden profit distribution (*see* section 6.1.5.) in view of an excessive interest rate.

An informal capital contribution (*informele kapitaalstorting*) includes, according to the Supreme Court, loans granted under such conditions that it is to be considered a contribution of capital for tax purposes. In accordance with case law, in principle, the characterizations of a loan as debt for tax purposes follow the characterizations of a loan for civil law purposes (HR 27 January 1988, BNB 1988/217). However, there are three exceptions to the general rule laid down in the case law. These result in a recharacterization of a loan to equity for tax purposes. The exceptions are: (i) sham loans (*schijnleningen),* (ii) bottomless-pit loans (*bodemloze-put vordering*) and (iii) participation loans (*deelnemerschapslening*).

A loan is considered a sham loan if the parties structure a transaction that only has the appearance of a loan, but in fact the parties intended to provide equity (BNB 1957/239).

Bottomless-pit loans include the case of substantial loss financing, whereby a shareholder grants a loan to its subsidiary that sustains substantial losses, while at the moment of granting the loan it is certain or almost certain that the loan will not be repaid, either wholly or partially, due to the substantial losses.

A transaction qualifies as a participation loan *(deelnemerschapslening*) if all of the following conditions are met (article 10(1)(d) of the Vpb):

- the remuneration on the loan is entirely profit dependent;
- the loan is subordinate to claims of all creditors; and
- the loan has no term or is perpetual (i.e. the term exceeds 50 years).

Deduction of interest, including value changes of the loan, is denied where a loan with no fixed maturity or a maturity of more than 10 years obtained from a related company bears no interest or an interest rate which is substantially lower than that which would have been agreed between unrelated parties (article 10b of the Vpb). In two recent landmark cases regarding the characterization of hybrid financing instruments, the Supreme Court ruled that instruments that qualify for civil law purposes as equity are also considered equity for tax purposes (HR 7 February 2014, 12/03540 and 12/04640). The hybrid finance instruments that qualify as equity for Netherlands tax purposes also qualify for the participation exemption. However, in practice this may lead to an international mismatch arrangement or double non-taxation. This is due to the fact that, on the one hand, the instruments are qualified as debt and the interest is thus deductible in the hands of the debtor, while on the other hand the income received at the level of the creditor is exempt under the application of the participation exemption.

On 20 June 2014, the proposed EU Directive 2014/86 (which contains an amendment to the EU's Parent–Subsidiary Directive 2011/96) was formally adopted whereby it will no longer be possible to apply an exemption on dividend income from hybrid instruments in one EU Member State if the corresponding interest payment is deductible in another EU Member State. The Netherlands has transposed the amendment into the domestic participation exemption rules, which will become effective as from 1January 2016 (*see* section 6.1.3.).

In the case of transactions with related companies, interest and royalties received and paid on loans or legal relationships that are directly or indirectly connected, are ignored for the profit calculation if the company does not bear a sufficient risk with regard to the loans or legal relationships. A company is assumed to bear a sufficient risk if its equity is the lower of 1% of its outstanding loans or EUR 2 million. If the related company does not run a sufficient risk, an arm's length compensation fee is allocated to its profits (article 8c of the Vpb).

In addition, deduction of interest, including costs and currency exchange losses, is also denied if a related party grants a loan to the company which falls under the anti-base erosion rules of article 10a(1) of the Vpb in the case of:

(1) profit distributions or repayment of capital to a related company or related individual;

(2) a capital contribution in a related company; or

(3) the acquisition or an extension of a participation in a company which becomes a related company after this acquisition or extension.

The restriction in (2) includes situations where a parent company makes a contribution of capital to a subsidiary, which in turn uses these funds to grant a loan to another subsidiary of the parent company; if the parent company is non-resident, the restriction does not apply. The restriction in (3) covers situations in which shares in resident companies are transferred within the group in exchange to a debt.

On the other hand, the deduction of interest is granted, if the company paying the interest is able to provide evidence that (article 10a(3) of the Vpb):

- the loan, taken together with the legal transactions concerned, is based mainly on sound business reasons (double-test); or
- the interest is subject to sufficient, compensatory taxation in the hands of the recipient, which is the case if tax is levied at a rate of at least 10% on a taxable base calculated according to Netherlands tax standards. In addition, the recipient should not be entitled to a carry-forward of losses of years preceding the year of granting the loan, nor should the loan be granted in order

to benefit from near-future losses. However, if the tax inspector demonstrates that the loan is not based on sound business reasons, the interest is not deductible even if it is taxed in the hands of the recipient at a rate of at least 10%.

Deduction of interest paid is denied if the taxation of the interest in the hands of the recipient is restricted by a tax treaty or the unilateral regulation for the avoidance of double taxation applicable to the Netherlands Antilles and Aruba (Decree of 23 March 2013, BLKB2013/110M). As the Netherlands Antilles ceased to exist from 10 October 2010, the Decree applies to its legal successors, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao and St. Maarten with effect from that date.

For the purposes of these provisions, the term “related company” includes companies and individuals. A company is deemed to be a company related to another company if (article 10a(4) of the Vpb):

- the first company holds an interest of at least 33.33% of the capital in the second company;
- the second company holds an interest of at least 33.33% of the capital in the first company;
- a third party holds an interest of at least 33.33% of the capital in both companies; or
- both companies are part of a fiscal unity (*see* section 8.).

An individual is deemed to be an individual related to a company if he holds an interest of at least 33.33% of the capital in that company, or in a company related to that company, alone or together with his spouse (or if his spouse, a relative in the direct line, a foster child, a partner of a foster child or a foster parent holds such an interest) (article 10a(5) of the Vpb).

A write-down of a loan that qualifies as a non-business related loan (*onzakelijke lening*) may not be taken into account as a taxable loss (i.e. it is not deductible) and should either be treated as an informal capital contribution or deemed a dividend (BNB 2008/191). A loan is qualified as a non-business related loan if a related party incurred a debtor risk that independent parties would not have been willing to accept (i.e. if the loan is not documented properly, lacks security instruments or a redemption scheme). Whether or not a loan qualifies as a non-business related loan should be monitored on a continuous basis.

Limitation regarding acquisitions by holding companies

With effect from 1 January 2012, a further limitation applies with respect to the deduction of interest paid in respect of a debt claim which has been used to take over a business in the Netherlands (article 15ad of the). The limitation applies to acquisitions and expansions of a holding that are debt financed and for which the acquirer and the target company enter into a fiscal unity for corporate income tax purposes (section). This limitation also covers interest on financing obtained from third parties.

Main features

Under this limitation, interest is deductible up to EUR 1 million or if the financing of the takeover is considered to be sound (article 15ad(2) of the). Financing is considered to be sound if the debt claim does not exceed 60% of the takeover price. The percentage is to be reduced in the following 7 years with 5% per year to 25% of the takeover price (article 15ad(6) of the). If the acquisition interest exceeds the own profit, but the excess amount is less than EUR 1 million (franchise), the interest is still deductible in full.

If the acquisition interest exceeds the positive own profit and the excess amount is more than the EUR 1 million franchise, then, in principle, an amount equal to the franchise increased by the positive own profit is deductible, any excess being non-deductible (article 15ad(3) of the Vpb). However, in such a case the acquisition interest is still deductible in full if there is no excess acquisition interest (“financing escape”) (article 15ad(3) and (4) of the Vpb). The excess acquisition interest is the interest due on the excessive part of the acquisition debt. This part equals the amount of the acquisition debt that exceeds a specific percentage of the acquisition price: 60% in the year in which the acquisition was included in the fiscal unity, 55% in the following year and so on, until a percentage of 25 is reached (article 15ad(3) and (4) of the Vpb). In the case of multiple acquisition debts, in particular where these relate to companies included in the fiscal unity in different years, the excess acquisition interest must be determined for each of those years separately. Acquisition debts and acquisition prices in respect of acquisitions that are included in a fiscal unity in any one year are combined. In the case of an excessive part of the acquisition debt and, consequently, excess acquisition interest, the non-deductible interest is set at the lower of the following amounts:

- acquisition interest less positive own profit minus EUR 1 million;
- the amount of the excess of acquisition interest (article 15ad(3) of the Vpb).

Carry-forward

Acquisition interest that is non-deductible in any year is carried over to the following year, where it is assessed again to see if it falls under the interest deduction limitation (article 15ad(8) of the). In respect of the interest carried forward, the EUR 1 million franchise and the financing escape are not taken into account again.

Transitional rules

Important transitional rules apply to existing fiscal unities: the deduction limitation does not apply to the financing of acquisitions included in a fiscal unity before 15 November 2011. Moreover, profits of company acquisitions that were included in the fiscal unity before 15 November 2011 are included in the aforementioned own profit.

Limitation on excessive interest relating to a participation in a subsidiary

With effect from 1 January 2013, an interest deduction restriction applies to the excessive debt financing of the acquisition of participations (article 13l of the).

This restriction measure aims at preventing the excessive deduction of interest related to the financing of participations. The non-deductible interest, i.e. the excess participation interest, is the interest related to the participation debt. A participation debt is present if the acquisition price of the participation exceeds the equity of the acquiring company (article 13l(1) of the Vpb). The amount of the excess participation interest is equal to the interest and costs, multiplied by a fraction made up of the average participation debts, divided by the average loans at the beginning and end of the financial year (article 13l(2) of the Vpb). However, the first EUR 750,000 of interest is always deductible (article 13l(1) of the Vpb).

To avoid impeding businesses in expanding their business activities, the acquisition price of a participation is not taken into account when determining the amount of the participation debt in the case of expansion of the group's operating activities, if the expansion took place within a certain period ("the qualifying expansion") (article 13l(5) of the Vpb). However, this exception does not apply to certain situations that are considered inappropriate, such as (article 13l(6)(a) to (c) of the Vpb):

- deducting the same interest twice;
- certain hybrid financing structures that involve a double interest deduction without sufficient taxation; and
- financing entered into because of the interest deduction.

Only in the second case is it possible, in certain circumstances, for the taxpayer to provide rebuttal evidence.

Transitional rules

The deduction limitation applies to financial years commencing on or after 1 January 2013. Transitional rules contain an optional fixed amount for purposes of the qualifying expansion exemption: the taxpayer may disregard 90% of the acquisition price, without the need for a further proof, if the participation was acquired or expanded, or equity was contributed to the participation, during a financial year commencing on or before 1 January 2006 (article 13l(10) of the). It is important to note that the taxpayer must prove that the old participations to which the 90% rule has been applied, do not involve inappropriate situations.

Set-off (active group financing)

The participation interest measure also contains a concession for active group financing activities (article 13l(9) of the). This means that the test for determining whether there is a participation debt and non-deductible participation interest does not take into account loans and their accompanying interest and costs to the extent that these loans relate to receivables held by the taxpayer in respect of the active group financing activities.

Reorganization and fiscal unity

In the Official Gazette of 24 January 2013, the State Secretary for Finance published an Implementation Decree of 16 January 2013, which covers reorganizations or inclusion in a fiscal unity (Decree limitation deduction excessive interest relating to participations). The decree also aims to resolve the conflict that arises with the deduction limitation for the acquisition by holding companies. It sets out rules for determining the acquisition price after a reorganization, and for determining that part of the acquisition price to be regarded as a qualifying expansion.

Foreign permanent establishment

The restriction does not apply to interest payments which are attributable to a foreign permanent establishment because since 2012 profits which are attributable to a permanent establishment abroad are exempt from corporate income tax (article 13l(7) of the) (section).

Conflict with limitation regarding acquisition by holding companies

A fiscal unity that has been entered into with a subsidiary that holds participations could result in a conflict between the deduction limitation for acquisition holding companies and the deduction limitation for excessive acquisition interest. The State Secretary for Finance in the above decree has indicated that it is intended to grant a reduction to the extent that the deduction of essentially the same interest twice is rejected. The part disregarded by the deduction limitation for acquisition debts is determined proportionally based on that part of the subsidiary's acquisition price that may be allocated to the participations.

1.4.6. Royalties

Royalty payments are fully deductible as normal business expenses, provided that they do not constitute a hidden profit distribution (*see* section 6.1.5.) and are not in conflict with the arm's length principle in cases of payments to related companies. There are no other restrictions, for example with respect to the location of the recipient.

1.4.7. Service and management fees

Service and management fees are fully deductible as normal business expenses, provided that they do not constitute a hidden profit distribution (*see* section 6.1.5.) or are in conflict with the arm's length principle.

1.4.8. Research and development

Research and development costs are fully deductible as normal business expenses, provided that they do not constitute a hidden profit distribution (*see* section 6.1.5.) or are in conflict with the arm's length principle.

For tax incentives for research and development costs, *see* section 1.9.

1.4.9. Other deductions

Gifts that are made to serve business interests are fully deductible as normal business expenses. The company must be able to prove that the gift was made for the benefit of the business.

Other gifts are not taken into account in computing the annual business profits (*see* section 1.2.1.). It is generally considered not in line with the purpose of a company to make gifts not related to its business. The deductibility of gifts is limited to those made to resident academic, religious, charitable, cultural and public benefit institutions (including political parties) and recognized institutions serving the social interest of their members or a particular target group (article 16(1) of the Vpb). A list of non-resident institutions to which deductible donations may be made has been issued by a decree on institutions of benefit to the public (*ANBI-Besluit*). Such gifts are deductible up to 50% of the profits with a maximum of EUR 100,000 (article 16(1) of the Vpb). The deduction is increased by 50%, with a maximum of EUR 2,500 in the case of donations to cultural institutions.

Entertainment costs and taxes are only partly deductible (*see* section 1.4.10.).

1.4.10. Non-deductible expenses

Distributions of profits, other than mentioned in article 9 of the Vpb (*see* section 1.4.1.) and distributions based on the articles of association or any similar document, are not deductible, unless they are deemed to be business expenses by nature (articles 10(1)(a) and (b) of the Vpb).

Corporate income tax, dividend withholding tax, lottery tax, bank tax (*see* section 12.5.1.) and the resolution levy (*see* section 12.5.2.) are not deductible. Foreign taxes on profits are, in general, not deductible, unless no tax treaty or unilateral provisions apply for the avoidance of double taxation (articles 10(1)(e) and (f) of the Vpb).

Furthermore, the costs of the issuing or granting of stock option rights by companies with a capital divided into shares are no longer deductible (article 10(1)(j) of the Vpb).

Deduction is denied for costs incurred on the grant of profit participation rights, stock options, or the right to acquire profit participation rights in a company or a related company, including rights granted to employees with an annual salary of more than EUR 531,000 the value of which predominantly directly or indirectly depends on the value of the shares or profit participation rights.

Deduction of the following costs and expenses is explicitly denied (article 3.14 of the IB):

- expenses in respect of yachts and other vessels used for representation purposes. This does not apply if the company's business includes the manufacture of, or the trade in, such vessels or the supply of services relating to such vessels;
- fines imposed by a Netherlands criminal court or settlement payments in order to avoid prosecution;
- fines imposed by an organ of the European Union;
- fines for traffic offences;
- administrative fines based on a variety of laws;
- expenses in respect of criminal activities, in so far as the company is convicted or has paid a settlement;
- expenses in respect of unauthorized possession of weapons, ammunition and animals; and
- donations made and services supplied in the context of a criminal act.

With effect from 2015, a fine imposed by a foreign government or government institution is no longer deductible either. On 7 January 2011, the Supreme Court held in Case 09/00617 that fines imposed for the violation of EU competition law are not deductible.

If an entrepreneur (*see* sections 1.4.2. and 1.4.3.) also acts as a managing director, special rules apply to some types of expense, as they are deemed to be partially of a private nature. These expenses include (article 3.15 of the IB):

- food, beverages and luxuries;
- representation activities, including receptions, parties and entertainment; and
- conferences, conventions, educational trips and the like.

Such expenses are fully deductible if the company adds to its taxable income an amount equal to 0.4% of the total taxable wages paid to all employees, subject to a minimum of EUR 4,400. Upon request, this amount is not added to taxable income, in which situation the deduction of the total of such expenses is limited to 73.5% thereof (article 3.15 of the IB).

1.5. Depreciation and amortization

1.5.1. General principles

Depreciation of business assets (*bedrijfsmiddelen*, *see* section 1.3.2.) is compulsory and must take place whether the company is profitable or whether it sustains losses.

Assets that are not subject to wear and tear, such as land, are not depreciable. Natural resources are deemed to be inventory and, therefore, not depreciable (*see* section 1.3.1.). Depreciable assets of minor value (i.e. below EUR 450) are written off in the year of purchase, i.e. the cost price is treated as a normal business expense (article 3.30(2) of the IB).

Depreciation of business assets is determined yearly as the part of the costs of acquisition or manufacture not yet depreciated that is attributable to that year (article 3.30 of the IB). Depreciation is computed on the value of acquisition or production less the residual value. In addition, the depreciation depends on the useful economic life of the asset. The value of acquisition or production is generally referred to as the historical cost price. The historical cost price includes the initial purchase price, taxes and installation costs (*see* section 1.3.2.).

The choice of method of depreciation is governed by sound business practice. Basically, this means that the chosen method of depreciation should match the course of the useful economic life of the asset concerned and is consistently applied. The following methods are, in general, accepted:

- straight-line method;
- degressive method (or sum-of-the-years'-digits method); or
- declining-balance method.

Once a method is chosen, a change of method is permitted only if it is in accordance with sound business practice. Any major change in the useful economic life expectation or in the residual value justifies an adjustment of the depreciation. A different method may be adopted for each kind of asset.

The straight-line method is commonly used and accepted by the tax authorities. The degressive method and the declining-balance method are allowed only for assets which provide for a greater utility in the first years of their useful economic life than in subsequent years. The company must justify the use of these two methods to the tax authorities.

If an asset is subject to an extraordinary loss of value caused by natural disasters, war and such, depreciation to the residual value is allowed in the year in which the loss of value occurred.

In a number of situations, investing in certain depreciable business assets is encouraged by granting arbitrary depreciation. These tax incentives are discussed in section 1.9.

A depreciable asset begins to depreciate from the moment it is brought into use. The depreciation is equal to the non-depreciation purchase and manufacturing costs which can be allocated to a year. Therefore, if an asset is purchased or manufactured during the year, depreciation is calculated on a pro rata basis. This has been confirmed in various decisions of the Supreme Court, including, (HR 26 September 1956, BNB 1956/298, HR 20 June 1960, BNB 1960/261, and HR 8 May 1968, and BNB 1968/143) Depreciation is calculated per group of assets. Special rules apply for different assets, e.g. immovable property (*see* sections 1.5.3.) and goodwill (*see* section 1.5.6.).

1.5.2. Right to claim depreciation

The company which bears the risk of the wear and tear of the depreciable asset is entitled to depreciate the asset. In general, this means that the economic owner of the assets is entitled to depreciate. In the case of lease-purchase contracts and financial lease contracts, the purchaser and lessee, respectively, are entitled to depreciate on the whole purchase price.

The assets must be put into use before depreciation may be taken. It is not necessary that the assets are fully paid for. If an asset is put into use during the tax year, the amount of depreciation is determined proportionally.

1.5.3. Immovable property

Depreciation of immovable property is only allowed as long as the book value does not fall below the minimum value (*bodemwaarde*) (article 3.30a(1) of the IB).

The minimum value of immovable property amounts to (article 3.30a(3) of the IB):

- if the property is an investment property, i.e. rented to a third party: 100% of the "WOZ value" (*see* below); or

- if the property is used by the taxpayer or a related entity/person: 50% of the WOZ value (*see* below). A company is considered to be related if the taxpayer (or a group company) has an interest of at least 5% in the share capital of a company.

The WOZ value is the value according to the Law on Valuation of Immovable Property (Wet waardering onroerende zaken*, WOZ*), which is used as the taxable base for taxation by municipalities and in principle represents the fair market value of the property (*see* section 5.3.).

The building, separate components of the building and the land are treated as one asset for depreciation purposes (article 3.30a(2) of the IB). Only pieces of equipment which can be separated without damage may be treated as separate business equipment. This rule also applies in case of revaluation to lower business value.

A building which (in)directly is intended to be put at the disposal of an unrelated person or company for more than 70% is deemed to be a real estate investment.

If immovable property is owned by several owners, the value is attributed to the partners on a pro rata basis (article 3.30a(5) of the IB).

If a taxpayer and a related individual or company have invested in a building, depreciation takes place as if the investment is made by one individual or business (article 3.30a(7) of the IB). The depreciation is then attributed to each investor on a pro rata basis to the maximum of the amount of the allowed depreciation at the level of each investor as if this provision would not apply. The term related individual includes the spouse, a partner or a minor child of the taxpayer (article 3.30a(9) of the IB). A related company is defined as a company in which the taxpayer or a related individual owns a substantial shareholding (i.e. at least 5% of the outstanding shares) (article 3.30a(11) of the IB).

1.5.4. Plant, machinery and equipment

Plant, machinery and equipment are generally depreciated under the straight-line method. The depreciable base is the historical cost price. In a few situations, depreciation by a degressive method is permitted.

The rates are determined by the circumstances.

The maximum annual depreciation for all business assets is 20% of the production or acquisition costs (article 3.30 of the IB). However, under a transitional regime the depreciation with respect to business assets produced or acquired before 1 January 2007 is equal to 12/60 less the months that the assets were already depreciated before 1 January 2007) (article 10a.3(1) of the IB).

1.5.5. Trademarks and patents

Trademarks and patents may be depreciated under the straight-line method on the basis of their historical cost price. In general, depreciation takes place in 5 years regardless of the actual economic life expectancy.

1.5.6. Goodwill

Acquired goodwill may, in general, be depreciated in at least 10 years corresponding to an annual rate of 10% (article 3.30 of the IB). The residual value is deemed to be nil, which means that the acquisition cost is fully depreciated. However, under a transitional regime the depreciation with respect to goodwill acquired before 1 January 2007 is equal to 12/120 less the number of months that the assets were already depreciated before 1 January 2007) (article 10a.3(1) of the IB).

Self-created goodwill may not be activated on the balance sheet, and is therefore not depreciable.

1.5.7. Other assets

The general provisions for depreciation also apply to seagoing vessels. In addition, the State Secretary for Finance has issued a decree (Decree of 16 July 2008, CPP2008/1222M) on depreciation according to the degressive method. Degressive depreciation is permitted if the following conditions are met:

- the seagoing vessel is depreciated as a whole. Dividing the vessel into various assets, e.g. body and motor, is not permitted;
- the vessel is a new vessel or a vessel purchased within 132 months after it was first put into use; and

- the residual value, the economic life expectancy and the rates comply with the rules of the decree.

The life expectancy and residual value of seagoing vessels are as follows:

Years since first purchase	Economic life expectancy	Residual value (%)
1-3	15	15
4-7	13	19
8-11	11	24

If the company has opted for the tonnage regime (*see* section 12.), depreciation on the vessels is not allowed. If a vessel qualifies for the tonnage regime, but the company does not opt for this special regime, depreciation is allowed (*see* section 1.9.1.).

Special rules apply with respect to pleasure yachts and the traditional fleet (e.g. *tjalken* and *skûtsjes*).

Natural resources are deemed to be inventory and, therefore, not depreciable (*see* section 1.3.3.).

1.5.8. Cessation of use, transfer or disposal of assets

If an asset is sold or otherwise disposed of at a price exceeding the current book value, the gain is treated as ordinary business income. Conversely, if an asset is sold at a price lower than the current book value, the loss is deductible.

The same rules apply with respect to the cessation of use of an asset.

1.5.9. Unutilized depreciation or amortization allowances

There are no provisions on the carry-forward of excess depreciation. There are also no restrictions in case of a change of ownership or cessation of business.

1.6. Reserves and provisions

1.6.1. Bad and doubtful debts

A provision for bad and doubtful debt claims may be created in accordance with sound business practice if a debt is unlikely to be paid due to probable or actual financial failure of the debtor. The provision is calculated as a percentage of the total amount of collectively valued claims, whereby the percentage is based on figures of the past. A percentage of the annual turnover is not allowed. The amount allocated to the provision is deemed to be a normal business expense. Should a bad debt claim become recoverable, the corresponding part of the provision must be added back to taxable income.

1.6.2. Replacement of assets

A reinvestment reserve (*herinvesteringsreserve*) may be created for the replacement or repair of business assets. The reserve is available upon the alienation, loss or damage of both tangible and intangible assets (article 3.54 of the IB and Decree of 9 December 2011, BLKB 2011/2061M).

If the proceeds of alienation or the amount of indemnification exceed the book value of the asset, the excess may be placed into a reinvestment reserve if, and as long as, the company intends to reinvest this amount. The genuine continuous intention to acquire a new qualifying asset should therefore be documented as such. The amount placed in the reserve must be reinvested during the year of disposal or the 3 following years, unless special circumstances justify a longer period. If the reinvestment does not take place within that period, the reserve must be added back to taxable income.

With respect to non-depreciable assets or assets which are generally depreciated over a period of at least 10 years, the asset in which the reinvestment is made should fulfil the same economic purpose as the replaced asset. The new asset does not have to be identical or similar from a technical point of view; it may be technically more advanced.

The reserve is applied against the acquisition price of the new asset. The book value of the new asset (i.e. the acquisition price less the amount of the reserve) may not be lower than the book value of the replaced asset. If the reserve exceeds the acquisition price of the new asset, the excess is added back to taxable income. The replacement reserve may not be allocated pro rata to the residual value of the new asset in order to create a higher depreciation base (HR 16 March 2012, Case 10/04653).

The reinvestment asset is considered to be the first asset acquired that may be considered to replace the old asset. The reinvestment reserve is also available where the new asset is acquired before the sale of the old asset. This, however, is only applicable to the reinvestment of non-depreciable assets or assets that are generally depreciated over a period of at least 10 years.

The reinvestment reserve is not available for assets of minor value (i.e. less than EUR 450) and shareholdings (whether portfolio or qualifying participations). The reinvestment reserve is only available to the taxpayer who placed the amount in the reserve; other taxpayers are not eligible to that reserve even if they are affiliated entities (HR 9 August 2013, Case 12/05870).

The reinvestment reserve must be immediately added to the profit reserves when the beneficial ownership in the company is substantially (for more than 70%) changed (article 12a of the Vpb). After such a change of the beneficial ownership, a new reinvestment reserve is only available upon an alienation which has been decided on after this change.

Entities without shareholders, acting for the general or social interest, may create a reinvestment reserve for the acquisition, production or improvement of business assets and expenses for projects which are expected to result in a loss (article 12 of the Vpb). The reinvestment reserve must be used for costs made in the year of creation or in the following 3 years. The reinvestment reserve must be used for business activities which are in line with the purpose of the entity or for the collection without consideration and subsequent sale of second-hand goods in line with its purpose.

The maximum annual amount which may be added to the reserve is equal to the annual profit made.

After 3 years, the reinvestment reserve must be added to the profits unless a special circumstance justifies a longer period.

By ministerial decree, the creation of a reinvestment reserve may be denied to entities or activities if it would result in substantial competition distortion.

1.6.3. Other reserves and provisions

1.6.3.1. Equalization reserve

An equalization reserve may be created for the proper allocation of costs over the years (article 3.53 of the IB). To qualify for the reserve, the company must express its explicit intention to make, periodically during a period of more than 1 year, costs that are partially to be allocated to the years preceding the year in which they occur.

The reserve is usually created with respect to costs for maintenance that takes place periodically. The annual deductible allocation to the reserve depends on the actual costs and the time the costs will occur. For example, in the case of maintenance costs of EUR 50,000 to be incurred every 5 years, the annual deductible allocation is EUR 10,000.

When the costs are actually incurred, they are set off against the reserve. If the company no longer intends to incur the costs for which the reserve was created, the reserve must be added back to taxable income.

The reserve is not available for future contingencies.

1.6.3.2. Revaluation reserve

There is a deferral of the taxation of profits from the conversion, transfer or waiving of a debt claim, which was depreciated at the expense of Netherlands taxable profit, on a company in which a participation of at least 5% is held. The tax is deferred until the value of the participation increases (article 13ba(1) of the Vpb). The profits are temporarily transferred to a revaluation reserve. Subsequently, the reserve is added to the annual profits for an amount equal to any value increase of the participation (article 13ba(5) of the Vpb). For this purpose, the participation is valued at its fair market value. This (partial) recapture of the reserve does not occur in the case of a transfer of the participation within a group of companies.

The reserve may be released tax exempt (i) for the amount of profits derived from issued shares, profit shares, membership rights, participation certificates to which the participation exemption does not apply and (ii) in the case of the transfer of an entire participation to a company outside the group (articles 13ba(7) and (8) of the Vpb). Under an anti-abuse provision, the reserve may not be released tax exempt in the case of artificial constructions, as a result of which the taxpayer temporarily no longer owns a participation (in order to release the reserve tax exempt), which is deemed to be the case if the taxpayer acquires a new participation within 3 years of the tax-exempt release (article 13ba(9) of the Vpb). The reserve is immediately added to the taxable profit if (i) a company of the debtor or its part is transferred to the taxpayer, a related company or a related individual, (ii) the participation or its part is transferred to a related individual, or (iii) the debtor becomes part of a fiscal unity (*see* section 8.) with the taxpayer in a capacity of a subsidiary (article 13ba(10) of the Vpb).

The provision on the revaluation reserve does not apply to low-taxed investment participations (*see* section 6.1.3.).

1.6.3.3. Miscellaneous

In general, a provision for future contingencies may be created if, at the end of the tax year, it is relatively certain that the costs will occur. To qualify, the costs must relate to facts and circumstances prior to the end of the tax year (Decree of 6 August 2010, DGB 2010/3706M). The provision is not available if the contingencies are compensated in any way to the company.

For financial risk provisions, *see* section 12.3.

1.7. Capital gains

1.7.1. General

Capital gains realized on the disposal of any asset are treated as normal business profits, and included in taxable income. The disposal of assets for cash or other property is treated in the same manner.

1.7.2. Capital assets

All assets of a company may produce a capital gain on disposal, and such gains are taxed as business profits.

1.7.3. Realization

Realized capital gains are recognized for tax purposes if so warranted by sound business practice. Unrealized capital gains are not included in taxable income, unless previous losses on the same assets have been deducted from taxable profits.

1.7.4. Computation of capital gains and losses

Capital gains and losses are computed as the difference between the sales price and the book value of the asset.

1.7.5. Exempt capital gains

Capital gains (and losses) on qualifying participations are exempt under the participation exemption (*see* section 6.1.3.).

Capital gains realized upon mergers may be exempt under special provisions (*see* section 9.2.).

1.7.6. Deferment of tax on capital gains

Gains realized on the disposal of business assets may be placed in a reinvestment reserve (*see* section 1.6.2.).

1.8. Losses

1.8.1. Ordinary losses

Ordinary losses arise when the expenses (including depreciation and allocations to provisions) exceed the profits of a company in a tax year (article 20(1) of the Vpb). The accounting losses appearing in the company's balance sheet do not always constitute tax losses because certain expenses are not deductible for tax purposes (*see* section 1.4.10.). Ordinary losses include initial losses and terminal losses.

Losses may be set off against past and future profits. As from 1 January 2007, losses sustained in the current tax year may be carried back to the preceding year, and forward for 9 years, provided that the loss has been formally determined by the tax inspector.

For the 2009 and 2010 tax years, companies could opt for a loss carry-back of 3 years. This option was extended to be applicable also in tax year 2011 by the Tax Plan 2011. In such a case, the loss carry-forward was restricted to 6 years.

From 7 April 2009, a procedure for obtaining a loss carry-back is available. Instead of a tax assessment, an estimate of the losses may be submitted. A final assessment for the year in which the loss carry-back is claimed, is not required.

The tax inspector's determination of the loss may be appealed (article 20(2) of the Vpb). Losses must be set off in the sequence in which they are incurred and in which profits are realized (article 20(7) of the Vpb).

Holding and financing losses

From 1 January 2004, the rules regarding the set-off of losses are amended to avoid the situation in which holding companies set off losses relating to the expenses of participations against the profits from other activities. If the activities of a company for the entire year entirely or almost entirely (i.e. at least 90%) consist of the holding of participations or (in)direct financing of related companies (pure holding company), losses resulting from these activities may only be set off against the profits of years in which the activities of the company for (almost) the entire year also (almost) entirely consist of the holding of participations or (in)direct financing of related companies. Furthermore, the book value of debt claims on related companies less the book value of debts to these companies in (almost) the entire year may not exceed the book value of other comparable debts less the book value of other comparable debts at the end of the year in which the loss was realized (article 20(4) of the). The last-mentioned condition does not apply if the company demonstrates that a change in this balance was not mainly intended to increase the loss set-off possibilities (article 20(5) of the Vpb). In general, this means that losses from holding activities (not falling under the scope of the participation exemption, section) may not be set off against profits derived from other activities.

On 24 June 2011, the Supreme Court ruled that the loss relief restriction applicable to holding companies under article 20 of the Vpb is not incompatible with the EU freedom of establishment of article 49 of the TFEU (HR 24 June 2011, Case 09/05115).

The activities of a company are not deemed to be (almost) entirely consisting of the holding of participations or (in)direct financing of related companies if at least 25 employees are engaged in other activities on a full-time basis (article 20(6) of the Vpb).

Change of ownership

The set-off of losses against future profits is denied if the beneficial owners of the future profits have substantially (i.e. 30% or more) changed. Previous shareholder changes must also be taken into account, starting from the earliest year for which losses are not yet fully compensated (Decree of 25 February 2015 No. NLKB 2015/211M). If certain conditions are met, however, the loss carry-forward remains available (article 20a of the). If the beneficial owners of future profits have not substantially changed, the losses remain deductible, even when new activities are set up or when business activities are replaced by investment activities.

With effect from 1 January 2011, the change-in-ownership rules have been further tightened. Losses incurred prior to a substantial change in ownership in a tax year may not be utilized anymore, neither by way of loss carry-forward or carry-back nor by loss set off against profits derived in the same tax year after the change in ownership took place (article 20a(1) and (9) of the Vpb).

In the case of group taxation (*see* section 8.1.) and mergers (*see* section 9.2.), the set-off of losses is subject to special provisions. Losses of a company are not transferred to the company that continues the business activities of the former. In the case of a merger, however, the transfer of losses is available under strict conditions. Upon the dissolution of a fiscal unity (group taxation), the transfer of losses may also be available (*see* section 8.5.)

If an investment institution (*see* section 12.2.) loses its status as a special entity, the set-off of losses between the two regimes is not available.

With effect from 1 January 2012, losses attributable to permanent establishments of resident companies abroad are excluded from the taxable base in the Netherlands. However, losses that remain after the cessation of the permanent establishment remain deductible.

Liquidation losses are, however, not deductible if the activities of the PE are continued by a related company.

A recapture rule applies if, within 3 years after liquidation, the PE starts new activities. In that case, all liquidation losses are added back to the fiscal profits.

Foreign losses are further discussed in section 7.2.3.

1.8.2. Capital losses

There are no special provisions on capital losses. Losses on the alienation of assets are included in ordinary income.

Losses incurred on the disposal of a qualifying participation are not taken into account because such losses fall under the participation exemption. If, however, the subsidiary in which the qualifying participation is held is liquidated, the participation exemption may not apply. In such situation, and subject to certain conditions, the loss sustained is deductible (*see* section 6.1.3.).

1.9. Incentives

1.9.1. Accelerated depreciation

For certain investments, arbitrary depreciation (*willekeurige afschrijving*) is available. The amount of arbitrary depreciation is generally limited to the cost of acquisition or production. Two types of asset are eligible for arbitrary depreciation (the particular qualifying assets are to be specified by the government):

(1) assets that are in the interest of the protection of the environment in the Netherlands (article 3.31 of the IB); and

(2) assets that are in the interest of the enhancement of the economic development or the economic structure, including the enhancement of entrepreneurship (article 3.34 of the IB).

Arbitrary depreciation for assets mentioned in (1) is limited to assets which (i) are not yet widespread; and (ii) have never been used before (article 3.31(3) of the IB). Eligible assets are listed in the Annex to the Indicating Regulation on Arbitrary Depreciation and Environmental Investment Deduction 2009 (*Aanwijzingsregeling willekeurige afschrijving en investeringsaftrek milieu-investeringen 2009)* with respect to environmental investments. If the investment exceeds EUR 25 million, arbitrary depreciation is only allowed after approval by the European Commission.

Eligible assets in (2) are mentioned in the Implementing Regulations on Arbitrary Depreciation (*Uitvoeringsregeling willekeurige afschrijving*). From 2009, arbitrary depreciation is also allowed with respect to buildings qualifying for environmental investment.

With respect to seagoing vessels, arbitrary depreciation up to 20% per year is allowed, provided that the vessel qualifies for the tonnage regime (*see* section 12.), but the company has not opted for that regime.

Based on a Regulation of 10 December 2008, DB 2008/697M, all newly purchased or manufactured assets in 2009 could be depreciated in 2 years if taken into use before 1 January 2012. This incentive did not, inter alia, apply to buildings, motors, motor vehicles, intangible assets and assets mainly intended to be made available to third parties. Decree DB 2010/103M provided that entrepreneurs who entered into commitments in 2009, but only made the first payment in 2010, could avail of the accelerated depreciation in 2010 and 2011.

The Tax Plan 2011 provided for an extension of the applicability of the 2-year accelerated depreciation measure to tax year 2011. As a result, assets that were newly purchased or manufactured in 2011 may be fully depreciated over 2 years if put into use before 1 January 2014. With effect from 1 January 2012, the 2-year accelerated depreciation possibility is abolished.

A temporary accelerated depreciation measure was available from 1 July through 31 December 2013. Accordingly, companies may apply an accelerated depreciation equal to 50% of the purchase or processing costs of a business asset if reasonable expectation exists that the asset will be put into use before 1 January 2016. The measure is available once only, in the year in which (i) the company has entered into a binding contract to acquire the asset or (ii) the processing costs are made.

If the asset is not put into use before 1 January 2016, the accelerated depreciation taken will be recaptured. In exceptional cases, such as bankruptcy of the supplier, or if a longer manufacturing period is needed, the asset may be put into use later. Recapture also applies if the use of the asset for business purposes is discontinued before 1 January 2016.

The accelerated depreciation measure also applies to investments in vessels, but only in so far as the shipping company does not apply the tonnage tax regime (*see* section 12.1.) until 1 January 2023.

The measure also applies to passenger cars with a low CO2 emission used for business purposes. Accelerated depreciation is possible if the CO2 emission is less than 88 g/km for diesel cars and less than 95 g/km for other cars.

1.9.2. Investment deduction

Upon request, an investment deduction (*investeringsaftrek*) is granted for small scale investments in certain assets (article 3.40 of the IB). The deduction may be applied whether or not the company sustains a loss and in addition to the normal depreciation.

Each separate asset must have a cost price of at least EUR 450.

The investment deduction (for 2015) is set out below:

Total investment (EUR)			Deduction
Up to		2,300	0%
2,300	–	55,745	28%
55,745	–	103,231	EUR 15,609
103,231	–	309,693	EUR 15,609 less 7.56% of the invested amount exceeding EUR 103,231
Over		309,693	0%

The investment deduction and the energy investment deduction (*see* section 1.9.3.) or the environmental investment deduction (*see* section 1.9.4.) may be applied together. However, if an investor has opted for the application of the energy investment deduction in respect of a particular investment, the environment investment deduction may not be applied with respect to that investment (article 3.42a(6) of the IB).

Non-qualifying investments include land, housing, private cars, vessels, securities, debt claims, goodwill and licences. The acquisition of (part of) an enterprise in exchange for shares is excluded from the investment deduction. Transactions between related parties are also excluded. For the purposes of the investment deduction, companies are related if a company had a direct or indirect participation of at least 33.33% in another company at any moment in the past 5 years or both companies had the same shareholder for at least 33.33% at any moment in the past 5 years (article 8(8)(a)-(c) of the Vpb).

Investments in assets that are intended to be used mainly by third parties (including permanent establishments) are also excluded. A third party includes related and unrelated parties, but it does not include a company belonging to the same fiscal unity (*see* section 8.1.) as the company making the investment.

Investments in the improvement of land may also qualify (article 3.45(1)(b) of the IB).

The deduction is granted in the tax year in which the investment is made. An investment is deemed to be made at the moment of concluding the contract, or, with respect to self-produced assets, when the expenses are incurred. If the asset is not put into use at the end of the calendar year, however, the deduction is limited to the amount actually paid; any excess is carried over to the following year.

The investment deduction is recaptured if the asset is disposed of within 5 years after the beginning of the calendar year in which the investment was made. The recapture applies only if the total disposal price of such assets is equal to at least EUR 2,300 and is computed as a percentage of the disposal price per asset. The recapture percentage is equal to the percentage of the initial investment deduction. The recapture is limited to the amount of the initial deduction (article 3.47(1) of the IB).

A change in nature or use of the asset in a way that the asset no longer qualifies for the investment deduction is deemed to be a disposal, which may result in the recapture (article 3.47(3) of the IB).

In addition, the deduction is recaptured if the asset is not put into use within 12 months after the investment was made and less than 25% was paid, or if the asset is not put into use within 3 years of the investment (article 3.47(6) of the IB).

The investment deduction is not available to investment institutions (*see* section 12.2.).

1.9.3. Investment credit

An energy investment deduction (*energie-investeringsaftrek*) is granted, upon request, for qualifying investments (article 3.42 of the IB). From 1 June 2009, it covers, inter alia, investments in rental housing. The deduction may be applied whether or not the company sustains a loss. Each separate asset must have a cost price of at least EUR 2,500. The energy investment deduction is equal to 41.5% of the total amount of energy investments in a calendar year. The maximum deduction is reached if the qualifying investments amount to a total of EUR 119 million. In the case of a partnership, the sum of all qualifying investments of the partnership as a whole is taken into account to determine which percentage is applicable.

To qualify for the deduction, the investment must be made in new assets that enhance energy saving. Used assets do not qualify. Eligible assets are listed in the Energy Investment Deduction List (*EIA-lijst*). This list is issued by the Ministry of Finance and the Ministry of Economic Affairs. The list is updated every year.

The energy investment deduction and the investment deduction (*see* section 1.9.2.) may be applied concurrently.

Non-qualifying investments include land, housing, private cars, vessels, securities, debt claims, goodwill and licences (article 3.45 of the IB). The acquisition of (part of) an enterprise in exchange for shares is excluded from the investment deduction. Transactions between related parties are also excluded. For the purposes of the energy investment deduction, companies are related if a company had a direct or indirect participation of at least 33.33% in another company at any moment in the past 5 years or both companies had the same shareholder for at least 33.33% at any moment in the past 5 years (article 8(8)(a)-(c) of the Vpb).

Investments in assets that are intended to be used mainly by non-resident parties or permanent establishments outside the Netherlands generally do not qualify for the deduction (article 3.45(1)(a)(2) of the IB).

Investments in the improvement of land may qualify for the deduction (article 3.45(1)(b) of the IB).

The deduction is granted in the tax year in which the investment is made. An investment is deemed to be made at the moment the contract is concluded or, with respect to self-produced assets, when the expenses are made. If the asset is not put into use at the end of the calendar year, however, the deduction is limited to the amount actually paid; any excess is carried over to the following year.

The energy investment deduction is recaptured if the asset is disposed of within 5 years after the beginning of the calendar year in which the investment was made. The recapture applies only if the total disposal price of such assets amount to at least EUR 2,300 and is computed as a percentage of the disposal price per asset. The percentage for the recapture is equal to the percentage of the initial energy investment deduction. The recapture is limited to the amount of the initial deduction (article 3.47 of the IB).

A change in nature or use of the asset in a way that the asset no longer qualifies for the investment deduction is deemed to be a disposal, which may result in the recapture (article 3.47(3) of the IB).

In addition, the deduction is recaptured if the asset is not put into use within 12 months after the investment was made and less than 25% was paid, or if the asset is not put into use within 3 years of the investment (article 3.47(6) of the IB).

The energy investment deduction is not available to investment institutions (*see* section 12.2.).

1.9.4. Environmental investment deduction

An environmental investment deduction (*milieu investeringsaftrek*) is granted, upon request, for qualifying investments (article 3.42a of the IB). The deduction may be applied whether or not the company sustains a loss. Each separate asset must have a cost price of at least EUR 2,500.

The environmental investment deduction is computed as a percentage of the cost price of each qualifying investment. The percentages are 36%, 27% and 13.5% for Categories I, II and III, respectively.

To qualify for the deduction, the investment must be made in new assets that enhance energy saving; used assets do not qualify. Eligible assets are listed in the Environmental Investment Deduction List (*Milieu-lijst*). This list is issued, and updated annually, by the Ministry of Finance and the Ministry of Housing, Planning and Environment. Investments in the improvement of land may qualify (article 3.45(1)(c) of the IB).

Non-qualifying investments include land, vessels, securities, debt claims, goodwill and licences (article 3.45 of the IB). The acquisition of (part of) an enterprise in exchange for shares is excluded from the investment deduction. Transactions between related parties are also excluded. For the purposes of the environmental investment deduction, companies are related if a company has had a direct or indirect participation of at least 33.33% in another company at any moment in the past 5 years or both companies had the same shareholder for at least 33.33% at any moment in the past 5 years (article 8(8)(a)-(c) of the Vpb). Housing and private cars are explicitly included in the list of eligible assets for application of the environmental investment deduction (article 3.45(3) of the IB).

The deduction is granted in the tax year in which the investment is made. An investment is deemed to be made at the moment the contract is concluded or, with respect to self-produced assets, when the expenses are made. If the asset is not put into use at the end of the calendar year, however, the deduction is limited to the amount actually paid; any excess is carried over to the following year.

The environmental investment deduction is recaptured if the asset is disposed of within 5 years after the beginning of the calendar year in which the investment was made. The recapture applies only if the total disposal price of such assets is at least EUR 2,300 and is computed as a percentage of the disposal price per asset. The percentage for the recapture is equal to the percentage of the initial environmental investment deduction. The recapture is limited to the amount of the initial deduction (article 3.47 of the IB). A change in the nature or use of the asset in a way that the asset no longer qualifies for the environmental investment deduction is deemed to be a disposal, which may result in the recapture (article 3.47(3) of the IB). In addition, the deduction is recaptured if the asset is not put into use within 12 months after the investment was made and less than 25% was paid, or if the asset is not put into use within 3 years of the investment (article 3.47(6) of the IB).

If the environmental investment deduction is applied on a certain investment, the energy investment deduction (*see* section 1.9.3.) is not available in respect of that specific investment (article 3.42a(6) of the IB). However, the environmental investment deduction may be applied concurrently with the investment deduction (*see* section 1.9.2.).

The environmental investment deduction is not available to investment institutions (*see* section 12.2.).

1.9.5. Wage withholding tax reductions

The reductions in the wage withholding tax (including the national social security contributions) discussed below are granted as tax incentives to employers. They do not influence the employee's obligations or credit possibilities with respect to the individual income tax. The benefits derived by the employer from the reductions are taxable for corporate income tax purposes (less costs).

1.9.5.1. Research and development

If a company conducts certain research and development (R&D) activities, a reduction of wage withholding tax may be available for salaries paid to employees performing these activities. Such reduction also applies to wages paid in connection with feasibility studies directed at technical-scientific research or at the technical possibilities of own research and development (article 1(1)(n)(1)-(4) of the WVA). The definition of R&D encompasses new products developed from existing components.

In 2015 and 2014, the reduction is 35% (38% in 2013) of the first EUR 250,000 (EUR 200,000 in 2013) of wages in respect of R&D and 14% of any excess of R&D wages. For starting companies developing technological products, the reduction is currently 50% of the first EUR 250,000 (EUR 200,000 in 2013) of the total salaries and 14% of any excess (article 23(3) and (7) of the WVA). The maximum annual reduction per employer or fiscal unity (*see* section 8.1.) is EUR 14 million (article 23(5) of the WVA).

Qualifying activities must be systematically organized in the Netherlands and must be directly and exclusively aimed at technical and scientific research on new technical tangible products or production processes (article 1(1)(n)(1)-(2) of the WVA). A prior feasibility study must be made (article 1(1)(n)(3)-(4) of the WVA); the reduction also applies to wages paid for this feasibility study. The R&D reduction may not be computed on the 30% tax-free allowance granted to foreign employees.

The reduction may be applied after obtaining an R&D declaration from the Minister of Economic Affairs (article 23(1) of the WVA). The request for such a declaration must be filed at least 1 calendar month prior to the beginning of the period in which the R&D activities are initiated (article 22(4) of the WVA). A decision on the request generally must be taken within 3 calendar months (article 22(3) of the WVA). An R&D declaration may be requested for a period of at least 3 and at most 12 consecutive calendar months within a calendar year and for at most 3 periods per calendar year (article 22(1) of the WVA).

1.9.5.2. Other

In addition, a reduction of wage withholding tax (including the national social security contributions) is available with respect to sailors employed on vessels sailing under the Netherlands flag. If the employee is resident in the Netherlands or any other EEA country and subject to Netherlands wage tax and social security contributions, the reduction is equal to 40% of taxable wages (article 17(2)(a) of the WVA). If the employee is subject only to the national social security contributions, the reduction is 10% of the wages (article 17(2)(b) of the WVA).

A combination of this incentive and the research and development reduction (*see* section 1.9.5.1.) is not allowed.

The reduction of wage withholding tax with respect to employees in qualifying education programmes has been abolished with effect from 1 January 2014.

1.9.6. Aruba, Curaçao, St. Maarten and the BES Islands

If certain conditions are met, companies with a permanent establishment situated in Aruba, Curaçao, St. Maarten or the BES Islands (Bonaire, Saba and St. Eustatius), may benefit from the arbitrary depreciation, investment deduction and energy investment deduction (*see* sections 1.9.1. to 1.9.3.) (article 10.10 of the IB and Decree of 23 December 2010, DB2010/304M). The assets in which the investment is made must constitute part of the business assets of the permanent establishment.

The incentives are not taken into account in arriving at the tax relief to avoid double taxation under the Tax Regulation for the Kingdom of the Netherlands (for Aruba, Curaçao and St. Maarten) and the Decree on Tax Regulation for the Netherlands (for the BES Islands) (*see* section 7.4.1.3.).

1.9.7. Innovation box

Royalties derived from a self-developed patented intangible asset developed after 31 December 2009 are, by virtue of article 12b of the Vpb, subject to an effective tax rate of 5% if the asset for at least 30% contributes to the profit derived from the use of the intangible asset. The effective rate of 5% is technically achieved by taking into account for the determination of the taxable profits, 5/25% of the qualifying profits.

The 5% rate also applies to intangible assets for which no patent is granted, but which result from R&D activities for which an R&D certificate was received (*see* section 1.9.5.1.). Gains derived from the transfer of self-developed patented intangible assets are also subject to the 5% rate. The regime does not apply to logos and trademarks.

Prior to the application of the innovation box regime in affiliated situations, it first has to be established whether or not an arm's length remuneration has been applied for the performed functions, assets used and the associated risks. In addition, realized profits have to be allocated based on an arm's length application to permanent establishments prior to the application of the innovation box regime.

With effect from 2011, the regime also applies to qualifying royalties derived during the period between when a patent was applied for and the year preceding the year in which the patent is finally granted.

The reduced effective tax rate of 5% is only applicable to profits derived from the use of an intangible asset that exceed the asset’s development costs. The development costs are all costs incurred for the development of the innovation, regardless of the operational function. Excluded from the development costs are costs for fundamental research to the extent that they are not directly linked to the developed innovation. For situations where a legal entity applying the innovation box regime is converted into another legal entity, *see* section 9.1.

The regime is optional. A choice to apply the regime may not be made retroactively apart from in the year that all conditions are met, as the choice to apply the regime is open as long as the assessment is not yet final. The choice may be made per patented asset or per asset developed by R&D for which an R&D certificate was obtained (*see* section 1.9.5.1.). Nevertheless, a taxpayer may only have one innovation box: it consists of all qualifying assets that the taxpayer has opted to include in the regime.

The development of a qualifying intangible asset is determined by means of elements such as separability, identifiability, transferability and repeatability. The incentive generally applies to patented knowledge and applications, but not to know-how. Decree BLKB2014/1054M of 1 September 2014 clarifies that the self-development requirement is met if a taxpayer is authorized to take decisions and has the functional capacity to control the R&D activities. The outsourcing of R&D activities is permitted if the intangible asset is developed for the taxpayer's own account and risk. To obtain an R&D certificate, the taxpayer must employ qualified research personnel. The condition of self-development is always met if less than 50% of the R&D activities were outsourced, to be shown by means of the number of hours spent on R&D activities. However, when more than 50% of the R&D activities are outsourced, the incentive still applies if the taxpayer shows that substantial coordinating and controlling activities are carried out with respect to the development of the intangible asset.

With retrospective effect from 1 January 2009, losses incurred under the innovation box are fully deductible from taxable profits. Before that date, only 10% of such losses were deductible.

The amount of qualifying profits is determined by means of:

- the per asset method, meaning that costs and profits are determined per intangible;
- the allocation of profits to the core R&D functions after determining the importance of the functions for the taxpayer;
- a cost-plus method by increasing all costs with a percentage between 8% and 15%; or
- a forfeit method allowing the taxpayer to allocate 25% of profits to the innovation box with a maximum of EUR 25,000, if he has developed an intangible asset qualifying for the box in the current year or in the 2 preceding years.

On 20 June 2014, the Council for Economic and Financial Affairs (Ecofin Council) invited the Code of Conduct Group on Business Taxation to assess or consider by the end of 2014 all patent (innovation) boxes in the European Union, including those already having been previously assessed or considered (as is the case for the Netherlands) and thereby ensuring consistency with the principle of equal treatment. The Ecofin Council also initiated an assessment of the EU patent boxes against the background of international developments, including those in relation to the OECD base erosion and profit shifting (BEPS) initiative.

1.9.8. Research and Development Deduction

As from 1 January 2012 an R&D deduction for the development of innovative products is granted. The incentive aims at innovation costs and is provided for in addition to the existing innovation box incentive (*see* section 1.9.7.). Under the deduction entrepreneurs are entitled to a deduction of 60% (54% in 2013) of the cost and expenditure for R&D recognized in a declaration by the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*, RVO.nl), which is a special department of the Ministry of Economic Affairs.

A Decree of 21 December 2011 on the R&D deduction provides that expenses of more than EUR 1 million per asset must be deducted in equal parts spread over the following 5 years. If the taxpayer did not spent more than 150 hours per month on R&D activities, the amount of costs and expenses is deemed to be equal to the number of qualifying R&D hours multiplied by 15. However, this rule does not apply if the taxpayer proves that the amount of costs and expenses exceeds EUR 50,000 per calendar year.

The deduction does not apply to:

- costs for research which is contracted out;
- costs for hiring of labour;
- financing costs;
- costs to purchase or improve land;
- costs which constitute a compensation for putting business assets at the disposal of a related taxpayer.

1.10. Rates

1.10.1. Income

The corporate income tax rates are as follows (article 22 of the Vpb):

Taxable income (EUR)		Tax on higher amount (EUR)	Rate on excess (%)
Up to	200,000		20
Over	200,000	40,000	25

Before 1 January 2011, the corporate tax rate applicable to taxable income exceeding EUR 200,000 was 25.5%.

Qualifying investment institutions are taxed at a rate of 0% (*see* section 12.2.).

1.10.2. Capital gains

There is no separate tax on capital gains. Capital gains are taxed as ordinary business income at the general corporate income tax rates.

1.10.3. Withholding taxes

1.10.3.1. Dividends

A dividend withholding tax (*dividendbelasting*) of 15% is levied on dividends, liquidation proceeds and other profit distributions, whether in cash or in kind, paid by resident companies to resident shareholders. No dividend tax needs to be withheld if the recipient qualifies for the participation exemption (*see* section 6.1.3.) and/or falls under the conditions of the EU Parent-Subsidiary Directive, if the recipient is resident of another Member State of the European Union, or if both the distributing company and the shareholder are part of the same fiscal unity (*see* section 8.3.). Stock dividends distributed out of a capital premium (*agio*) reserve are exempt from withholding tax in all cases.

The same withholding tax also applies to interest from participation loans (*see* section 1.4.5.). Such interest is treated as dividends for dividend withholding tax purposes. A participation loan may qualify for the participation exemption (*see* section 6.1.3.); thus, the above-mentioned exemption from the withholding obligation also applies (articles 3(1)(f) and 4(1) of the DB).

No exemption from, or refund or credit of, dividend withholding tax is granted to a recipient that has paid a consideration in connection with the receipt of dividends as part of a series of transactions, whereby it is assumed that another individual or company is, in fact, benefiting directly or indirectly from receipt of the dividends (article 4(7) of the DB).

The tax withheld is generally credited against the recipient's corporate income tax liability. No credit is granted, however, if the recipient of the dividends is not the beneficial owner of these dividends and the beneficial owner would not be entitled to an exemption from dividend withholding tax under application of the anti-avoidance provision in the applicable tax treaty (article 4(3) and (4) of the DB). This is deemed to be the situation where the recipient has paid compensation in exchange for the dividends as part of several related transactions and the dividends are entirely or partially (in)directly paid for the benefit of:

- individuals or companies that are only entitled to a lower credit or refund; and
- such individuals or companies have (in)directly obtained or retained shares, profit shares or similar rights, or loans constituting equity of the debtor (*see* section 1.4.5.), in the dividend paying company to such an extent that the legal position remains the same as before the related transactions took place (article 25(2) of the Vpb).

The term “related transactions” includes transactions on a recognized stock exchange, and transactions in relation to the purchase of dividend coupons or for establishing of short-term beneficial rights (article 25(3) of the Vpb).

However, to avoid unreasonable results, the rule is not applied in certain circumstances, determined in each individual case (Decree of 15 January 2011, DGB 2010/8223M).

No credit is granted for dividend withholding tax withheld from profit distributions which are exempt from corporate income tax, such as participation dividends, purchased dividends and dividends distributed by a subsidiary in a fiscal unity (article 25 of the Vpb). In such a case, the taxpayer may claim a refund for the dividend withholding tax (article 10 of the DB).

For withholding taxes on payments to non-resident companies, *see* section 7.3.4.

1.10.3.2. Interest

There is no withholding tax on interest. Interest on participation loans is, however, treated as dividends for withholding tax purposes (*see* section 7.3.4.1.).

1.10.3.3. Royalties

There is no withholding tax on royalties.

1.10.3.4. Other income

There is no withholding tax on any other type of income.

1.11. Administration

1.11.1. Tax returns

Companies must file their tax returns by the date set by the tax inspector. As from 1 January 2005, corporate income tax returns must be filed electronically. VAT returns relating to taxable periods after 1 January 2005 also have to be filed electronically; wage tax returns must be filed electronically as from 1 January 2006.

The filing date may not be less than 1 month after the tax inspector has sent the tax return (article 9(1) of the AWR). In general, corporate income tax returns must be filed before 1 June of the year following the tax year (provided that the tax year coincides with the calendar year).

The filing date may, upon request, be extended by the tax inspector, at which time the inspector may impose conditions, e.g. that information be supplied to prepare a preliminary assessment (article 9(2) of the AWR).

If the tax return has not been filed by the set filing date, the tax inspector generally sends a reminder and allows the company to comply with its filing obligations before a date which is mentioned in the reminder. After receiving this notice, a request for extending the filing date is denied. If the company fails to file the tax return before the date mentioned in the reminder, the tax inspector may impose a penalty upon preparing the assessment. For details on assessment, *see* section 1.11.2.; for penalties, *see* section 1.11.5.

Tax and accounting firms may apply for a special extension of the filing date for their clients. Under certain conditions, the filing period may be extended up to 10 months.

The tax return must be accompanied by copies of documents that may be relevant with respect to preparing an assessment, most notably the commercial annual accounts and explanatory notes (article 7 of the AWR).

Accounting records relevant for taxation must be kept for a period of 7 years. They should be maintained in such a way that tax liabilities are easily recognizable (article 52 of the AWR).

1.11.2. Assessment

The competence for making assessments, collecting taxes and other matters relating to the tax liability of companies lies with one of the local tax offices. Which local tax office is competent depends on the location of the head office of the company or group of companies in the Netherlands. For some types of enterprise, the competence is centralized as follows:

- for financial institutions, such as banks and insurance companies, the competent authority is the Banking and Securities Team of the Local Tax Office Amsterdam;

- for oil and gas companies and their (sub)contractors, the competent authority is the Oil and Gas Team of the Local Tax Office Rijnmond, Rotterdam Office; and

- for group financing, licensing and holding companies, the competent authority is the APA/ATR Team of the Local Tax Office Rijnmond, Rotterdam Office. The APA/ATR Team is also competent on transfer pricing issues with respect to advance pricing agreements (APAs; *see* section 1.11.7.) and advance tax rulings (ATRs; *see* section 1.11.7.).

After receiving the tax return, the tax inspector makes an assessment. He is not obligated to make the assessment according to the information in the tax return, but if he makes any adjustments, he must inform the company of his reasons. If no tax return was filed, the tax inspector may make an estimated assessment (article 11 of the AWR). The tax inspector may request additional information relevant for determining the tax liability (article 47 of the AWR).

The tax inspector may make one or more preliminary assessments at his own discretion. The amount of the assessment is estimated as the average of the 2 preceding years, unless the company makes a reasonable case for a lower amount. Preliminary assessments are made in the current tax year. The taxpayer may request the tax inspector to revise a preliminary assessment if:

- new facts would lead to a more accurate preliminary assessment; or

- the relevant legislation has been incorrectly applied (article 13 of the AWR; article 23 of the Uitv. reg. AWR).

It is standard practice to make at least one preliminary assessment if it is expected that the company will realize taxable profits at the end of the tax year. Due to this practice, companies may file an estimation form with respect to the estimated profits.

Additional assessments may be made if new information obtained by the tax inspector proves that the initial assessment was made in an amount lower than the actual tax liability. Any facts that the tax inspector could or should have known are not deemed to be new facts, unless the company has misled the tax inspector with respect to this information. In addition, new rulings of the Supreme Court or a change of opinion of the tax inspector are not deemed to be new facts in this respect.

An additional assessment is allowed upon the discovery of a minor mistake made by the tax inspector, which was obvious for the company (article 16 of the AWR).

1.11.3. Appeals against assessment

In addition to the assessments, other decisions made by tax inspectors that are specifically mentioned in the tax law (such as denial of a fiscal unity; *see* section 8.1.) may be objected to and appealed as described below.

A company or its representative (e.g. tax consultant) may lodge an objection with the tax inspector within 6 weeks after the date of the assessment (articles 22j and 23 of the AWR; article 6:7 of the Awb). One objection may cover several assessments (article 24a of the AWR).

The objection must state the grounds on which the assessment should be revised, but it is allowed to file a pro forma objection (i.e. a mere statement that the company objects to the assessment, without stating the grounds on which the objection is based). The tax inspector requests the company to send an elaboration on the objection within 4 weeks. If the company does not respond, the tax inspector sends a reminder setting an additional term of 2 weeks. If the company fails to meet this last term, the objection is generally declared non-admissible (article 6 of the BFB).

The company lodging an objection has the right to request a hearing before a decision is rendered. In general, the hearing is before a tax inspector other than the one dealing with the objection (article 7:5 of the Awb).

Article 7:10 of the Awb prescribes that a decision must generally be taken within 6 weeks for regular cases. This period is extended to 12 weeks if an independent advisory commission is set up to organize a hearing with respect to the appeal.

If the company is not satisfied with the decision of the tax inspector concerning its objection to the assessment, an appeal may be lodged with a lower court (*Rechtbank*) (article 26 of the AWR). The appeal must be lodged within 6 weeks after the date of the decision of the tax inspector (article 26c of the AWR; article 6:7 of the Awb). One appeal may cover several related decisions of the tax inspector (article 26b of the AWR).

The appeal must state all the objections to the decision of the tax inspector. It is, however, allowed to lodge a pro forma appeal (i.e. a mere statement that the company appeals to the decision, without stating the grounds on which the appeal is based). The court of appeals sets a term for the company to rectify the omission to state the grounds on which the appeal is based. The company and the tax inspector are invited to make their case before the court in person. The company does not have to be represented by a legal representative.

The lower court must render its written decision within 6 weeks after the closure of its investigations (article 8:66 of the Awb). In extraordinary circumstances, this period is extended by another 6 weeks. The lower court may also render an oral decision, which is stated after the hearing. The oral decision may be adjourned for 2 weeks (article 27d of the AWR).

A company may file a request for a provisional ruling by the lower court if an objection or an appeal already has been lodged. The court of appeals considers the request only if sufficient interest has been proven.

Within 6 weeks after the decision of the lower court, an appeal may be lodged with a court of appeals (*Gerechtshof*) (article 27h of the AWR; article 6:7 of the Awb). The procedural aspects are the same as before the lower court (*see* above). The court of appeals may decide to refer a case back to the lower court if (i) it nullifies a decision according to which the lower court is incompetent to decide the case or (ii) it decides for other reasons that a case has to be decided again by the lower court (article 27q of the AWR).

Alternatively, after the decision of the lower court, the involved parties may also agree to directly appeal to the Supreme Court and to leave out the appeal procedure before the court of appeals (*sprongcassatie*).

Both the company and the tax authorities (i.e. the state, represented by the State Secretary for Finance) may lodge an appeal against the written decision of the court of appeals with the Supreme Court (*Hoge Raad*) (article 28 of the AWR). The appeal must be lodged within 6 weeks after the date the decision of the court of appeals was received by the party lodging the appeal (article 6:8 of the Awb). The appeal must be sent to the court of appeals whose decision is appealed. The court of appeals forwards the appeal to the Supreme Court (article 28b of the AWR).

The Supreme Court takes the appeal into consideration only on grounds of misunderstanding of the tax law or neglect of procedure by the court of appeals; an appeal in relation to the facts of the case is not possible.

1.11.4. Payment of tax and refunds

The final corporate income tax is payable after receiving an assessment. Some other taxes are payable on a tax return basis, meaning that taxes are payable upon self-assessment (e.g. VAT, dividend withholding tax and wage withholding tax).

The final corporate income tax is payable within 6 weeks of the date of the assessment. Preliminary assessments payable in the current tax year may be made in as many instalments as months remaining of that year. Additional corporate income tax assessments are payable within 1 month of the date of the assessment (article 9 of the Iw). Preliminary assessments are set off against the final tax liability and dividend withholding tax is credited against the corporate income tax.

Lodging an objection or appeal does not suspend the obligation to pay taxes in general, but the payment of the disputed amount may be suspended (article 9(11) of the Iw).

In extraordinary circumstances, e.g. if the company is declared bankrupt, taxes are payable immediately (article 10 of the Iw).

If the taxes are not paid in due time, the tax collector sends a reminder setting a new term of 10 days. If the company fails to meet this new term, the tax collector issues a distress warrant. This distress warrant entitles the tax collector to execute on the assets of the company. The tax collector has several other privileges in order to secure payment of taxes (articles 11-23 of the Iw).

Companies that pay a preliminary assessment immediately, which is otherwise payable in several instalments, receive a reduction of tax. The rate of the reduction is equal to the statutory interest rate (*see* section 1.11.5.). The amount of reduction is included in taxable income (article 27a of the Iw).

The company receives a refund of tax if the tax paid by preliminary assessments exceeds the final assessment. A refund is also granted if the assessment is reduced by virtue of an objection or appeal. Interest on the refunded tax is computed at the statutory rate (*see* section 1.11.5.).

1.11.5. Late payment interest and penalties

Interest (*belastingrente*) becomes payable upon assessment if the tax due exceeds the advance levies. The accrual period of the interest is from the end of the tax year until the date of the corporate income tax assessment. With respect to wage withholding tax, VAT and some other taxes, the accrual period starts at different dates, but generally when the taxes are due or refundable; consequently, the company receives interest upon a tax refund (articles 30f-30k of the AWR).

From 2013, the accrual period of the interest no longer starts at the end of the tax year, but on 1 July of the following year. This means that no interest is payable if an assessment is issued before 1 July. From 1 January 2014, the interest rate, for corporate income tax purposes, was equal to the statutory interest rate for commercial transactions with a minimum of 8%. The current rate is set at 8.15%. For other taxes, the interest rate was 3% until 31 March 2014, and is currently at least 4%.

If the tax due is lower than the advance levy, the tax authorities pay an interest compensation. The compensation period starts to run from the end of the calendar year. From 2013, an interest compensation is only paid if an assessment is not issued within 13 weeks after the date on which the return was filed. In this case, an interest compensation is paid from the date on which an assessment should have been issued until the date the assessment was actually issued. With effect from 2013, no interest compensation is paid if a settled assessment is later reduced because of an appeal. However, by virtue of the ECJ case *Irimie* (Case C-565/11), the interest compensation period begins as from the date of the payment by the taxpayer.

Upon late payment of final taxes, interest (*invorderingsrente*) is payable. The accrual period starts from the payment date of the final tax (articles 28-31a of the Iw). From 2013, the interest rate is equal to the legal interest for non-commercial transactions. This rate was 3% until 31 March 2014, and is currently at least 4%.

Before 2013, the interest rate was statutory and could be changed by royal decree every 3 months, e.g. for the period 1 October 2012 through 31 December 2012, the rate was 2.25% (previously 2.5%).

With respect to penalties, a distinction must be made between administrative fines and criminal penalties. Administrative fines are governed by tax law only, criminal penalties are also governed by penal law.

Administrative fines are imposed by the tax inspector if the company has not complied with its obligations regarding filing of tax returns or proper payment of taxes. Administrative fines are governed by the General Law on Taxation (AWR) and the Decree on Administrative Fines (BBBB).

Penalties exist for non-filing or late filing of tax returns. The tax inspector may impose a penalty while making the assessment. The amount of penalty depends on the tax due on the assessment. If tax is due, the penalty amounts to EUR 2,460 in case of a first time default, but may be increased up to EUR 4,920 in cases of repeated default.

In the case of late payment or failure to pay the tax due, the tax inspector may impose a penalty of up to 3% (2% before 2014) of the tax due with a minimum of EUR 50 and a maximum of EUR 4,920 (articles 67c of the AWR and 23 and 24 of the BBBB).

A penalty equal to 100% of tax due is imposed by the tax inspector if the company fails to comply with its obligations due to a fault of the company itself (articles 67d-67f of the AWR). However, the penalty may be reduced to 50% or 25%, depending on the severity of the fault (articles 25-28 of the BBBB).

It is in the tax inspector's discretion whether or not to impose a penalty based on the fault of the company; the burden of proof of the existence of a fault is on the tax inspector.

In case where the tax inspector has imposed a penalty, criminal prosecution is no longer possible (article 69a of the AWR).

The various criminal offences are described in the AWR. These include filing a formally incorrect tax return, providing the tax authorities with incorrect information, falsified books and records, and failing to preserve books and records for a period of 7 years (articles 68-70 of the AWR).

The penalties imposed for the criminal offences range from EUR 8,100 for minor offences to EUR 81,000 for severe fraud (articles 69-71 of the AWR and 23 of the Penal Code). In the case of more severe offences, however, the amount of tax evaded may be higher than the maximum fine stated in the Penal Code. In those situations, the maximum penalty equals the amount of tax evaded (article 69(1) and (2) of the AWR). Furthermore, with effect from 1 January 2014, a penalty is imposed for failure to comply with the disclosure requirements set for intermediate financing companies (intermediate interest and royalty companies). Such failure, which is regarded as an offence, is subject to a penalty up to EUR 19,500 in cases of intent or gross negligence.

1.11.6. Statute of limitations

The statute of limitations for making an assessment is 3 years from the end of the tax year. If the tax inspector has granted an extension for filing the tax return, this period is extended with the period of granted extension (article 11(3) of the AWR).

An additional assessment is only possible if the tax inspector establishesa “new fact”. Such an assessment must be made within a period of 5 years, starting from the end of the tax year. This period is also extended in the case of an extension for filing the tax return (article 16(3) of the AWR). With respect to foreign-source income, the period for making an additional assessment is 12 years (article 16(4) of the AWR).

On 11 June 2009, the ECJ held in the case of *X and E.H.A. Passenheim-van Schoot v. Staatssecretaris van Financiën* (C-155/08) that the application of a longer 12-year period of the statute of limitation in respect of foreign assets and savings balances is not incompatible with the freedom to provide services and the freedom of capital movement (articles 49 and 56 of the TFEU) if the assessment has been made fairly soon after the new fact was found. The decision of the ECJ was followed by the Supreme Court in its decisions of 26 February 2010 in joined cases 43050 and 43670bis.

On 6 September 2013, a bill to change the statute of limitations period was submitted to the parliament for approval. Some important aspects of the adopted bill are as follows:

- The statute of limitations period for issuing a supplementary assessment is reduced from 5 to 2 years. This 2-year period starts on the day after the expiration of the revision period. The revision period starts from the date of the (provisional) assessment and expires 18 months after the receipt of the tax return. This means that the possibility to impose a supplementary assessment de facto would expire after 42 months (i.e. 18 months plus 2 years) after the tax return was received.
- In the case of tax fraud, the statute of limitations period is extended from 5 to 12 years.
- The possibilities to issue a supplementary assessment in the case of new facts is reduced because of the fact that if no, or an abnormally low, tax is erroneously imposed, this must reasonably be knowable for the taxpayer.

1.11.7. Rulings

The Netherlands has an open system of advance tax rulings (ATRs). This system enables companies active in the Netherlands, whether a single company or group of companies, to approach the tax authorities and seek guidance in advance on the fiscal implications of its transactions in the Netherlands. There is no limitation on the area of tax law that may be discussed.

In general, an advance tax ruling is considered to be a binding advance opinion from the tax authorities based on specified facts and circumstances. The ruling is binding only with respect to the activities specified by the ruling; if the actual facts and circumstances deviate, the ruling is cancelled.

Rulings are free of charge and in general are provided for a period of 5 years. There is no formal procedure. The tax authorities do not issue a ruling if the proposed structure obviously conflicts with domestic or international tax law or erodes the tax base in the Netherlands.

For specific topics, companies previously had to address the Ruling Team of Local Tax Office for Large Enterprises in Rotterdam (renamed Local Tax Office Rijnmond, Rotterdam Office). From 1 April 2001, the ATR practice has been complemented with an APA practice (*see* sections 1.11.7.1. and 1.11.7.2.).

1.11.7.1. Advance Pricing Agreement (APA)

The Advance Pricing Agreement programme was started on 1 April 2001 (Decree of 30 March 2001, IFZ2001/295M, replaced by Decrees of 11 August 2004, IFZ 2004/124M and 21 August 2004, IFZ2004/680M) and has been updated with effect as of 27 November 2013 (Decree of 14 November 2013, IFZ2013/184M which cancelled Decree IFZ2004/680M). Under this programme, companies may, upon request, obtain a unilateral or bilateral agreement on transfer pricing in cross-border transactions between related companies.

The request must be sent to the local tax inspector, who presents the request to the APA/ATR Team of the Local Tax Office Rijnmond, Rotterdam Office. The APA/ATR Team provides the local tax inspector with a binding advice on the issues in the request. The binding advice of the APA/ATR Team is mandatory for concluding the agreement.

The APA programme is directly based on the OECD Transfer Pricing Guidelines.

1.11.7.2. Advance Tax Ruling (ATR)

The Advance Tax Ruling programme is regulated by Decrees DGB2014/3098, DGB 2014/3099 and DGB 2014/3101 of 12 June 2014. The rulings are issued by the APA/ATR Team (*see* section 1.11.7.1.). Under this programme, companies may, upon request, obtain an agreement on, amongst others, the following issues:

- the application of the participation exemption to holding companies in international structures;
- the use of hybrid financing instruments and hybrid entities;
- the existence of a permanent establishment in the Netherlands; or
- the classification of activities, i.e. group services or shareholder activities.

With respect to related transactions carried out by intermediate financial services companies or holding companies, no ATRs are issued if the company does not have substance in the Netherlands. Furthermore, no ATRs are issued to an intermediate financial services company if that company does have substance in the Netherlands, but does not undertake real risks, i.e. credit or market risks. In this context, risks passed on to a third and unrelated party are deemed to be risks of the financial services company. A mere operational risk is not sufficient to meet this criteria. An intermediate financial services company providing loans is deemed to run a real risk if the equity necessary to bear the risks is equal to at least 1% of the total of all loans made or EUR 2 million. For intermediate financial services companies which do not meet the risk criteria, an ATR is only issued if the company meets the set minimum substance requirements and it accepts that information will be exchanged with the source country. If the activities of financial services companies do not involve real risks, no relief for foreign withholding taxes paid is available as, in this case, the financial services company is merely a conduit (Decree of 12 June 2014, DGB 2014/3101) (*see* section 7.2.1.3. and 10.2.3.).

In general, ATRs are not issued if they could be incompatible with good faith in respect of the Netherlands tax treaty partners or international relations, subject to additional requirements (Decree DGB 2014/3101). In addition, no ATRs are issued if it is assumed that the information is presented incorrectly or differently from the way it would be presented in the foreign state concerned.

The APA/ATR Team of the Local Tax Office Rijnmond, Rotterdam Office, provides the local tax inspector with binding advice on the attribution of shares to a permanent establishment. The binding advice of the APA/ATR Team is mandatory for concluding the agreement. However, with respect to APAs and ATRs requested by intermediate financial services companies, the Local Tax Office Rijnmond, Rotterdam Office, handles the entire fiscal compliance of the taxpayer. The same applies to holding companies and companies conducting financing and/or licensing activities (Decree of 3 June 2014, DGB 2014/296M).

On 30 August 2013, the Netherlands government announced in a letter to the parliament that it sought to improve tax transparency in order to avoid abuse of tax treaties. As concerns intermediate service companies, being resident companies whose main activities involve the intra-group receipt and payment of foreign interest, royalties, and rental or lease payments from and to companies abroad, this means that the substance requirements for obtaining an APA also applies for companies that did not request for an APA. If such a company invokes a Netherlands tax treaty in another country, it must explicitly report whether or not the substance requirements are met and whether its equity is appropriate to the function and risks of the company when filing the tax return (*see* section 10.2.3.). With effect from 1 January 2014, this new policy was implemented in a new article 3a of the Implementing Decree on the Assistance in International Tax Matters (*Uitvoeringsbesluit internationale bijstandsverlening bij de heffing van belastingen*). This article contains the new substance requirements for intermediate financial services companies in order to prevent taxpayers with no real presence in the Netherlands from benefitting from the Netherlands treaty network. Recently, the Netherlands State Secretary for Finance also published a decree clarifying the substance requirements for holding companies (Decree DGB 2014/3099). An ATR is only issued for intermediate holding companies or top holding companies if the company is part of a group which has operational activities in the Netherlands or has genuine plans to engage in such activities. These conditions are applicable for holding companies with effect from 13 June 2014 (*see* section 10.2.3.).

Spontaneous exchange of information concerning the APA to foreign tax authorities will also apply to intermediate financial services companies that obtain an APA with the Netherlands tax authorities if the group in which they operate does not perform activities in the Netherlands other than those relating to receiving and paying of interest and/or royalties, and/or rental or lease payments.

1.11.7.3. International Investors' Desk

A foreign investor who is not yet conducting activities in the Netherlands, but is considering a job-creating investment of more than EUR 4.5 million may submit an APA or ATR request to the International Investors' Desk (*Aanspreekpunt buitenlandse investeerders*) located at the Local Tax Office Rijnmond, Rotterdam Office.

1.11.8. Tax audit/examination

With irregular intervals, the tax authorities perform audits to examine whether a company complies sufficiently with its fiscal obligations. In general, the tax authorities give an advance notice to a company of an upcoming audit.

In general, there are two kinds of audits. The most common form is the examination on the spot (*waarneming ter plaatse*), where the tax authorities visit a company to examine the way books are kept in a general way. A more time-consuming and severe form is the audit of books and records (*boekenonderzoek*), where the tax authorities examine the tax compliance for the current year and the preceding 5 tax years. An examination on the spot may give rise to an audit of books and records.

1.11.9. Withholding obligations

1.11.9.1. Dividends, interest and royalties

Dividend payments, distributions treated as dividends and interest on participation loans paid by resident companies to residents or non-residents are subject to dividend withholding tax (*dividendbelasting*).

The tax is withheld by the distributing company at the moment the dividends are put at the disposal of the recipient. The distributing company must file a tax return and pay the tax withheld to the tax authorities within 1 month of the distribution (articles 7 of the DB and 19(3) of the AWR).

There is no withholding obligation if:

- the participation exemption regime applies (*see* section 6.1.3.);
- the dividends are paid to a qualifying EU parent company (*see* section 7.3.4.1.); and
- both the distributor and the recipient are part of a fiscal unity (*see* section 8.1.)

There is no withholding tax on interest, other than the dividend withholding tax on participation loans, nor is there a withholding tax on royalties.

For withholding tax rates, *see* sections 1.10.3. (payments to residents) and 7.3.4. (payments to non-residents).

1.11.9.2. Subcontract payments

There are no withholding obligations with respect to payments to subcontractors.

1.11.9.3. Fees for technical and other services

There is no withholding tax on fees for technical and other services.

1.11.9.4. Other

A wage withholding tax (*loonbelasting*) is levied on payments by a company to its employees and deemed employees, including directors who are also substantial shareholders. The rules on taxation of employment income are governed by the Wage Withholding Tax Law of 1964 (*Wet op de loonbelasting 1964*, LB) and correspond to similar rules of the individual income tax.

With respect to social security contributions, a distinction must be made between employee social security contributions and national social security contributions (*see* section 4.2.).

Wage withholding tax and social security contributions are withheld by the employer at the moment the employment income is paid to the employee. Within a set period of time, usually 1 month, the employer must file a tax return and pay the taxes and the national social security contributions to the tax authorities (article 27 of the LB; article 19(1) of the AWR). Employee social security contributions withheld are remitted monthly to the social security authorities.

The rates of the wage withholding tax are progressive and correspond with the individual income tax rates, which include the national social security contributions. The employee social security contributions are withheld at the rates mentioned in section 4.2. The wage withholding tax and the national social security contributions are, in general, advance payments of individual income tax. Employees may set off the taxes withheld against their final individual income tax liability. If certain conditions are met, the wage withholding tax constitutes a final levy.

Contractors are jointly and severally liable for wage withholding tax in the same manner as for social security contributions (*see* section 4.2.).

In respect of employees seconded from abroad, wage withholding tax liability only arises if the non-resident employer has or is deemed to have a permanent establishment in the Netherlands.

A non-resident company is subject to withholding obligations in respect of salaries paid to its employees if (article 6(2) and (3) of the LB):

- it has, or is deemed to have, a permanent establishment or permanent representative in the Netherlands; or
- it employs at least one person in the Netherlands, keeps payroll records in the Netherlands and has reported itself to the local tax inspector as a withholding agent.

For wage withholding tax incentives, *see* section 1.9.

2. Other Taxes on Income

The state profit share is an additional tax levied on income from oil and gas production. The tax is levied on holders of an onshore or offshore Netherlands production licence. The tax rate is 50%, with a tax credit for the deemed allocable corporate income tax. Most allocable expenses, including exploration expenses, may be deducted at 110% instead of 100% of the cost.

The state profit share is a deductible expense for corporate income tax purposes.

2.1. Local income tax

Not applicable.

2.2. Business tax on income

Not applicable.

2.3. Other

Not applicable.

3. Tax Calculation Example

This simulation tool allows you to fill out your own figures to calculate the corporate income tax for a profitable resident company obtaining source income and extraterritorial income in a given year.

Business income/loss as per profit and loss statement in EUR	**20,000,000**
	Currency converter
Add-backs (+)	
Depreciation/amortization	0
Non-trading expenses	200,000
Expenses connected with exempt income	200,000
Non-deductible interest (thin cap., etc.)	400,000
Applicable transfer pricing adjustments	0
Deemed income (e.g. balancing charges)*	0
General provisions	400,000
Disallowed accrued but unpaid obligations	0
Operation of anti-avoidance rules	0
Specific exclusions:	0
- Entertainment expenses	100,000
- Disallowed management expenses/technical fees*	0
- Legal fees*	0
- Bribes/fines	0
- Non-deductible gifts	0
- Non-deductible taxes	700,000
- Other	100,000
Total add-backs	**2,100,000**
Deductions (-)	
Exempt income	-2,000,000
Depreciation/amortization	0
Deemed expenses (e.g. balancing charges, notional interest)*	0
Applicable transfer pricing adjustments	0
Taxable income not relatable to the current tax year*	0
Tax reliefs granted by way of deduction (exports, R&D)	-500,000

Other			0
		Total	**-2,500,000**
Adjustments			
Applicable loss relief			-25,000
Applicable group relief			-100,000
Applicable charges on income*			0
Inflationary adjustment*			0
Other			0
		Total adjustments	**-125,000**
Taxable income			19,475,000
		Applicable rate	Tax
0 to	200,000	20%	40,000
200,000	and above	25%	4,818,750
Tax due			4,858,750
Tax credits			
Advance payments*			0
Tax withheld			-100,000
Applicable foreign tax credit			-300,000
Incentives			0
		Total credits	**-400,000**
Tax payable			4,458,750
Alternative minimum income tax*			0
Surcharge*			0
Total tax due			**4,458,750**
			Currency converter
Effective tax rate			22.79%

* Not applicable.

Disclaimer: This tax calculation example is solely developed and maintained by IBFD research specialists. IBFD makes no representation nor gives any warranty (either express or implied) as to the completeness or accuracy of this tax calculation example. IBFD will not be liable for any direct or consequential damages arising from the use of the information contained in this tax calculation example.

Please note that the Print, PDF, Word, Excel, and Favourites functionality only exports the presented tax calculation example in Simultax, so not the figures you filled in yourself. You can also download and modify the Excel version for your own purposes.

4. Taxes on Payroll

4.1. Payroll tax

Employers must pay a levy on excessive severance payments to former employees, i.e. payments exceeding in each case EUR 531,000. The levy is calculated at a rate of 75% of the excess over the above amount (article 32bb of the LB). If the employment is terminated in the same year when it started, the amount which would have been earned if the employee would have worked for the full year is taken into account. If the employment started in the previous year, the salary of that year is taken into account. If it started 2 or more than 2 years earlier, the salary of the second preceding year is taken into account.

In 2013 and 2014 employers must pay a one-off 16% levy on salaries if and to the extent that an employee's salary for the previous year exceeded EUR 150,000 (article 32bd-1 of the LB). The employers must report this austerity levy in the wage tax return for March 2013/2014 and remit the amounts in April 2013/2014.

In tax practice, it has been argued that the judgment of the Court of Appeals of Arnhem-Leeuwarden of 12 February 2013 (12/0047) provides grounds for claims that this levy is contrary to article 1 of the First Protocol to the European Convention on Human Rights because of the lack of sufficient grounds to justify the substantive retroactive effect of this legislation. Decisions from Lower Courts have so far shown different outcomes; litigations are still pending.

4.2. Social security contributions

The Netherlands has an extensive system of social security. In general, there are two major types of social security:

- the national social security; and
- the employee social security.

The national social security system encompasses the general old age pension fund (AOW), the general surviving relatives fund (ANW) and the general extraordinary medical expenses fund (AWBZ). The AWBZ, however, was abolished with effect from 1 January 2015 and replaced by the Social Support Law 2015 (*Wet maatschappelijke ondersteuning 2015*) and the Law on Long-Term Medical Care (*Wet Langdurige Zorg 2015*) for minor forms of care and support. Other forms of care are covered by the Health Insurance Law (*Zorgverzekeringswet*). National social security contributions are payable by employees and other individuals in combination with the individual income tax on the first two tax brackets. The employer withholds the employee's social security contributions (together with the wage withholding tax; *see* section 1.10.3.1.), which the employee may set off against his final national social security liability. The contributions (and the wage withholding tax) are deductible for corporate income tax purposes (*see* section 1.4.2.).

The employee social security covers the unemployment insurance (AWF), disability insurance (WIA) and health insurance (ZVW). The employer contributions are calculated on the gross income paid to the employees, up to EUR 51,976 annually per employee. The rates of employer contributions are the following (for 2015):

Contribution for		Rate (%)
Disability insurance (WIA):		
–	fixed general contribution	5.25[1]
–	work resumption premium	1.08[2]
–	variable risk-related contribution for large companies	0.12-1.96
Unemployment insurance (AWF):		

1 For companies with total gross salary payments of less than EUR 31,400, the rate varies per sector between 0.19% and 1.49%.
2 This rate consists of three parts: a fixed rate of 0.51%, a flexible rate of 0.18% and a sickness contribution rate of 0.34%.

Contribution for		Rate (%)
–	general contribution	2.07
–	redundancy contribution	0.78
–	redundancy contribution (average)[3]	2.68
Child care contribution		0.50
Health insurance (ZVW)		6.95[4]

In addition to the employer's liability for social security contributions, contractors are jointly and severally liable for such contributions owed by the subcontractors and their subcontractors involved. This liability is based on the Law on Chain Liability (*Wet ketenaansprakelijkheid* incorporated in article 35 of the Iw and article 60 of the WFSV) and the Law on Users' Liability (*Wet inlenersaansprakelijkheid*, incorporated in article 34 of the Iw).

Liability for social security contributions generally arises when the employment activities are performed in the Netherlands. EU regulations and social security agreements (*see* section 7.4.5.) may provide otherwise.

Furthermore, social security contributions are payable in respect of an employment on the Netherlands continental shelf, and when an employment is carried out abroad for less than 3 months. If the employment is carried out abroad for a period of more than 3 months, social security contributions are payable only if the employment is carried out for an employer resident or established in the Netherlands. Furthermore, social security contributions are payable for employees of non-resident companies seconded from abroad to the head office. Social security contributions are deductible for taxable profits (*see* section 1.4.2.).

3 The actual rate varies per sector.

4 The income-dependent premium of 6.95% is payable by all employers on a maximum amount of EUR 51,974. Before 2013, the contribution was levied on the employee, who was then fully compensated by the employer for this contribution.

5. Taxes on Capital

5.1. Net worth tax

There is no net worth tax.

5.2. Business tax on capital

There is no business tax on capital.

5.3. Real estate tax

Local governments may impose a wide variety of taxes, levies and charges. Those taxes are generally levied in respect of the possession or use of immovable property although the taxable event may be different. Only the real estate tax imposed by municipalities is discussed below.

Real estate tax (*onroerende-zaakbelasting*) is imposed annually by all municipalities. The tax is governed by the Municipality Law (*Gemeentewet*) and local ordinances.

The taxable base is established by annual valuation (*WOZ-beschikking*) issued by municipality. The valuation is governed by the Law on Valuation of Immovable Property (*Wet waardering onroerende zaken*, WOZ). In general, immovable property used in a business is valued at the higher of the fair market value of the full ownership of the (non-occupied) property and the replacement value (article 17 of the WOZ).

The tax rate differs for each municipality. Different rates may apply for commercial property and private property.

Real estate tax is fully deductible for corporate income tax purposes.

5.4. Landlord charge

From 1 January 2013, landlords of rental housing in the regulated sector have to pay a landlord charge (*verhuurderheffing*). The charge is applicable if more than ten houses are rented out for which the rent is less than the rent allowance threshold (EUR 699.48 in 2014 and 2015; EUR 681.02 in 2013); the situation as at 1 January is decisive. Exceptions are housing rented out by hotels, etc. and housing only rented out on a short-term basis.

The landlord charge is levied on the total WOZ value (*see* section 5.3.) of the relevant rental housing, less ten times the average WOZ value of such rental housing (tax-free threshold). A rate of 0.381% applies for 2014 and 2015 (0.0014% for 2013).

Subject to certain conditions, a taxpayer may obtain a tax rebate ranging from EUR 10,000 to 15,000 per residential immovable property. Excess rebate may be carried forward to the next year. The rebate is granted for investments in housing in certain parts of Rotterdam, as well as for demolition or construction works of housing in certain depopulated areas in de provinces of Groningen, Limburg and Zeeland.

6. Shareholders and Directors of Resident Companies

6.1. Shareholders

6.1.1. Dividends in general

The term "dividend" is not clearly defined under Netherlands tax law. Instead, the term "income from shares" is being used. For tax purposes, this term includes income from shares in companies (BVs and NVs) and profit certificates and profit-sharing loans issued by (BVs and NVs (article 1 of the DB). Income from shares encompasses any distribution by a company which is not a repayment of the fiscal paid-up capital. The distribution is taxable in the year in which it takes place even if the distribution takes place by conversion of the dividend into new shares. Dividend payments made in violation of the articles of company law are also taxable.

The fiscal paid-up capital is important in categorizing a dividend. The fiscal paid-up capital is not the same as the paid-up capital for company law purposes. Fiscal paid-up capital includes the nominal paid-up capital, the premium paid on the issue of shares (*agio*), and the informal paid-up capital (deemed capital contribution). Informal paid-up capital is capital in the form of money or goods paid by the shareholder, even though the company does not issue shares or give any other compensation.

The Netherlands corporate tax system is a classical system, which means that corporate profits are fully taxed and distributions from the taxed profits are again fully taxed in the hands of the shareholders. Profit distributions are not deductible from taxable income of the distributing company. In the case of qualifying distributions to corporate shareholders, however, double taxation is eliminated through the participation exemption. In the case of individual shareholders with a substantial shareholding, double taxation is mitigated through a lower flat rate of income tax on dividends.

Distributions of profit are subject to dividend withholding tax, which is generally creditable for resident shareholders against their individual or corporate income tax liability, as the case may be. The corporate income tax levied on the distributing company is not creditable for the shareholders.

6.1.2. Individual shareholders

Dividends and other profit distributions are generally taxable in the hands of the individual shareholder. For tax treatment purposes, a distinction must be made between substantial shareholders, ordinary shareholders and shareholders who hold the shares as part of the assets of their business.

A substantial shareholding is generally deemed to exist if an individual alone or together with his or her spouse, directly or indirectly, owns at least 5% of the issued share capital or at least 5% of a particular class of shares of the distributing company (article 4.6 of the IB). Substantial shareholders are taxed on the dividends derived from a substantial shareholding with individual income tax at a flat rate of 25% (article 2.12 of the IB). For tax year 2014, however, the rate was reduced to 22% for income up to EUR 250,000. The normal rate of 25% is applied to any excess. Dividend withholding tax may be credited against the individual income tax liability.

Individual shareholders other than substantial shareholders are not taxed on the dividends received as such. Investment income of such individuals does not consist of separate types of income, but is based on an annual fixed yield of 4% of the average economic value of the underlying investment. This fixed yield is taxed at a flat rate of 30% (article 2.13 of the IB). Exemptions may apply if certain conditions are met. Dividend withholding tax may be credited against the individual income tax liability.

If the shares are held by an individual as part of his business assets, the dividends are treated as business income (article 3.8 of the IB). Dividends received by such shareholders are taxed at progressive rates up to 52% (article 2.10 of the IB).

Non-resident individuals that qualify as substantial shareholders of a resident company are subject to individual income tax at a flat rate of 25% on the dividends received. If the shares belong to the assets of a business situated in the Netherlands, progressive rates apply. Other non-resident individuals with no substantial shareholding are not subject to individual income tax, but only to the dividend withholding tax. In the latter case, the dividend withholding tax may be credited against the individual income tax liability. This only applies when the dividends received relate to components of the total income that is subject to individual income tax (article 9(2)(8) of the IB), i.e. the income from shareholding must be included in the taxable base. In all other cases, the dividend withholding tax is final (*see* section 7.3.4.1.).

However, on 17 September 2015, the ECJ ruled on whether the Dutch final withholding tax on non-resident portfolio individual and corporate shareholders is contrary to EU law (joined cases *Miljoen, X* and *Société Générale* (Cases C10/14, C14/14 and C17/14)). TheECJ ruled that the withholding tax on non-residents is contrary to EU law if the overall effective tax burden of the non-resident is higher than that of a resident shareholder. In this respect, the comparison should take into account the corporate (or personal) income tax position of residents, since they are able to credit or obtain a refund of the withholding tax in domestic situations. The ECJ further noted that the restriction on the free movement of capital may, however, be justified by the effects of a bilateral convention for the avoidance of double taxation concluded by Member States.

6.1.3. Substantial corporate shareholders

Under the participation exemption (*deelnemingsvrijstelling*) regime, dividends and other profit distributions, currency gains (or losses) and capital gains (or losses) on the disposal of a qualifying participation or part thereof may be exempt from corporate income tax (article 13 of the Vpb). Such distributions are also exempt from dividend withholding tax (articles 4(1) and 4a of the DB). For capital gains, *see* section 6.1.6.2.

All resident companies and non-resident companies with a permanent establishment in the Netherlands may benefit from the participation exemption, provided that they are generally subject to corporate income tax in the Netherlands (the subject-to-tax test). Investment institutions (*see* section 12.2.), however, are excluded from this regime because they are not subject to corporate income tax (article 13(8) of the Vpb).

Results on currency hedge instruments concluded in relation to a participation may qualify for the participation exemption, provided that a request is filed with the tax inspector (article 13(7) of the Vpb).

With effect from 8 April 2011, foreign exchange gains relating to qualifying participations are no longer exempt under the participation exemption regime, provided that a foreign exchange loss is (or was) deducted from the corporate income tax due. This is, however, subject to the outcome of a litigation on the issue whether or not the ECJ's decision in *Deutsche Shell* (Case C-293/06) applies to foreign exchange losses qualifying under the participation exemption. On 13 January 2015, the Court of Appeal in The Hague held that these foreign exchange losses are deductible. An appeal against this decision will probably be filed with the Supreme Court. In addition, to qualify for the participation exemption, an ownership test and a motive test must be satisfied. If the motive test is not met, the participation exemption nevertheless applies if an asset test or the subject-to-tax test is met. These tests are described below. Decree DGB 2010/2154M dated 12 July 2010 (published in the Official Gazette of 19 July 2010) provides for the tax authorities' opinion on the application of the participation exemption.

There is no requirement as to the duration of the period in which a participation must be held by the parent company.

The ownership test

The ownership test provides that the participation exemption applies to:

- a participation of at least 5% in the nominal paid-up share capital of an active subsidiary company;
- a participation of at least 5% in a mutual fund (*see* sections 0.2.7. and 12.2.);
- the membership of a cooperative (*see* sections 0.2.6. and 11.4.);
- a participation in an open limited partnership (*see* sections 0.2.4.1. and 11.2.2.) of a limited partner who participates for at least 5% in the profits realized by that open limited partnership (article 13(2) of the Vpb).

Furthermore, ownership of at least 5% of the voting rights in a subsidiary established in an EU Member State also qualifies if the tax treaty with that State provides for a reduction of the dividend withholding tax on the basis of voting rights (article 13(3) of the Vpb).

Decree DGB 2010/2154M of 12 July 2010 provides that a participation of at least 5% in a qualifying taxable association (*see* sections 0.2.6. and 11.4.) is to be treated as the holding of shares in a company with a capital which is wholly or partially divided into shares.

The participation exemption also applies to profit shares owned by a company in, and hybrid loans granted to, a qualifying participation (article 13(4)(a) and (b) of the Vpb). Furthermore, the participation exemption applies to call options, in which case the holder of the call option has the right to acquire shares at a set time and fixed price. The holder of the option may apply the participation exemption only for rights to acquire shareholdings in an existing qualifying participation.

If a taxpayer owns a shareholding of less than 5%, a hybrid loan or a profit share in a company, such shareholding, hybrid loan or profit share qualifies for the participation exemption if a related company owns a qualifying participation in the same company under article 13(2) or article 13(3) of the Vpb (article 13(5) of the Vpb). During parliamentary discussions, the State Secretary has indicated that this provision also applies if the related company is a non-resident company owning a 5% participation, which would have qualified for the participation exemption if the company would have been resident in the Netherlands.

The motive test

Under the motive test, to qualify for the participation exemption, a participation must be generally held for business reasons and not as a mere portfolio investment. However, it is open to the tax authorities to prove that the participation is held as a mere portfolio investment.

A participation is considered not to be held as a portfolio investment if the activities of the subsidiary are considered to be in line with the active business of the taxpayer. If the taxpayer is a holding company which performs an essential function within the business of the group, the participation is considered not to be held as a portfolio investment. In addition, if the taxpayer is a top holding company that performs a management or a strategic function within the business of the group, the participation is not considered to be held as a mere portfolio investment.

The intermediate holding company that acts as a link between the business activities of the parent company and the activities of the subsidiaries is deemed to perform an essential function within the business of the group. The approach for (intermediate) holding companies in relation to the motive test is based on the policy as applicable to 2007 (under BNB 1975/11).

If the taxpayer has a mixed motive, the predominant motive is decisive. Furthermore, the motive test is deemed not to be met if (i) more than half of the participation's consolidated assets consist of shareholdings of less than 5%, or (ii) the predominant function of the participation, together with the function of lower tier subsidiaries, is to act as a group finance company.

The subject-to-tax test

The subject-to-tax test is met if the foreign subsidiary in its country of residence is taxed at an effective rate of at least 10% on the taxable profits determined in accordance with Netherlands tax standards (article 13(11)-(13) of the).

On 12 July 2010, the State Secretary for Finance indicated that the calculation for the subject-to-tax test may also be made on the basis of domestic tax standards, as long as these domestic standards lead to taxation similar to that as under the Netherlands tax system. Tax measures that are not considered equivalent to Netherlands tax standards include, for instance, the deductibility of dividends, tax sparing credits in situations where such credits are not granted under Dutch law and local tax holidays (Decree DGB 2010/2154M).

The asset test

The asset test provides that the participation exemption does not apply to low-taxed portfolio investments. If over 50% of the subsidiary's asset base is made up of free portfolio investments (including receivables on group companies) other than those reasonably necessary in connection with the business activities of the subsidiary, the subsidiary is deemed to be a passive portfolio investment (article 13(9)-(12). For the application of the asset test, it is important to consider the place that assets take in the capital of the subsidiary. Therefore, for this assessment, the entire assets of the subsidiary are taken into consideration in such a way that both the asset side and the liability side of the balance sheet are compared. In principle, the assets are considered on a consolidated basis.

Participations held by the subsidiary company of less than 5% are in any case deemed to be a portfolio investment (article 13(10)-(14) of the Vpb).

The portfolio investments are considered free if they do not have any business function (article 13(12) of the Vpb). Furthermore, generally, assets used for direct or indirect finance activities which are put at the disposal of related companies are considered free portfolio investments (article 13(12)(b) of the Vpb). This provision does not apply if the activities are regarded as active financing activities, which is always deemed to be the case if the following conditions are met (article 2a of the Uitv. besch. Vpb):

- a company arranges and carries out financial transactions for group companies other than occasionally;
- loans obtained from third parties constitute at least 20% of the fair market value of the company's assets;
- the company does not manage surplus liquidities which exceed 10% of the paid-up capital of the company for a period of more than 12 months. Short-term investments which are kept for the acquisition of participations are not taken into account for the determination of the 10% threshold;

- the company is independent with respect to its general management and day-to-day business management, without taking into account the normal interference with the business conducted by the shareholder and the management of the group;
- the number of persons employed by the company, their skills and responsibilities are in accordance with the character and function of the company and the company has its own office which is equipped with the facilities which are customary in the financial sector; and
- the company carries out the relevant transactions for this regulation via its own bank accounts.

If a taxpayer itself or together with a related company owns at least 25% in a company and the participation is not a real estate participation, such participation must be valued at fair market value if the assets of the company for 90% or more consist of free portfolio investments and its profits are not taxed at an effective statutory rate of at least 10%. If the taxpayer realizes profits in relation to the non-qualifying portfolio investment, an amount by multiplying the profit by 100/95 is grossed up to the earnings. However, the taxpayer may offset the income tax imposed by applying a tax credit for the corporate income tax due (article 23c of the Vpb).

Furthermore, the gross participation profits, in relation to the revaluation of the participation and the profits related to the sale of the participation, are calculated taking into account the costs relating to the acquisition and disposal of the non-qualifying portfolio investment (article 13aa(3) of the Vpb).

If the parent company makes a loss on a low-taxed investment participation, its profits are nevertheless increased by 5/25 of the loss (article 13aa(6) of the Vpb). However, this provision does not apply to (article 13aa(7) of the Vpb):

- exempt subsidiaries and subsidiaries that are liable to tax but de facto do not pay tax; and
- investment companies (*see* section 12.2.2.).

For low-taxed portfolio investment companies, a credit system applies with respect to foreign tax. If the requirements of the EU Parent-Subsidiary Directive (2011/96) are met, the corporate income tax effectively paid may be credited against, and up to, the Netherlands tax due. In other cases, a fixed amount of 5% of the dividends received is assumed as the amount of the underlying tax qualifying for credit. It is questionable whether such fixed percentage is in accordance with EU law after the judgments of the European Court of Justice (ECJ) in, for example, *Haribo* (C-436/08 and C-437/08) and *Test Claimants in the FII Group Litigation* (C-446/04 and C-35/11).

On 1 May 2015, the compartmentalization principle in relation to the participation exemption regime was codified with retroactive effect from14 June 2013. Generally, the compartmentalization principle refers to the attribution of capital gains in situations where the same income is treated differently for tax purposes as a result of a change in circumstances relevant for application of the criteria for eligibility to the participation exemption, e.g. a decrease or increase in ownership below or above the 5% of share capital.

According to article 28c(1), a compartmentalization reserve (CR) must be created in the following two situations:

- there is a shareholding to which the participation exemption did not apply, but to which it will apply at a given moment. In such a case, a taxable compartmentalization reserve (*belaste compartimenteringsreserve*, BCR) is created; and
- there is a shareholding to which the participation exemption applied, but to which it will no longer apply at a given moment. In such a case, an untaxed compartmentalization reserve (*onbelaste compartimenteringsreserve*, OCR) is created.

The CR is the difference between the fair market value and the book value of the participation immediately preceding the transition from taxed to untaxed (or vice versa). The participation is thereby revalued to the fair market value. The creation of a CR is, in principle, not taxable.

If at any time after the transition from taxed to untaxed (or vice versa) a benefit is derived from the participation, for instance dividend, and this benefit is attributable to the period before the transition, this in general results in:

- the book value of the shareholding being reduced by the amount of the benefit;
- the addition of the BCR up to the amount of the benefit to the profit; or
- the reduction of the OCR by the amount of the benefit, not resulting in an addition to the profit.

The settlement of a CR ultimately takes place once the participation no longer, directly or indirectly, forms part of the taxpayer's assets. This is the case when, for example, the entity in which a participation is held is merged or liquidated. If the taxpayer is merged or split and subsequently ceases to exist, the CR is also settled. In addition, a CR is settled if the taxpayer, at any given moment, enters into a fiscal unity with the participation for which the CR was created.

The taxable settlement of a BCR may, for example in the case of a merger of the entity in which a participation is held, be cancelled in so far as the acquired shareholding replaces the original shareholding.

Furthermore, expenses related to the acquisition and disposal of the participation are not deductible (*see* section 1.4.1.). Moreover, from 1 January 2013 interest exceeding EUR 750,000 paid on loans to finance the acquisition of participations is restricted. For details, *see* section 1.4.5.

With effect from 1 January 2016, the participation exemption rules and the participation credit system will be amended to implement EU Directive 2014/86 on hybrid mismatches. The participation exemption and the credit system will no longer apply for benefits (i.e. dividends or other payments) derived from a qualifying subsidiary insofar as these benefits are deductible for corporate income tax purposes at the level of the subsidiary. If the benefits or payments received are deducted from the acquisition price of the subsidiary, they will be treated as taxable income.

Loans granted to a qualifying subsidiary may be depreciated if the subsidiary sustains substantial losses. Such depreciation must be recaptured, however, in the year in which the loan is (articles 13b and 13ba of the Vpb):

- transferred to a related company (under certain conditions);
- transferred to a business or permanent establishment abroad;
- used to subscribe to shares or certificates issued by the subsidiary;
- deemed to be informal capital (*see* section 1.4.5.); or
- wholly or partly waived to the extent that the subsidiary is not subject to tax on the benefit in the Netherlands, or in case of a non-resident, against a statutory rate of at least 10%.

Upon request, the recapture provision does not apply if the loan is transferred at its fair market value to a Netherlands company subject to corporate income tax (Decree of 12 July 2010, DGB 2010/2154M). Such request must be filed within 2 months after the transferor has filed his return for the book year in which the loan was transferred.

The depreciation must also be recaptured if the business conducted by the company or other entity in which the participation is held is wholly or partially transferred to a related entity (article 13b(4) and (5) of the Vpb). However, no recapture has to take place if the following cumulative conditions are met:

- the loan is valuable;
- the business is transferred at an arm's length price;
- the devaluation was the result of currency losses; and
- the profits resulting from a later revaluation are taxable in the Netherlands (Decree of 12 July 2010, DGB 2010/2154M).

Furthermore, the recapture provision does not apply if a loan is transferred to a third company and the value increase of the loan is included in the Netherlands taxable profits of the acquiring company or is taxed in the country of the acquiring company at a reasonable rate according to Netherlands standards (article 13ba(13) of the Vpb).

As a result of the exemption of income from a foreign permanent establishment, a specific provision on the non-application of the participation exemption and the recapture of losses deducted by a permanent establishment in the years preceding the conversion into a subsidiary was abolished with effect from 1 January 2012. However, a transitional rule provides that the previous provision remains applicable with respect to permanent establishment losses deducted before 2012 (article 33b(5) of the Vpb).

Under this provision, if a foreign permanent establishment was converted into a subsidiary, the participation exemption did not apply to the extent that the losses sustained through the former permanent establishment in the years preceding its conversion into a subsidiary were fully set off. In such situation, dividends distributed by the subsidiary and capital gains on the disposal of shares in the subsidiary were taxed until such losses were fully set off, after which the participation exemption became applicable (former article 13c(1) of the Vpb).

Losses sustained through a permanent establishment converted into a subsidiary had to be recaptured immediately if (former article 13c(2) of the Vpb):

- the shares in the company or other entity in which the participation was held were wholly or partially transferred to a non-resident related entity;
- the business of the entity in which the participation was held was wholly or partially transferred to a resident or related entity;
- the taxpayer's share in the profits of the entity in which the participation was held decreased, because a non-resident related entity acquired a right to those profits; or
- the entity in which the participation was held was transferred to a permanent establishment abroad.

For foreign-source dividends derived by resident companies, *see* section 7.2.1.3. For dividends derived by non-resident companies from resident companies, *see* section 7.3.4.1.

6.1.4. Portfolio corporate shareholders

If a company owns shares in another company but the shareholding does not constitute a qualifying participation, dividends and other profit distributions therefrom are treated in the same manner as other business income and are consequently included in the taxable income of the shareholder. Expenses related to these distributions are deductible as normal business expenses. For dividend withholding tax, *see* section 1.10.3.1.

For foreign-source dividends derived by resident companies, *see* section 7.2.1.3. For dividends derived by non-resident companies from resident companies, *see* section 7.3.4.1.

6.1.5. Hidden profit distribution

Hidden profit distributions or deemed dividends (*verkapt dividend*) result from non-arm's length transactions between a company and its shareholders. The deemed dividend is that part of the benefit passed on by the company which is deemed to be excessive. For example, if the company borrows money from a shareholder at an interest rate higher than the market rate, the excess is considered to be a deemed dividend. Deemed dividends may be in cash or in kind irrespective of what label the company gives to the transaction (the "substance over form" principle).

Deemed dividends are treated as dividend payments in the hands of the receiving shareholder. This means that, in the case of resident corporate shareholders, the distribution is subject to corporate income tax and dividend withholding tax, unless the participation exemption applies (*see further* section 6.1.3.). For resident individual shareholders, *see* section 7.1.2. In the case of non-resident individuals/shareholders, a final dividend withholding tax (*see* section 6.1.2.) levy may apply. For non-resident corporate shareholders, corporate income tax may become due on capital gains or dividends received (*see* section 7.3.4.1.), unless the participation exemption (*see* section 6.1.3.) or the EU Parent-Subsidiary Directive (*see* section 7.3.4.2.) applies, or a tax treaty provides otherwise (*see* section 7.4.1.5.).

For the treatment of deemed dividends from the point of view of the distributing company, *see* section 1.4.4.

In the reverse case (e.g. a company sells goods to its shareholder for an excessively high price), the benefit may not be taxable in the hands of the company and not deductible for the shareholder. Such benefit is deemed to be an informal capital contribution made by the shareholder to the company (*see* section 1.4.5.).

6.1.6. Capital gains

6.1.6.1. Individual shareholders

Capital gains derived from the sale of shares belonging to a substantial shareholding (i.e. at least 5% of the issued share capital) are subject to individual income tax (article 4.1 of the IB) at a flat rate of 25%. For 2014, however, the rate was reduced to 22% for income up to EUR 250,000. The normal rate of 25% applies to any excess. The capital gain is calculated as the sales price minus the shareholder's acquisition price (article 4.19 of the IB).

If the shares are held for business purposes, the capital gains are treated as normal business profits. The progressive rates apply to these gains. The capital gain constitutes the amount of the sales price exceeding the book value of the shares.

Capital gains derived from the sale of shares by an individual shareholder other than a substantial shareholder are not taxed as such, but the fixed yield tax applies (*see* section 6.1.2.).

Non-resident substantial shareholders of a resident company are subject to individual income tax at a flat rate of 25% on the capital gains. For 2014, however, the rate was reduced to 22% for income up to EUR 250,000. The normal rate of 25% applies to any excess. If the shares belong to the assets of a business situated in the Netherlands, progressive rates apply. Other non-resident shareholders are not subject to individual income tax or other taxes on capital gains, but they are subject to Netherlands dividend withholding tax (*see* section 6.1.2.).

6.1.6.2. Substantial corporate shareholders

Capital gains on the disposal of shares in a resident company by a resident or non-resident substantial corporate shareholder may be exempt by virtue of the participation exemption (*see* section 6.1.3.). Consequently, losses are generally not deductible (except for liquidation losses; *see* section 6.1.8.3.). If the shares are disposed of on an earn-out basis, the changes in value of the earn-out constitute capital gains (or losses) for both the acquiring company and the disposing company. Capital gains may also be exempt if the shares are alienated within the framework of a merger or division (*see* section 9.2.).

Under the participation exemption, changes in the value of a qualifying participation do not affect the taxable income of the parent company.

As from 2006, it is no longer possible to devalue participations.

For details on intercorporate transfers of shares, *see* section 8.4.

6.1.6.3. Portfolio corporate shareholders

If a resident company owns shares in another company and the shareholding does not constitute a qualifying participation (*see* section 6.1.3.), any capital gain or losses therefrom are treated in the same manner as other business income and are consequently included in or deducted from the taxable income of the shareholder. Expenses related to the participation are deductible as normal business expenses. Capital gains may be exempt if the shares are alienated within the framework of a merger or division (*see* section 9.2.).

Non-resident portfolio corporate shareholders are not taxed on capital gains derived from their portfolio investment, provided that the shares are not held through a permanent establishment in the Netherlands. Should the latter be the case, then the capital gains are taxed as business profits.

6.1.7. Purchase by a company of its own shares

The purchase by a company of its own shares constitutes a partial liquidation for tax purposes. Accordingly, the liquidation surplus is taxed as a profit distribution. For details, *see* section 6.1.8.

6.1.8. Liquidation

6.1.8.1. General

Liquidation constitutes the dissolution and winding-up of a company and should be distinguished from the termination of the company's business activities.

In general, the liquidation surplus, i.e. the liquidation proceeds less the average amount of contributed share capital, is subject to (corporate or individual) income tax as profit distributions in the hands of the (corporate or individual) shareholders. In addition, the liquidation surplus is subject to dividend withholding tax (article 3 of the DB).

6.1.8.2. Individual shareholders

For individual substantial shareholders (i.e. holding at least 5% of the share capital), the liquidation payment is taxable to the extent that the payment exceeds the shareholder's acquisition price (article 4.34 of the IB). The excess is treated as dividends (article 3(1)(a) of the DB). The dividend withholding tax is creditable against the individual income tax liability. Individual income tax is due at a flat rate of 25%. For 2014, however, the rate was reduced to 22% for income up to EUR 250,000. The normal rate of 25% applied to any excess. A liquidation loss may be set off against other income from substantial shareholdings (article 4.49 of the IB). Losses from a substantial shareholding is normally not available for set off against income from employment and from owner-occupied housing. However, if an individual no longer has a substantial shareholding, any loss that has not been set off is, upon request of the taxpayer, converted into a levy rebate (tax credit) equal to 25% of the amount of the loss which was not set off (article 4.53 of the IB). This amount may, in the following years, be offset against income from employment and from owner-occupied housing (Box 1).

For individual shareholders other than substantial shareholders, the liquidation payment is not taxable as such. The payment is treated as dividend for individual income tax and dividend withholding tax purposes (*see* section 6.1.2.).

If shares are held by an individual as part of the assets of his business, the liquidation payment is taxable to the extent it exceeds the book value of the shares. This may also result in a tax-deductible loss. The dividend withholding tax, however, is calculated on the excess of the average amount of contributed capital on the issued share capital. This tax may generally be credited against the individual income tax due with respect to the liquidation proceeds.

Non-resident individuals who qualify as substantial shareholders are subject to individual income tax at a flat rate of 25% on the above-mentioned excess only if the shares do not belong to the assets of a business. For 2014, however, the rate was reduced to 22% for income up to EUR 250,000. The normal rate of 25% applied to any excess. Such individuals are granted a credit for the dividend withholding tax. If the shares belong to the assets of a business of the individual, the progressive rates apply. Other non-resident individuals are not subject to Netherlands tax, except for the 15% dividend withholding tax which may be final (*see* section 6.1.2.). However, on 17 September 2015, the ECJ ruled on whether the Dutch final withholding tax on non-resident portfolio individual and corporate shareholders is contrary to EU law (joined cases *Miljoen, X* and *Société Générale* (Cases C10/14, C14/14 and C17/14)). *See* also section 6.1.2.

6.1.8.3. Corporate shareholders

If shares are held by a company as part of the assets of its business, the liquidation payment is taxable to the extent it exceeds the book value of the shares. This may also result in a tax-deductible loss. The dividend withholding tax, however, is calculated on the excess of the average amount of contributed capital on the issued share capital. This tax may generally be credited against the corporate income tax due with respect to the liquidation proceeds.

Notwithstanding the exemption, a loss sustained in the liquidation of a qualifying subsidiary is deductible (article 13d of the Vpb). For this purpose, the liquidation loss is calculated as the liquidation proceeds less the acquisition price. Adjustments are to be made for subsequent capital contributions, repayments of capital and the amount of the profit reserves of the subsidiary at the time of acquisition. Moreover, adjustments are to be made for profit distributions in the year in which the subsidiary terminated its business activities and the preceding 5 years (extended up to 10 years in certain situations) and all subsequent years (article 13d(3) of the Vpb). Further, the acquisition price is adjusted at the moment when the revaluation reserve (*see* section 1.6.3.2.) is added to the taxable profits (article 13d(2) of the Vpb). Liquidation losses in respect of subsidiaries that belong to the same fiscal unity (*see* section 8.1.) as the parent company remain non-deductible. When shares in a company are acquired from a related company and the participation exemption becomes applicable, the acquisition price is deemed to be the acquisition price of the related company. However, the acquisition price is equal to the economic value at the moment of acquisition if the former owner has been subject to tax on the difference between the economic value and its acquisition price against a statutory rate of at least 10% (article 13d(7) of the Vpb).

There are detailed provisions to prevent undesired use of the deduction of liquidation losses, e.g. when the business activities of the liquidated company are continued by a related company (articles 13d and 13e of the Vpb). These preventive provisions apply to liquidation losses resulting from the liquidation of resident and non-resident subsidiaries. Despite the preventive provisions, a taxpayer may deduct liquidation losses if he is able to reasonably prove that the loss results from a decrease in value of the participation due to an adverse change in facts and circumstances during the period the taxpayer held the participation. The non-deductibility is therefore limited to cases where the loss is not reasonably caused by objective factors.

6.2. Directors

Although the actual management activities are performed by individuals, members of the board of directors may be individuals or companies. Under the Civil Code, only individuals may be members of the supervisory board.

All fees, fringe benefits and other remuneration paid to a director of a resident company are taxable in the hands of the director. As for individual directors, the remunerations are treated as income from employment and subject to individual income tax (article 3.81 of the IB for residents; article 7.2 of the IB for non-residents). The remuneration is also subject to wage withholding tax (*see* section 1.11.9.4.), which can be set off against the individual income tax liability. Special rules apply to directors who are substantial shareholders (*see* section 1.4.3.).

Directors' remuneration received by a company is treated as normal business income. Such remuneration is generally (depending on the activities) also subject to VAT.

Remuneration paid to a member of the supervisory board is treated in the same manner as that paid to a director. Only individuals may be members of the supervisory board.

With respect to non-resident directors and members of the supervisory board, tax treaties generally allocate the right to levy taxes on the remuneration to the country where the company for which the activities are performed is resident. Some treaties may provide differently.

7. International Aspects

7.1. Definitions

7.1.1. Resident and non-resident companies

Companies and SEs incorporated under Netherlands law are deemed to be residents of the Netherlands for corporate income tax and dividend withholding tax purposes (article 2(4) of the Vpb; article 1(3) of the DB). This general rule does not apply for the application of the participation exemption (*see* section 6.1.3.), legal mergers and divisions (*see* section 9.2.) and the fiscal unity regime (*see* section 8.).

Further, entities established in the BES Islands, and not subject to the BES regime (*see* section 1.1.4.), are deemed to be resident in the Netherlands (article 2(8) of the Vpb; article 1(6) of the DB).

In addition, companies may be treated as residents of the Netherlands for tax purposes if they are deemed to be "actually situated" there on the basis of "facts and circumstances", whether they are incorporated in the Netherlands or not (article 4(1) of the AWR). These terms are not defined in the tax law, but extensive case law has provided a number of factors important for the determination. In general, a key factor is the place where the effective management is located. Other relevant factors include the place of residence of the directors and the members of the supervisory board, the place where general meetings of shareholders are held, the place of residence of an individual (majority) shareholder, the location of the company's assets, the location of the bookkeeping and the nature and location of the business activities. An exception to the "facts and circumstances" rule is provided in article 4(3) of the AWR, which refers to the EU Merger Directive (2009/133), the EU Parent-Subsidiary Directive (2011/96) and the EU Interest and Royalties Directive (2003/49): a company is deemed to be a resident of an EU Member State if it is a resident under the tax law of that EU Member State.

Tax treaties may provide additional residence rules. For tax treaty purposes these provisions may prevail over domestic law and, consequently, a company resident under domestic law may nevertheless for treaty purposes be treated as a non-resident taxpayer.

Unlike companies, other entities are not necessarily deemed to be residents of the Netherlands if they are incorporated under Netherlands law. They may be deemed to be residents on the basis of the "facts and circumstances". The exception for EU residents also applies to entities other than companies.

There is no definition of "non-resident company" in Netherlands tax law.

7.1.2. Permanent establishment

7.1.2.1. Definition under domestic law

General definitions of the terms "permanent establishment" and "permanent representative" are provided in article 15f of the Corporate Income Tax Law (*Wet op de vennootschapsbelasting*, Vpb). The definition of the term "permanent establishment" (article 15f(1) of the Vpb) closely follows that of article 5 of the OECD Income and Capital Model. The definition of the term "permanent representative" (article 15f(3) of the Vpb) is similar to the definition in article 5(6) of the OECD Model Convention. It concerns an agent, who is not independent, acts on behalf of an enterprise and has, and habitually exercises, an authority to conclude contracts on behalf of that enterprise.

In addition, there are two specific definitions in Netherlands tax law. Based on article 17a of the Vpb, a permanent establishment or permanent representative in the Netherlands includes:

- immovable property located in the Netherlands, including rights thereon and rights related to the exploration for or exploitation of natural resources located in the Netherlands;
- rights to shares of the profits of an enterprise whose management is located in the Netherlands, unless the rights constitute a mere portfolio shareholding;
- debt claims on a Netherlands company if the beneficial owner of the debt claim has a substantial shareholding in that company;
- services provided as a member of the board of directors or a member of the supervisory board of a resident entity, even if the powers of the member are restricted to the company's establishments abroad. From 1 January 2013, this category has been

extended to services rendered in the material functioning of a director or supervisor to a resident entity in order to include the performance of substantive board activities and management services without statutory directorship; and

- business activities in respect of the exploration for or exploitation of natural resources for a period of at least 30 consecutive days in the North Sea area. If the activities are discontinued, but are resumed by a related company within 12 months and the aggregate of days of business activities is at least 30, each of the companies involved is deemed to have a permanent establishment. Based on article 10a(4) of the Vpb, companies are deemed to be related if there is a direct or indirect shareholder relationship between them of at least 33.33% in the capital or a third party holds an interest of at least 33.33% in the capital of both companies.

Another specific definition of permanent establishment may be found in the unilateral Decree on Avoidance of Double Taxation of 2001 (*Besluit voorkoming dubbele belasting 2001*, Bvdb). According to article 2 of the Bvdb, a permanent establishment constitutes a continuous place of business of an enterprise, through which the business activities of the enterprise are wholly or partly carried on. This includes the place of effective management, the use of land for agricultural purposes and construction or installation projects continuing for more than 12 months.

Under the Bvdb the following persons are deemed not to be permanent representatives:

- a completely independent representative;
- a representative who is not authorized to conclude transactions, even though he may maintain a stock of goods for effecting prompt deliveries; and
- a person holding commodities on consignment.

In addition, based on article 32(2) of the Bvdb, a permanent establishment or permanent representative *abroad* includes:

- immovable property located outside the Netherlands and rights on such property;
- rights to shares of the profits of an enterprise whose management is located outside the Netherlands, unless the rights constitute a mere portfolio shareholding; and
- business activities in respect of the exploration for or exploitation of natural resources for a period of at least 30 consecutive days in, on or above the foreign territory.

It is possible to obtain an advance tax ruling from the tax authorities on the issue of the existence of a permanent establishment in the Netherlands (*see* section 1.11.7.2.).

7.1.2.2. Definition under treaties

The definition of a permanent establishment in the tax treaties concluded by the Netherlands is generally similar to the definition of article 5 of the Netherlands Model Convention (*Nederlands standaardverdrag*, NSV). This article corresponds with article 5 of the OECD Income and Capital Model. Tax treaties concluded with developing countries often incorporate features of article 5 of the UN Model Convention.

In addition, recent tax treaties concluded by the Netherlands and countries with coastlines include provisions on activities within the territorial waters and the continental shelf similar to the provisions under domestic law (*see* section 7.1.2.1.).

7.2. Taxation of resident companies

7.2.1. Taxable foreign income

7.2.1.1. General principles

Resident companies are subject to corporate income tax on their worldwide income. However, with effect from 1 January 2012, profits which are attributable to a permanent establishment abroad are exempt from corporate income tax (article 15e of the Vpb). If a company becomes a non-resident for treaty and BRK purposes, it is deemed to have disposed of all its assets and liabilities at market values. Therefore, the transfer of assets may constitute a taxable event if, upon the transfer, the company is deemed to be a non-resident (article 15c of the Vpb) (*see also* section 7.2.5.). Furthermore, transfers between head office and permanent establishment may affect the amount of relief granted for the avoidance of double taxation (*see* section 7.2.6.1.).

7.2.1.2. Business profits

The profits of a foreign permanent establishment of a resident company must be computed according to Netherlands tax standards.

For the allocation of income, deductions and assets between the head office and the foreign permanent establishment, the direct method is used, i.e. the permanent establishment is treated as if it were an independent part of the general enterprise dealing at arm's length. The permanent establishment must maintain separate accounting records in the currency of the country in which it is located. The effects of currency exchange fluctuations are allocated to the head office. (The euro may be substituted by a functional currency (*see* section 1.2.1.) in this respect).

For relief from double taxation, *see* sections 7.2.6. and 7.4.1.2.

7.2.1.3. Dividends

Resident companies are subject to corporate income tax on their worldwide income, including foreign-source dividends, interest and royalties. With respect to dividends and interest on participation loans, the participation exemption may apply (*see* sections 6.1.3. and 7.2.6.2.).

Relief from double taxation of dividends, is, in general, only available under treaty provisions (*see* section 7.4.1.2.). For unilateral relief, *see* sections 7.2.6.3. and 7.3.3.4.

7.2.1.4. Interest, royalties and other income

Interest and royalty payments made by a non-resident intermediate financial services company are exempt from corporate income tax in the hands of a resident recipient company if the latter does not bear a genuine risk with respect to such payments. Consequently, no relief for double taxation is available. A company is assumed to bear a genuine risk if it maintains sufficient equity to cover such risks and this equity is at least the lower of 1% of its outstanding loans or EUR 2 million (article 8c of the Vpb).

Relief from double taxation of interest and royalties is, in general, only available under treaty provisions (*see* section 7.4.1.2.). For unilateral relief, *see* section 7.2.6.3.

Other types of foreign-source income (e.g. income from foreign-situs immovable property) are taxed as normal business income. Relief from double taxation is available under domestic law and treaty provisions (*see* sections 7.2.6.3. and 7.4.1.2.).

7.2.1.5. Capital gains

Resident companies are subject to corporate income tax on their worldwide income, including foreign-source capital gains. With effect from 1 January 2012, an exemption (*objectvrijstelling*) applies with respect to profits that are attributable to a permanent establishment situated abroad (article 15e of the Vpb). Relief from double taxation is available under domestic law and treaty provisions (*see* sections 7.2.6.4. and 7.4.1.2.). The participation exemption may apply to capital gains on the disposal of shares of a qualifying participation (*see* sections 6.1.3. and 7.2.6.2.).

7.2.2. Foreign losses

Until 31 December 2011, foreign losses of a permanent establishment of a Netherlands resident company were deductible and eligible for the set-off of losses (*see* section 1.8.).

For the computation of the relief from double taxation, foreign profits, and thus also foreign losses, were taken into account on a per-country basis. This means that foreign profits derived from a country were not set off against losses incurred in another country. Furthermore, foreign losses suffered in a preceding year reduced the foreign profits eligible for relief derived in subsequent years, thus reducing the relief. Otherwise, foreign losses would be taken into account twice (*see* section 7.2.6.1.).

Losses sustained through a permanent establishment converted into a subsidiary had to be recaptured immediately if (former article 13c(2) of the Vpb):

- the shares in the company or other entity in which the participation was held were wholly or partially transferred to a non-resident related entity;
- the business of the entity in which the participation was held was wholly or partially transferred to a resident or non-resident related entity;
- the taxpayer's share in the profits of the entity in which the participation was held decreased, because a non-resident related entity acquired a right to those profits; or
- the entity in which the participation was held was transferred to a permanent establishment abroad.

With effect from 1 January 2012, an exemption applies with respect to profits and losses attributable to a permanent establishment abroad of a company which is resident in the Netherlands. However, under a transitional regime the above recapture rule remains applicable to loses deducted before 2012 (article 33d(5) of the Vpb).

7.2.3. Other taxes on income

There are no local income taxes or business taxes on income. The oil taxes are not levied on income from activities abroad.

7.2.4. Taxes on foreign capital

There is no net worth tax or business tax on capital. The real estate tax is not levied on property located abroad.

7.2.5. Emigration

The transfer of the place of effective management abroad by a company that is deemed to be a resident of the Netherlands on the basis of "facts and circumstances" (*see* section 7.1.1.) does not necessarily trigger taxation. If, however, the transfer of the place of effective management is proceeded by or coincides with a transfer of assets, including an independent part of an enterprise, the transfer of assets may be a deemed disposal at market values. The transfer of assets only triggers taxation if, upon the transfer of the place of effective management, the company becomes a non-resident for treaty and BRK purposes (article 15c of the Vpb).

If a company ceases to derive profits from the Netherlands (i.e. a full emigration), any hidden reserve, tax-free reserves and provisions must be included in the taxable base in the year of emigration. This includes capital gains on foreign assets and permanent establishments. Relief from double taxation is, however, available. Past investment deductions (*see* section 1.9.2. may be recaptured (article 15d of the Vpb). On 18 March 2010, the European Commission sent a reasoned opinion in an infringement procedure, arguing that the immediate taxation of capital gains at the time of emigration is incompatible with the EU freedom of establishment as interpreted by the ECJ in *Hughes de Lasteyrie du Saillant v. Ministère de l'Économie, des Finances et de l'Industrie* (C-9/02) and in *N. v. Inspecteur van de Belastingdienst Oost/kantoor Almelo* (C-470/04), and also by the Commission's Communication on Exit Taxation (COM(2006)825).

On 29 November 2011, the ECJ gave its decision in the case of National Grid Indus BV v. Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam (C-371/10). The ECJ held that a company incorporated under the law of a Member State may invoke the freedom of establishment as provided for in article 49 of the TFEU against a Member State, if this Member State imposes an exit tax upon the transfer of the place of effective management of that company to another Member State and that transfer does not affect its status of being a company of the former Member State.

Furthermore, the ECJ decided that the freedom of establishment does not preclude that a Member State definitively determines the tax due on unrealized capital gains relating to the company's assets, without taking into account decreases or increases in value, when the company no longer obtains taxable profits in that Member State because of the transfer of the place of effective management to another Member State. In this context, the ECJ also ruled that it makes no difference that the taxed unrealized capital gains relate to exchange rate gains which are not reflected in the host Member State under the tax system in force in that State. However, the freedom of establishment precludes legislation of a Member State providing for the immediate recovery at the time of transfer of tax on unrealized capital gains relating to assets of a company transferring its place of effective management to another Member State.

The decision of the ECJ was confirmed by the Court of Appeals of Amsterdam on 31 May 2012. The Court held that the fact that a tax inspector requires a bank guarantee in the case of tax deferral does not constitute an impediment for transferring the place of residence of a company. In addition, the Court held that the imposition of tax collection interest is also not incompatible with the EU freedom of establishment. This decision was more or less repeated by the ECJ when asked to decide in the said infringement procedure.

A law to bring the legislation in accordance with the above-mentioned decisions of the ECJ was enacted on 14 May 2013 with retroactive effect from 29 November 2011. Accordingly, the taxpayer that has transferred its place of effective management to another EU Member State may pay the tax due immediately after the emigration or, subject to several conditions, postpone such payment until the moment of actual realization of the capital gain or pay in annual instalments during a period of 10 years (article 25a Iw).

Companies incorporated under Netherlands law that have become non-resident (for the application of the BRK or a tax treaty concluded by the Netherlands) must continue to file their tax returns even if they receive no domestic income (Decree of 6 March 2001, CPP2000/3020).

7.2.6. Double taxation relief

Unilateral relief from double taxation is granted under Netherlands law in situations where a tax treaty is absent, or if a tax treaty contains no explicit provision with respect to a certain type of income.

Only residents may apply for unilateral relief.

In general, there are three methods for the avoidance of double taxation:

- exemption with progression;
- tax credit; and
- deduction of foreign tax as a business expense.

Relief under the second method is granted to companies under the Decree on Avoidance of Double Taxation of 2001 (*Besluit voorkoming dubbele belasting 2001*, Bvdb).

Relief under the first and third methods is granted under the Corporate Income Tax Law (Vpb). With effect from 1 January 2012, an exemption applies to profits derived by a company and which are attributable to a permanent establishment abroad (article 15e of the Vpb). The deduction of foreign tax as a business expense applies if there are no other provisions for the avoidance of double taxation (article 10(e) of the Vpb).

With effect from 1 January 2012, only cessation losses after the liquidation of the permanent establishment or the transfer of the permanent establishment to a third party remain deductible subject to certain conditions.

7.2.6.1. Business profits

Until 31 December 2011, under articles 31-33 of the Bvdb, the exemption with progression method applied to business profits derived through a permanent establishment or permanent representative abroad (*see* section 7.1.2.). Dividend, interest and royalties were included in business profits, and thus qualified for the exemption with progression if they were received by a permanent establishment or representative abroad. For the treatment of such income otherwise, *see* sections 7.2.6.2. and 7.2.6.3.

Although the Netherlands does not impose a branch profit tax, under some tax treaties concluded by the Netherlands the treaty partner is allowed to levy such a tax. Branch profit taxes are treated as business expenses of the permanent establishment.

Until 31 December 2011, if under the exemption with progression method the Netherlands taxes were not sufficient for a full relief of foreign taxes, the excess of foreign income could be carried forward to subsequent years. In addition, the relief method was applied on a per-country basis. This means that profits derived from a given country were not set off against losses derived from another country (articles 34 and 35 of the Bvdb). The following examples may clarify these provisions. The amounts are in euro, the corporate income tax rate is assumed to be 25%.

Example 1

In year 1 there is a domestic loss and a foreign-source profit. In such a case, the relief is equal to the amount of Netherlands tax payable on the net result. The relief is not applied to the full amount of foreign income. The excess of foreign profit over combined net result – determined per country – is carried over to year 2 in order to compute the amount of foreign income eligible for the relief.

Example 2

Computation of foreign income on a per-country method

With respect to business income derived through a permanent establishment engaged mainly (i.e. over 50% of its activities) in passive group finance activities or investment activities, the exemption with progression method is replaced by a specific credit method. Such credit may not exceed the amount of foreign tax due, nor 50% of the amount of the Netherlands corporate income tax attributable to such income (article 39 of the Bvdb). This credit method applies for tax years beginning on or after 1 January 1999.

The exemption with progression method was available until 31 December 2011 for income from active group finance activities. For this purpose, group finance activities may be characterized as active if the following conditions are met (article 2a of the Uitv. besch. Vpb):

- financial transactions are performed on a regular basis;
- at least 20% of the fair market value of the assets of the permanent establishment is financed with loans from outside the group. The condition may be relaxed for specific business reasons;
- the cash surplus does not exceed 10% of the equity allocated to the permanent establishment for a period of more than 12 months (a certain fund for future acquisitions of other companies is not taken into account);
- the day-to-day management is, in principle, independent;
- an office equipped with the usual facilities in the finance sector is used, the number of employees and their authority and responsibilities are in accordance with the nature and activities of the permanent establishment; and
- the relevant financial transactions are made through separate bank accounts.

7.2.6.2. Dividends

7.2.6.2.1. Portfolio corporate shareholder

In general, there is no unilateral relief for foreign taxes on dividends. However, relief is granted in the following three situations:

- dividends received by resident companies from qualifying foreign participations (participation exemption) upon their redistribution;
- participation profits received from a low-taxed investment participation to which the participation exemption does not apply; and
- foreign dividends derived from developing countries.

A credit may be granted to a resident company for foreign dividend withholding tax against Netherlands dividend withholding tax upon the redistribution of the foreign dividends (which qualified for the participation exemption) to its non-resident shareholders.

7.2.6.2.2. Participation exemption

Foreign dividends may be exempt from corporate income tax under the participation exemption regime (*see* section 6.1.3.). Because of the full exemption of foreign dividends (and capital gains), a separate relief for the avoidance of double taxation is not granted.

A qualifying foreign participation is a participation of at least 5% of the issued and paid-up share capital of the foreign subsidiary company. In addition, the subsidiary may not generally hold more than 50% free portfolio investments and it should be taxed at a statutory rate of at least 10%.

A decree of 11 December 2009 (CPP2009/519M) indicates that in case the credit method applies to dividends received from another EU Member State, the application of the credit method is no longer limited to first-tier subsidiaries, but extended to all direct and indirect subsidiaries.

It is possible to obtain an advance tax ruling from the tax authorities on the issue of whether or not the participation exemption is available in respect of certain participations (*see* section 1.11.7.).

7.2.6.2.3. Low-taxed investment company

A credit is also granted if the participation exemption does not apply because the participation is a low-taxed investment participation (*see* section 6.1.3.) (articles 13aa and 23c(2) of the Vpb). The reduction is the lower of (i) 5% of the gross participation profits calculated according to article 13aa(5) of the Vpb or (ii) the Netherlands corporate income tax attributable to the participation profits (article 23c(2) of the Vpb). It is questionable whether this 5% credit is in accordance with the EU freedom of capital movement after the ECJ has held in several decisions that at least the tax paid must be creditable, for example *Haribo* (C-436/08 and C-437/08) and *Test Claimants in the FII Group Litigation* (C-446/04 and C-35/11).

Upon request by the holding company, alternatively, the profit tax actually paid on the amount of the profit distribution by the participation may be taken into account if the following conditions are met (article 23c(3) of the Vpb):

- the low-taxed investment participation is established in an EU Member State, subject to tax on profits and meets the requirements of the EU Parent-Subsidiary Directive (2011/96);
- both the holding company and the low-taxed investment participation have a legal form mentioned in the Annex to the EU Parent-Subsidiary Directive; and
- the holding company and the low-taxed investment participation are not resident outside the European Union on the basis of a tax treaty with a third state.

If, with respect to profit distributions by low-taxed investment participations resident in an EU Member State, the holding company opts for taking into account profit tax actually paid, instead of the 5% credit, the tax paid by companies in which the low-taxed investment participation owns a direct or indirect participation is also taken into account, provided that each interest in the chain is at least 5% (article 23c(4) of the Vpb).

If profit distributions received from a low-taxed participation resident in an EU Member State in a year are not (entirely) taken into account for the determination of the gross profits but de facto were already taken into account in an earlier year, the 5% credit is increased by 75/100 of the profit tax paid in as far as this amount exceeds 5% of the gross profits (article 23c(5) of the Vpb).

A credit which cannot be taken into account can be carried forward to the following year (article 23c(7) of the Vpb).

7.2.6.2.4. Dividends from developing countries

In the case of foreign dividends derived from developing countries, relief may be granted through a foreign tax credit against the Netherlands corporate income tax payable. To qualify for the relief, the dividends must be subject to an income tax levied (whether or not withheld at source) on behalf of the developing country and may not be received through a permanent establishment located in that developing country.

For the purposes of this credit, the qualifying developing countries are (article 6 of the Bvdb 2001): Afghanistan, Algeria, Angola, Belize, Benin, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, the Central African Republic, Chad, Colombia, the Comoros, Congo (Rep.), Congo (Dem. Rep.), Costa Rica, Cuba, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, The Gambia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kiribati, Laos, Lebanon, Lesotho, Liberia, Madagascar, Malawi, the Maldives, Mali, the Marshall Islands, Mauritania, Micronesia, Mongolia, Mozambique, Myanmar (Burma), Namibia, Nepal, Nicaragua, Niger, the Palau Islands, the Palestinian Autonomous Areas, Papua New Guinea, Paraguay, Peru, Rwanda, St. Vincent and the Grenadines, Samoa, São Tomé and Principe, Senegal, Sierra Leone, the Solomon Islands, Somalia, South Sudan, Sudan, Swaziland, Syria, Tanzania, Togo, Tonga, Tuvalu, Uganda, Vanuatu and Yemen.

The credit may not exceed any of the following:

- the amount of foreign tax paid;
- 15% of the dividends received;
- the amount of the Netherlands corporate income tax attributable to these dividends; and
- the total amount of Netherlands corporate income tax.

For the purposes of this foreign tax credit, the net dividends must be used, i.e. costs directly related to the dividends must be deducted (article 36 of the Bvdb).

If the foreign taxes (whether or not withheld at source) cannot be fully credited against Netherlands corporate income tax, the credit may be carried forward according to the method described in section 7.2.6.1. (article 37 of the Bvdb).

The resident company deriving dividends from developing countries may opt to deduct the foreign taxes as business expenses rather than applying the credit (article 38 of the Bvdb).

7.2.6.2.5. Foreign dividend withholding tax

The foreign tax credit for developing countries is not available if the Netherlands has concluded a tax treaty with a particular country (*see* section 7.4.1.3.) or if the participation exemption applies to these dividends.

A credit may, however, be granted to a resident company for foreign dividend withholding tax against Netherlands dividend withholding tax upon the redistribution of the foreign dividends (which qualified for the participation exemption) to its non-resident shareholders (article 11 of the DB).

The credit is granted if the following conditions are met:

- the dividends are received from a company that is a resident of Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao or St. Maarten, or of a country which has concluded a tax treaty with the Netherlands;
- the Netherlands company holds, alone or together with related companies (see below), at least 25% of the nominal issued share capital in the non-resident distributing company or at least 25% of its voting rights (if this is the criterion for reduction under the relevant tax treaty);
- the dividends have been subject to a foreign withholding tax of at least 5%, which tax was actually withheld;
- the dividends received by the Netherlands company were exempt under the participation exemption;
- the outbound dividends are subject to the Netherlands dividend withholding tax (*see* section 7.3.4.1.) and are not eligible for full relief; and
- the redistribution is made in the calendar year in which the foreign dividends were received or in the following 2 years with the application of the FIFO system.

In this respect a company is deemed to be a company related to another company if (article 10a(4) of the Vpb):

- the first company holds an interest of at least 33.33% of the capital in the second company;
- the second company holds an interest of at least 33.33% of the capital in the first company; or
- a third party holds an interest of at least 33.33% of the capital in both companies.

The amount of the credit is the lowest of:

- 3% of the dividends redistributed (prior to withholding of Netherlands dividend withholding tax);
- 3% of the qualifying foreign dividends received in the calendar year of distribution and the 2 preceding calendar years (to the extent they have not been redistributed); or
- the foreign dividend tax withheld.

The cash benefit for the resident company resulting from the credit is not subject to corporate income tax. Such a benefit is, however, subject to dividend withholding tax at the normal rate (as reduced under a relevant treaty) upon a future distribution.

Example

The following example illustrates the relief:

Foreign gross dividend	100
Less foreign dividend withholding tax	(5)
Net dividend received	95
Gross redistribution	95
Netherlands dividend withholding tax (e.g. 15%)	14.25
Less redistribution credit (3% of 95)	(2.85)
Actual payment of withholding tax	11.4
Net dividend received by shareholder (95 – 14.25)	80.75
Cash to redistributor	2.85

Although the Netherlands does not impose a branch profits tax, a branch profits tax of at least 5%, levied in accordance with a tax treaty (*see* section 7.3.5.), in addition to the normal tax on profits from a permanent establishment, also qualifies for this credit.

7.2.6.3. Interest, royalties and other income

Under the Bvdb, no double taxation relief is generally granted for interest, royalties and other types of income not mentioned above. Where no relief from double taxation is available under the Bvdb or under a tax treaty, foreign taxes paid, including local taxes, are deductible as business expenses (article 10(1)(e) of the Vpb), however.

Nevertheless, the Bvdb grants a tax credit for foreign tax paid on interest and royalties derived from developing countries (*see also* section 7.2.6.2.4.).

7.2.6.4. Capital gains

Capital gains derived through a permanent establishment abroad are treated as business income (*see* section 7.2.1.2.). However, with effect from 1 January 2012, such gains are exempt from corporate income tax. The participation exemption may apply to capital gains on the disposal of shares of a qualifying participation (*see* sections 6.1.3. and 7.2.6.2.).

There are no special rules with respect to other capital gains, i.e. foreign taxes on capital gains are deductible as a business expense (*see* section 7.2.6.).

7.3. Taxation of non-resident companies

7.3.1. General

For the definitions of “non-resident company” and “permanent establishment of non-resident company”, *see* sections 7.1.1. and 7.1.2.

There are no specific provisions in Netherlands law for determining whether an entity established under foreign law is a separate taxpayer or not. Case law indicates that the criteria used to determine whether entities established under Netherlands law are separate taxable persons also govern the characterization of entities established under foreign law.

To be characterized as a non-resident corporate taxpayer, the entity must fall within one of the following categories (article 3 of the Vpb):

- any entity with legal personality;
- open limited partnerships and other non-legal entities the capital of which is wholly or partly divided in shares; or

- special purpose funds (*doelvermogens*). This category is a catch-all category. There is no legal definition of the term "*doelvermogen*". It includes, among other things, funds for joint account, trusts and funds without legal personality.

Non-resident entities that do not fall within any of the above categories are not subject to Netherlands corporate income tax. Their participants may, however, be subject to corporate income tax or individual income tax, as the case may be, with respect to their share in the income or capital gains (full transparency). Important examples of such transparent entities are general partnerships and limited partnerships qualifying as "closed", without legal personality abroad, established under Netherlands or foreign law, with taxable activities in the Netherlands.

7.3.2. Immigration

Immigration for tax purposes takes place if a company becomes a resident of the Netherlands according to the facts and circumstances (e.g. by transferring its place of effective management to the Netherlands (*see also* section 7.1.1.) or is deemed resident in the Netherlands under a tax treaty).

The taxable period as a resident company commences upon the moment of immigration. The assets and liabilities of the company must be valued at the fair market value at the beginning of the first tax year. Assets and liabilities already subject to Netherlands corporate income tax do not have to be revalued.

7.3.3. Taxable domestic income

7.3.3.1. General

Non-resident companies are taxed on the following Netherlands-source types of income (articles 17 and 17a of the Vpb):

- business income derived from a permanent establishment or permanent representative in the Netherlands;
- income and capital gains derived from immovable property located in the Netherlands;
- income and capital gains from rights related to the exploration for or exploitation of natural resources located in the Netherlands or the Netherlands part of the continental shelf during at least 30 days;
- all remuneration derived from a directorship of an entity resident in the Netherlands. As from 1 January 2013 this includes remuneration from managing activities or functions similar to that of a (formal) director;
- income from rights (other than bonds and shares) to the profits of an enterprise the management of which is located in the Netherlands;
- income from a substantial shareholding in a resident company (i.e. at least 5%), provided the shares are not considered business assets; and
- income and capital gains from debt claims related to a substantial shareholding (*see* section 7.3.3.3.).

Basically, business income derived through a permanent establishment or permanent representative (*see* section 7.3.3.2. in the Netherlands is the most relevant to non-resident companies. Income from a substantial shareholding is relevant for non-resident passive holding companies, foreign trusts and other entities mainly engaged in investment. Such companies are not considered to conduct a business.

Domestic business income of non-resident companies is computed in a manner similar to the income of resident companies. This includes the deductibility of expenses and tax incentives. The income from a substantial shareholding is computed according to the provisions of the Individual Income Tax Law of 2001 (article 18(2) of the Vpb) (*see* sections 6.1.3. and 6.1.6.2.).

There are no special provisions with respect to the set-off of losses and tax rates for non-resident companies.

7.3.3.2. Business profits

Non-resident companies are taxed on all income derived from a permanent establishment or permanent representative located in the Netherlands (*see* section 7.3.3.1.).

For determining the profits of a permanent establishment located in the Netherlands, the direct method generally applies. This means that the permanent establishment is treated as if it had been a separate, unrelated and distinct enterprise engaged in the same or similar activities under the same or similar circumstances as the head office. Consequently, this method also applies to the allocation of costs between permanent establishment and head office.

In certain types of activities, e.g. insurance, banking and transportation, the indirect method for determining the profits of the permanent establishment may be applied. Under this method, the income of the permanent establishment is computed as a fixed portion of the worldwide income derived by the non-resident.

The proper arm's length allocation of income and costs between permanent establishment and head office is an important issue for the tax authorities. Part of the overhead and advertising costs of the head office are deductible from the domestic income of the permanent establishment. No mark-up on these costs as a certain profit is allowed. The tax authorities generally require a mark-up over costs in respect of internal services rendered by the permanent establishment.

Interest and royalties paid by a permanent establishment to the head office, on the other hand, are not deductible from Netherlands income. Before 2013, the thin capitalization provisions also applied to permanent establishments (*see* section 10.3.).

Dividends received by a permanent establishment located in the Netherlands are exempt from dividend withholding tax if the corporate shareholder is eligible for the participation exemption (*see* sections 6.1.3. and 7.2.6.2.2.). In that case, the dividends are not included in the taxable income of the permanent establishment. The same applies for capital gains and losses on the shares.

Permanent establishments are taxed in the same manner as resident companies (*see* section 7.3.3.1.).

7.3.3.3. Dividends, interest and royalties

If dividends, interest and royalties derived from the Netherlands are received by a permanent establishment located in the Netherlands, such income is treated as normal business profits (*see* section 7.3.3.2.).

Dividends derived from a substantial shareholding (i.e. at least 5%), which shares do not constitute business assets, are also subject to corporate income tax in the same manner as normal business profits (*see* section 7.3.3.2. and 7.3.4.1.).

Loan interest paid by a resident company to a non-resident substantial shareholder (*see* above) is also generally subject to corporate income tax (article 17a(1)(c) of the Vpb). However, under domestic law implementing the provisions of the EU Interest and Royalties Directive (2003/49), such interest paid by a resident company to a company resident in an EU Member State is exempt if the following conditions are met (article 17a(2) of the Vpb):

- both companies have a legal form listed in the Annex to the Directive;
- the recipient company holds an interest of at least 25% of the capital in the paying company, or the paying company holds an interest of at least 25% of the capital in the recipient company, or a third party holds an interest of at least 25% of the capital in both companies;
- both companies are subject to corporate income tax listed in article 3(a)(3) of the Directive;
- the recipient is not resident outside the European Union for tax treaty purposes; and
- the loans do not constitute business assets of a permanent establishment outside the European Union.

For withholding taxes on dividends, *see* section 7.3.4.1. There are no withholding taxes on interest and royalties.

For withholding tax on direct payment, *see* section 7.3.4.4.

7.3.3.4. Other income

Other types of income not discussed above are not included in the taxable base.

7.3.3.5. Capital gains

There is no special tax on capital gains. Capital gains derived through a permanent establishment or on immovable property are treated as normal business income. The same rules apply as to resident companies.

For capital gains on shares in resident companies, *see* sections 7.2.1.5. and 7.2.6.4.

7.3.4. Withholding taxes

7.3.4.1. Dividends

7.3.4.1.1. General

Dividends and other profit distributions paid by a resident company to a non-resident company are subject to dividend withholding tax (*dividendbelasting*) of 15% levied on the gross amount. The rate is sometimes reduced under tax treaties (*see* section 7.4.1.5.).

On 30 November 2007, the Supreme Court (Case 2007/42679) held that the imposition of a withholding tax on dividend distributions by a Netherlands private limited liability company (BV) to a Luxembourg minority shareholder (SARL) is incompatible with the freedom of movement of capital because a resident shareholder having a similar holding would have been entitled to the participation exemption (*see* section 6.1.3.).

Also, following a preliminary ruling requested on 21 September 2005 by the Court of Appeals of Amsterdam, the ECJ decided in *Amurta* (Case C-379/05) on 8 November 2007 that the Netherlands dividend withholding tax on non-resident companies is incompatible with the freedom of establishment and freedom of movement of capital principles, because a withholding tax is levied on dividends distributed by a company resident in the Netherlands to a company resident in another Member State, while the dividends paid to a company liable to corporate income tax in the Netherlands or which has a permanent establishment in the Netherlands which owns the shares in the company making the distribution are exempt. In addition, the ECJ held that a Member State may not rely on the existence of a full tax credit granted unilaterally by another Member State to a recipient company resident in the latter Member State in order to escape the obligation to prevent economic double taxation of dividends resulting from the exercise of its power to tax in a situation where the first Member State prevents economic double taxation of dividends distributed to companies resident in its territory.

On 9 April 2010, the Supreme Court decided (Case 08/04160) that the imposition of withholding tax on dividends paid to a Netherlands Antilles company is not incompatible with the EU free movement of capital, holding that the Netherlands Antilles are neither an EU Member State nor a third state. However, after the ECJ's decision in *Prunus* (C-384/09), holding that the freedom of capital movement applied to an investment made in France by a company resident in the British Virgin Islands, the Supreme Court sent preliminary questions to the ECJ on 23 December 2011 in two cases, i.e. *X BV* and *TBG* (joined cases C-24/12 and C-27/12). These questions deal with the compatibility of the 8.3% dividend withholding tax (under the Tax Regulation for the Kingdom of the Netherlands) with the freedom of capital movement, as this rate is higher than the 5% rate which applied on 31 December 1993, the reference date of the standstill clause for the freedom of movement of capital towards third countries. The ECJ ruled in these cases on 5 June 2014 that EU law does not preclude a tax measure of a Member State that restricts the freedom of movement of capital between that Member State and its own Overseas Countries and Territories (OCT) whilst pursuing the objective of combating tax avoidance in an effective and proportionate manner. Following this decision, the Supreme Court ruled on 6 February 2015 that the 8.3% rate fulfils these requirements and is therefore allowed under EU law.

Furthermore, on 16 January 2014, the Supreme Court requested a preliminary ruling from the ECJ on a case involving dividend withholding tax levied on a non-resident corporate portfolio shareholder (Case C-17/14, *Société Générale*). Such a shareholder is taxed on the gross amount of the dividends, whereas a comparable resident company would be subject to corporate income tax on a net basis, i.e. the dividends received less costs. Even though the Netherlands tax rate to which the non-resident company is subject is lower than that of a comparable resident company, the non-resident company could be negatively affected by this treatment.

The Supreme Court has – in addition to the comparability of both situations − requested a preliminary ruling on the costs that non-resident companies may take into consideration.

The distributing company is obliged to withhold the tax and to pay the tax to the tax authorities. For non-resident recipients, the withholding tax is final. Corporate income tax, however, is due on dividends to non-resident companies when the dividends are derived through a permanent establishment located in the Netherlands unless the participation exemption applies (*see* sections 6.1.3. and 7.2.6.2.2.). Dividends on shares to which the participation exemption applies are not subject to withholding tax (article 4(1) of the DB).

In addition, corporate income tax may be due if the recipient (non-resident corporate shareholder) holds a substantial interest of at least 5% in the resident company distributing the dividends, and the shares do not belong to the assets of a business. With effect from 1 January 2012, a non-resident company with a substantial interest of at least 5% in a resident company is subject to corporate income tax on the income derived from such interest, to the extent that the substantial interest does not form part of the assets of a business and the non-resident company holds the substantial interest with the main purpose (or one of the main purposes) being to avoid Netherlands dividend withholding tax or individual income tax (article 17(3)(b) of the Vpb). In general, the taxation of capital gains received by the non-resident corporate shareholder only applies when the qualifying non-resident company does not have access to protection against the levying of corporate income tax under application of a tax treaty. If the substantial interest is held with the main purpose being to avoid dividend withholding tax, a lower rate of corporate income tax applies to the received dividends, i.e. the rate is set at 60% of the highest applicable rate of corporate income tax (article 17(5) of the Vpb).

Repayments of capital may be subject to dividend withholding tax in certain cases. Stock dividends distributed out of a capital premium (*agio*) reserve are exempt from dividend withholding tax.

Interest on participation loans is treated as dividends for dividend withholding tax purposes.

7.3.4.1.2. Exemptions from withholding tax

Under the provisions implementing the EU Parent-Subsidiary Directive (2011/96) in the Netherlands (article 4(2)-(4) of the DB), dividends and other distributions of profits by Netherlands subsidiaries, being NVs or BVs, to their parent companies resident in other EU Member States are exempt from withholding tax. To qualify for the exemption, the EU parent must:

- not be resident, for tax treaty purposes, outside the European Union; and
- have a direct holding of at least 10% of the capital (or 10% of the voting rights under tax treaties where this criterion is used) in the Netherlands subsidiary.

In *Commission of the European Communities v. Kingdom of the Netherlands* (C-521/07), the ECJ held that, by not exempting from withholding tax, dividends paid by Netherlands companies to companies resident in Iceland or Norway, under the same conditions as dividends paid to Netherlands companies or companies of other Member States of the Community, the Netherlands had failed to fulfil its obligations under article 40 of the EEA Agreement.

Following this decision and that of the ECJ in *Aberdeen Property Fininvest Alpha Oy* (C-303/07), the dividend withholding tax exemption was extended, with effect from 11 June 2009, to dividends paid to companies resident in Iceland and Norway. Following the entry into force of an agreement between Liechtenstein and the Netherlands on the exchange of information, the exemption applies to Liechtenstein from 1 January 2010. Thus, the exemption currently applies to companies resident in the whole European Economic Area (EU Member States and Iceland, Liechtenstein and Norway).

Tax refunds may be requested for tax levied in Iceland, Norway and Liechtenstein on dividends distributed before the above-mentioned dates. The requests must be filed within 3 years following the year in which the dividends were distributed.

With respect to EEA companies, it is no longer required that the company has a legal form listed in the Annex to the EU Parent-Subsidiary Directive.

However, the foreign parent company may not (i) be a transparent entity, (ii) have a function comparable with a Netherlands (taxable or exempt) investment institution and (iii) be ineligible for a reduction of a treaty dividend withholding tax rate on the basis of an anti-abuse clause in a tax treaty.

A decree of 11 December 2009 (CPP2009/519M) contains the criteria used in determining whether a foreign entity qualifies for Netherlands tax purposes as a transparent or a non-transparent entity. The outcome is based on the legislation of the other country involved, the articles of association or partnership agreement and Netherlands legislation.

The most important criteria are:

- whether the partnership may have legal ownership of assets used in the course of the business;
- the manner in which the liability of the participants is regulated, including whether or not at least one participant has unlimited liability with respect to the debts and other obligations of the partnership. In this regard, unlimited liability applies to the participant regardless of whether the participant is jointly and severally liable;
- whether the partnership capital is divided into shares; and
- whether or not the participations are freely transferable without the consent of all partners.

Under the decree, if a partnership may have legal ownership of assets used in the business and there are limits on the liability of the partners for the debts of the partnership, the entity is non-transparent. Likewise, if at least one partner in a partnership has unlimited liability for the debts of the partnership, but the capital is divided into shares or the participations are freely transferable, the entity is also non-transparent.

On the other hand, if at least one partner in a partnership has unlimited liability for the debts of the partnership and the capital is not divided into shares or the participations are not freely transferable, the entity is considered transparent for tax purposes.

With respect to foreign entities comparable to Netherlands limited partnerships (*commanditaire vennootschap*), if the participations are freely transferable without the consent of all partners of the entity, the entity is non-transparent. If the participations are not freely transferable without the consent of all partners, the entity is transparent. A general partner of such an entity is subject to personal or corporate income tax (depending on whether the partner is an individual or a company) for his/its share in the partnership.

The decree contains a list of foreign entities and the results (whether or not transparent) of the application of the above criteria. On 14 April 2013, the tax authorities published an updated annex to this decree. This list is not exhaustive, but of an indicative nature. Companies wishing to obtain certainty in advance may request an advance ruling from the tax authorities (*see* section 1.11.7.).

The subsidiary must, within 1 month of the distribution being paid or payable, inform the tax inspector in writing of the name, place of residence and address of the parent, the amount of authorized capital and the part of this capital or of the voting share capital owned by the parent, the amount of the distribution and the fulfilment of all statutory requirements. On the basis of this information the tax inspector may verify whether non-application of the dividend withholding tax was in accordance with the law. He may check the information with the tax authorities in the Member State of residence of the parent through the Ministry of Finance.

According to a resolution of 28 July 1994 (IFZ94/830), the exemption from dividend withholding tax is not granted to holding companies resident in Gibraltar or those subject to the free-zone tax regime of Madeira. Qualifying dividends paid to Madeira holding companies that are not subject to the free-zone regime may, however, qualify for the exemption if the dividends are subject to the general Portuguese corporate income tax regime in the hands of that company.

Under article 15 of the Savings Agreement (agreement of 26 October 2004 between the European Union and Switzerland providing for measures equivalent to those laid down in the EU Savings Directive), the EU Member States must exempt dividend payments to companies resident in Switzerland under essentially the same conditions as those set out in the EU Parent-Subsidiary Directive (before the amendments effective from 1 January 2005; thus, a minimum holding of 25% for at least 2 years may be required). A decree of 6 December 2005 (CPP2005/2215M) clarifies that the Netherlands exempts dividends under the conditions mentioned in the agreement, i.e. a minimum holding of 25% for at least 2 years is required. However, a more beneficial treatment applies under the tax treaty between the Netherlands and Switzerland: for exemption, a 10% direct holding but no holding period is required; 15% withholding tax is applied in other cases.

7.3.4.2. Interest

There is no withholding tax on interest in general. Interest on participation loans are, however, treated as dividends for withholding tax purposes (*see* section 7.3.4.1.).

7.3.4.3. Royalties

There is no withholding tax on royalties.

7.3.4.4. Other income

There is no withholding tax on other income paid to non-resident companies.

7.3.4.5. Withholding procedure

Dividend withholding tax (*see* section 7.3.4.1.) must be withheld by the resident distributing company (withholding agent) when the dividends are paid or become payable (article 7 of the DB). Within 1 month of the withholding, the withholding agent must file a dividend withholding tax return and pay the withheld tax to the tax authorities (article 19 of the AWR).

Upon making the withholding, the withholding agent must provide the recipient of the dividends with a dividend certificate (*dividendnota*). This certificate must include (article 9 of the DB; article 1b of the Uitv. besch. DB):

- the name and address of the issuer of the certificate;
- the name and address of the recipient of the dividends;
- the date of payment or the moment when the dividends become payable;

- description and the amount of dividends; and
- the amount of tax withheld.

The immediate application of the participation/EU exemption is possible.

If dividends are paid to a non-resident company that is a "qualifying company" under a tax treaty (*see* section 7.4.1.3.) and the reduced withholding tax rate applicable under the treaty is lower than the domestic rate (*see* section 7.4.1.5.), the distributing company (withholding agent) may apply the reduced rate at the moment of making the withholding at source (Regulation of 27 June 2012 (DGB 2012/3446M)). To be allowed to apply the reduced treaty rate, the distributing company must file a request with the tax inspector for permission to withhold tax at the reduced rate. An affirmative decision of the inspector remains in force as long as the circumstances do not change. Relevant changes must be reported by the withholding agent. Based on a Decree of 23 June 2014, DGB 2014/1008M on the exemption from, and reduction or refund of, dividend withholding tax, this approval also extends to intermediaries who file the forms on behalf of an agent of the recipient of the dividends if the intermediary is licensed to perform this activity by the tax authorities' international office (Belastingdienst/kantoor buitenland).

If the distributing company (or the intermediary) has not filed such a request or has filed the request after the distribution, it must withhold tax at the normal domestic rate, after which the recipient may apply for a refund. The request for a refund must be filed with the tax inspector who is competent in respect of the distributing company within the prescribed period, which under most treaties is 3 years. In the absence of such treaty provisions, domestic law provides for a 5-year period. However, the period is always 5 year for EU Member States, despite the shorter periods contained in some of the treaties with those countries. The refund is remitted to the distributing company for the account of the recipient.

The Decree of 23 June 2014, DGB 2014/1008M, provides that with respect to dividend payments on hybrid loans or profit-sharing bonds, authorized representatives may submit to the tax authorities a general authorization document when applying for the reduction or refund of withholding tax on dividends. Furthermore, representatives of non-residents may file requests for the refund of withholding tax on dividends electronically, provided a minimum of 25 requests is made in each electronic application. Reduction at source of withholding tax on portfolio dividends may also be requested electronically if certain conditions are met, such as that the prescribed forms are available in electronic format in a portal maintained by the agents and may be generated in such portal. Finally, transparent foreign entities may make a collective request for the refund of withholding tax on dividends for all their individual and corporate participants including investors resident in their state of establishment or a third state. A certificate of residence for each participant, dividend note or other documentary proof of the dividend payments and certain other data must be provided. A certificate of residence submitted to tax authorities remains valid for a period of 2 years. To avoid abuse, participation in the transparent entity must last for at least 1 year.

Similar rules apply where dividends are paid to non-resident recipients other than qualifying companies. To be entitled to the benefit of a reduced treaty rate, the recipient must file a special form (*IB92-form*) with the tax inspector who is competent in respect of the distributing company. This form includes a certificate of residence of the non-resident company. If such form is not filed by the time of distribution, the distributing company must withhold taxes at the domestic rate, after which the recipient can apply for a refund. In that case, the IB92-form must be filed with the local tax office for non-residents in Heerlen. A request for refund must be filed within a certain period specified in the tax treaty and related regulations.

There is no withholding tax on interest, except for interest on participation loans, which is treated as dividends for withholding tax purposes (*see* section 7.3.4.1.). There is no withholding tax on royalties.

7.3.5. Branch tax

There is no branch profits tax in the Netherlands. The following treaties concluded by the Netherlands, however, allow the treaty partner to levy such a tax at the maximum rates given in parentheses: Argentina (10%), Brazil (15%), Canada (10%), Indonesia (10%), Kazakhstan (10%), the Philippines (10%), Turkey (5%), the United States (5%), Vietnam (7%) and Zimbabwe (5%).

7.3.6. Other taxes on income

See section 7.2.3. for the profit payment imposed on income derived from the exploration for or exploitation of oil and natural gas from the continental shelf.

7.3.7. Taxes on capital

For real estate tax, *see* section 5.3.

7.3.8. Closure of branch/permanent establishment

If a non-resident company ceases to be liable for Netherlands corporate income tax due to the closure of its permanent establishment in the Netherlands, there is a deemed disposal of all assets and liabilities of the permanent establishment. Closure of the permanent establishment may trigger taxation of all hidden reserves, tax-free reserves and provisions, and goodwill as far as attributed to the former permanent establishment.

The Supreme Court has ruled that profits originating from a permanent establishment's activities after its liquidation are considered income derived by the former permanent establishment. Accordingly, a deduction from the tax due was permitted under the tax treaty with Turkey (BNB 1991/204).

7.3.9. Administration

Non-resident companies are generally subject to the same rules which apply to resident companies (*see* section 1.11.). Non-resident companies, however, have to report only their Netherlands domestic income in their corporate income tax return. If a non-resident company is established under Netherlands law, a corporate income tax return must be filed on its worldwide income and claim relief for its foreign income (Decree of 6 March 2001, CPP2000/3020).

Non-resident companies need not file a corporate income tax return if they are only liable to tax on dividends, which is subject to final withholding tax (*see* section 7.3.4.1.).

7.4. Tax treaties and other agreements

7.4.1. Tax treaties

7.4.1.1. Treaty policy

Netherlands tax treaty policy aims to avoid double taxation, to counteract tax evasion, to achieve as much as possible legal security for taxpayers, to reduce administrative burdens, to exchange information and to promote mutual assistance in collection of taxes.

Tax treaties concluded by the Netherlands are mainly based on the OECD Income and Capital Model, although some treaties incorporate features of the UN Model Convention. The Netherlands has also published its own model convention in 1987 (*Nederlands standaardverdrag 1987*, NSV), which corresponds largely with the OECD Income and Capital Model. In the Notice Fiscal Treaty Policy 2011 (*Notitie fiscaal verdragsbeleid 2011*), the State Secretary for Finance indicated that the NSV is no longer valid and that no new model will be published as the Netherlands starting point in tax treaty negotiations depends on the tax system of the country with which the Netherlands is negotiating.

For the policy regarding limitation on benefits *see* section 7.4.1.6.1.

For Netherlands treaty policy on tax sparing, *see* section 7.4.1.6.2.

With respect to Aruba, Curaçao and St. Maarten, double taxation is prevented by the Tax Regulation for the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK). With respect to the BES Islands, double taxation issues are covered by the Tax Regulation for the Netherlands.

Tax treaties concluded by the Netherlands do not automatically apply to Aruba, Curaçao, St. Maarten and the BES Islands. Due to the fact that the BES Islands have become part of the Netherlands, the Netherlands, when negotiating a new treaty, investigates whether the other treaty partner is prepared to apply the treaty to those islands. As a result, the new tax treaties concluded by the Netherlands with China (People's Rep.) and Ethiopia also cover the BES Islands. The treaty with Ethiopia is not yet in force (*see* section 7.4.1.4.).

In most treaties there is a provision on possible extension. If Aruba, Curaçao and St. Maarten wish a tax treaty to be extended, they must negotiate with the other contracting state on the application of the treaty. Furthermore, Aruba, Curaçao and St. Maarten may negotiate tax treaties on their own. If the Netherlands wish an existing treaty to be extended to the BES Islands, it must renegotiate with the other contracting state.

Furthermore, with respect to the BES Islands, the tax treaties signed by the former Netherlands Antilles remain applicable.

7.4.1.2. Treaty relief from double taxation

Only residents may claim relief under tax treaties concluded by the Netherlands. Case law of the European Court of Justice implies, however, that foreign permanent establishments may also benefit from treaty provisions (*St. Gobain case*). Following this case law, the State Secretary for Finance issued a decree on 21 January 2004 under which foreign permanent establishments may claim relief with respect to withholding taxes on dividend, interest and royalties (credit method). Relief is not available if the Netherlands has not concluded a tax treaty with the country in which the head office is situated and the foreign company has no access to a tax treaty which provides freedom of establishment similar to the freedom of establishment under EU law.

Under tax treaties concluded by the Netherlands, relief for the avoidance of double taxation is granted by (i) the exemption with progression method or (ii) the credit method.

More recent tax treaties provide for double taxation relief by reference to the relief methods granted under domestic law (*see* section 7.2.6.). Older treaties may provide different relief methods for certain types of income; such treaties should always be studied carefully.

The 1951 treaty with Switzerland provided for the credit method and did not include the reservation concerning the compensation of losses. Relief by way of exemption was, however, granted under Resolution BNB 1955/195. From 1999, this concession was withdrawn for passive group finance and investment permanent establishments (Decree of 18 July 2008, CPP2007/664M; *see* section 7.2.6.1.). According to the Decree of 16 March 1993 (IFZ92/397), the system of granting relief normally followed under tax treaties for carry-overs of positive and negative components may be applied upon request. With effect from 1 January 2012, a new treaty with Switzerland is applicable.

The credit method under treaties generally applies to foreign taxes on dividends, interest and royalties. Exceptions are the treaties with Germany and the former USSR. Under some treaties the credit may not exceed the amount of Netherlands tax attributable to the qualifying foreign income. The credit may be computed on an overall basis or per-country basis (Decree of 20 July 2000, IFZ2000/766M).

The treaties either exempt or apply a reduced rate of tax withholding to dividends, interest and royalties flowing from one country to another. Foreign tax suffered by the recipient is then available for tax credit relief. The taxpayer may, upon request, deduct the foreign withholding tax on dividends, interest and royalties as business expenses instead of treaty relief (Decree of 21 June 1996, IFZ96/619M). The taxpayer may thus elect each year, in respect of investment income from each treaty state, to deduct the foreign withholding tax as a business expense instead of applying for treaty relief.

The relief is limited to the lowest of (i) the amount of Netherlands taxes attributable to the qualifying income (*see* section 7.2.6.), (ii) the taxes withheld according to the provisions of the tax treaty concluded by the Netherlands and the source country or (iii) the taxes withheld according to the tax treaty concluded by the country in which the head office is situated and the source country (Decree of 21 January 2004, IFZ2003/558M).

7.4.1.3. Tax treaties in force

The following is the full list of tax treaties concluded by the Netherlands which are in force. For the effective date, only the date on which a treaty generally takes effect in the Netherlands is given (a treaty may take effect at different times for the treaty partner, as well as for different types of taxes).

Country	Scope	Date of signature	Date of entry into force	Effective date
Albania	Income and Capital	22 July 2004	15 Nov. 2005	1 Jan. 2006
Argentina	Income and Capital	27 Dec. 1996	11 Feb. 1998	1 Jan. 1999
Armenia	Income and Capital	31 Oct. 2001	22 Nov. 2002	1 Jan. 2003
Australia	Income	17 Mar. 1976	27 Sep. 1976	1 July 1975 (AU) 1 Jan. 1975 (NL)

Country		Scope	Date of signature	Date of entry into force	Effective date
	Memorandum of Understanding	Income	20 Aug. 2015	29 Aug. 2015	29 Aug. 2015
	Protocol	Income	30 June 1986	1 May 1987	1 July 1986 (AU) 1 Jan. 1986 (NL)
Austria		Income and Capital	1 Sep. 1970	21 Apr. 1972	1 Jan. 1969
	Protocol	Income and Capital	8 Sep. 2009	1 July 2010	1 Jan. 2010
	Protocol	Income and Capital	8 Oct. 2008	23 May 2009	1 Jan. 2010
	Protocol	Income and Capital	26 Nov. 2001	26 Jan. 2003	1 Jan. 2004
	Protocol	Income and Capital	18 Dec. 1989	28 Dec. 1990	1 Jan. 1991
Azerbaijan		Income and Capital	22 Sep. 2008	18 Dec. 2009	1 Jan. 2010
Bahrain		Income	16 Apr. 2008	24 Dec. 2009	1 Jan. 2010
Bangladesh		Income	13 July 1993	8 June 1994	1 Jan. 1995 (NL) 1 July 1995 (BD)
Barbados		Income	28 Nov. 2006	12 July 2007	1 Jan. 2008
	Protocol	Income	27 Nov. 2009	13 Nov. 2011	13 Dec. 2011
Belarus		Income and Capital	26 Mar. 1996	31 Dec. 1997	1 Jan. 1998
Belgium		Income and Capital	5 June 2001	31 Dec. 2002	1 Jan. 2003
	Protocol	Income and Capital	23 June 2009	1 Sep. 2013	1 Jan. 2010 1 Jan. 2008
Bermuda		Income	8 June 2009	1 Feb. 2010	1 Feb. 2010
Bosnia and Herzegovina		Income and Capital	22 Feb. 1982	6 Feb. 1983	1 Jan. 1984
Brazil		Income	8 Mar. 1990	20 Nov. 1991	1 Jan. 1992
Bulgaria		Income	6 July 1990	11 May 1994	1 Jan. 1995
Canada		Income	27 May 1986	21 Aug. 1987	1 Jan. 1987
	Other	Income	22 Oct. 2013	31 Oct. 2013	1 Nov. 2013
	Protocol	Income	25 Aug. 1997	15 Jan. 1999	16 Dec. 1998
	Protocol	Income	4 Mar. 1993	30 July 1994	1 Jan. 1993
China (People's Rep.)		Income	31 May 2013	31 Aug. 2014	1 Jan. 2015

Country		Scope	Date of signature	Date of entry into force	Effective date
Croatia		Income and Capital	23 May 2000	6 Apr. 2001	1 Jan. 2002
Curaçao		Income, Capital and Inheritance	12 Dec. 2013	1 Dec. 2015	1 Jan. 2016
Czech Republic		Income and Capital	4 Mar. 1974	5 Nov. 1974	1 Jan. 1972
	Protocol	Income and Capital	15 Oct. 2012	31 May 2013	1 Jan. 2014
	Protocol	Income and Capital	26 June 1996	11 Apr. 1997	1 Jan. 1998
Denmark		Income and Capital	1 July 1996	6 Mar. 1998	1 Jan. 1999
Egypt		Income	21 Apr. 1999	20 May 2000	1 Jan. 2001
Estonia		Income and Capital	14 Mar. 1997	8 Nov. 1998	1 Jan. 1995
	Protocol	Income and Capital	26 June 2008	22 May 2009	1 Jan. 2010
	Protocol	Income and Capital	14 July 2005	21 May 2006	1 Jan. 2005
Finland		Income and Capital	28 Dec. 1995	20 Dec. 1997	1 Jan. 1998
France		Income and Capital	16 Mar. 1973	29 Mar. 1974	1 Jan. 1974
	Annex	Income and Capital	28 Apr. 2006	n/a	n/a
	Protocol	Income and Capital	7 Apr. 2004	24 July 2005	1 Apr. 2004
Georgia		Income	21 Mar. 2002	21 Feb. 2003	1 Jan. 2004
	Memorandum of Understanding	Income	23 Nov. 2015	2 Dec. 2015	1 Jan. 2015
Germany		Income	12 Apr. 2012	1 Dec. 2015	1 Jan. 2016
Ghana		Income	10 Mar. 2008	12 Nov. 2008	1 Jan. 2009
	Memorandum of Understanding	Income	24 Mar. 2015	3 Apr. 2015	1 Jan. 2014
Greece		Income and Capital	16 July 1981	17 July 1984	1 Jan. 1981
	Protocol	Income and Capital	18 Jan. 2006	1 July 2006	1 July 2006
Hong Kong		Income	22 Mar. 2010	24 Oct. 2011	1 Jan. 2012 1 Apr. 2012

Country		Scope	Date of signature	Date of entry into force	Effective date
Hungary		Income and Capital	5 June 1986	25 Sep. 1987	1 Jan. 1988
Iceland		Income and Capital	25 Sep. 1997	27 Dec. 1998	1 Jan. 1999
India		Income and Capital	30 July 1988	21 Jan. 1989	1 Apr. 1989 (IN) 1 Jan. 1989 (NL) 1 Jan. 1987 (NL) 1 Apr. 1987 (IN)
	Protocol	Income and Capital	10 May 2012	2 Nov. 2012	2 Nov. 2012
Indonesia		Income	29 Jan. 2002	31 Dec. 2003	1 Jan. 2004
Ireland		Income and Capital	11 Feb. 1969	12 May 1970	1 Jan. 1965 (NL) 1 Apr. 1965 (IE)
Israel		Income and Capital	2 July 1973	9 Sep. 1974	1 Apr. 1970 (IL) 1 Jan. 1970 (NL)
	Protocol	Income and Capital	16 Jan. 1996	26 July 1996	1 Jan. 1996
Italy		Income and Capital	8 May 1990	3 Oct. 1993	1 Jan. 1993
	Memorandum of Understanding	Income and Capital	9 July 2014	22 Aug. 2014	1 Jan. 2011
Japan		Income	25 Aug. 2010	29 Dec. 2011	1 Jan. 2012
	Exchange of Letters	Income	6 Aug. 2012	6 Aug. 2012	1 Apr. 2012
Jordan		Income	31 Oct. 2006	16 Aug. 2007	1 Jan. 2008
Kazakhstan		Income and Capital	24 Apr. 1996	2 May 1997	1 Jan. 1996
Korea (Rep.)		Income	25 Oct. 1978	17 Apr. 1981	1 Jan. 1982
	Protocol	Income	6 Nov. 1998	2 Apr. 1999	1 Jan. 2000
Kosovo		Income and Capital	22 Feb. 1982	6 Feb. 1983	1 Jan. 1984
Kuwait		Income	29 May 2001	23 Apr. 2002	1 Jan. 2001
Latvia		Income and Capital	14 Mar. 1994	29 Jan. 1995	1 Jan. 1996
Lithuania		Income and Capital	16 June 1999	31 Aug. 2000	1 Jan. 2001
Luxembourg		Income and Capital	8 May 1968	20 Oct. 1969	1 Jan. 1967
	Protocol	Income and Capital	29 May 2009	1 July 2010	1 Jan. 2011

Country		Scope	Date of signature	Date of entry into force	Effective date
	Protocol	Income and Capital	16 Oct. 1990	27 Sep. 1992	1 Jan. 1993
Macedonia (FYR)		Income and Capital	11 Sep. 1998	21 Apr. 1999	1 Jan. 2000
Malaysia		Income	7 Mar. 1988	2 Feb. 1989	1 Jan. 1985
	Protocol	Income	4 Dec. 2009	19 Oct. 2010	1 Jan. 2010
	Protocol	Income	4 Dec. 1996	5 Feb. 1999	1 Jan. 2000 (NL) 1 Jan. 2001 (MY)
Malta		Income and Capital	18 May 1977	9 Nov. 1977	1 Jan. 1976
	Protocol	Income and Capital	18 July 1995	28 Mar. 1999	1 Jan. 1994 (MT) 28 Mar. 1999 (NL)
Mexico		Income	27 Sep. 1993	13 Oct. 1994	1 Jan. 1995
	Protocol	Income	11 Dec. 2008	31 Dec. 2009	1 Jan. 2010
Moldova		Income and Capital	3 July 2000	1 June 2001	1 Jan. 2002
Morocco		Income and Capital	12 Aug. 1977	10 June 1987	1 Jan. 1987
Netherlands		Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	28 Oct. 1964	1 Jan. 1965	1 Jan. 1965
	Protocol	Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	14 Feb. 2002	1 Feb. 2002	1 Jan. 2002
	Protocol	Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	8 Feb. 2002	1 Feb. 2002	1 Jan. 2002
	Protocol	Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	14 Dec. 2001	1 Jan. 2002	1 Jan. 2002
	Protocol	Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	13 Dec. 1996	1 Jan. 1997	1 Jan. 1997

Country		Scope	Date of signature	Date of entry into force	Effective date
	Protocol	Income, Capital, Inheritance, Gift, Stamp and Motor Vehicles Tax Treaty	9 Jan. 1996	n/a	n/a
New Zealand		Income	15 Oct. 1980	18 Mar. 1981	1 Apr. 1979 (NZ) 1 Jan. 1979 (NL)
	Protocol	Income	20 Dec. 2001	22 Aug. 2004	1 Jan. 2005 (NL) 1 Apr. 2005 (NZ)
Nigeria		Income	11 Dec. 1991	9 Dec. 1992	1 Jan. 1993
Norway		Income	12 Jan. 1990	31 Dec. 1990	1 Jan. 1991
	Protocol	Income	23 Apr. 2013	30 Nov. 2013	1 Jan. 2014
Oman		Income	5 Oct. 2009	28 Dec. 2011	1 Jan. 2012
Pakistan		Income and Capital	24 Mar. 1982	4 Oct. 1982	1 Jan. 1982
Panama		Income	6 Oct. 2010	1 Dec. 2011	1 Dec. 2011 1 Jan. 2012
Philippines		Income	9 Mar. 1989	20 Sep. 1991	1 Jan. 1992
Poland		Income	13 Feb. 2002	18 Mar. 2003	1 Jan. 2004
Portugal		Income and Capital	20 Sep. 1999	11 Aug. 2000	1 Jan. 2001
Qatar		Income	24 Apr. 2008	25 Dec. 2009	1 Jan. 2010
Romania		Income and Capital	5 Mar. 1998	29 July 1999	1 Jan. 2000
Russia		Income and Capital	16 Dec. 1996	27 Aug. 1998	1 Jan. 1999
Saudi Arabia		Income	13 Oct. 2008	1 Dec. 2010	1 Jan. 2011
Serbia and Montenegro		Income and Capital	22 Feb. 1982	6 Feb. 1983	1 Jan. 1984
Singapore		Income and Capital	19 Feb. 1971	31 Aug. 1971	1 Jan. 1968
	Protocol	Income and Capital	25 Aug. 2009	1 May 2010	1 May 2010
	Protocol	Income and Capital	28 Feb. 1994	9 Dec. 1994	1 Jan. 1994
Slovak Republic		Income and Capital	4 Mar. 1974	5 Nov. 1974	1 Jan. 1972
	Protocol	Income and Capital	7 June 2010	1 Dec. 2010	1 Jan. 2011

Country		Scope	Date of signature	Date of entry into force	Effective date
	Protocol	Income and Capital	16 Feb. 1996	19 Dec. 1996	1 Jan. 1997
Slovenia		Income	30 June 2004	31 Dec. 2005	1 Jan. 2006
South Africa		Income and Capital	10 Oct. 2005	28 Dec. 2008	1 Jan. 2009
	Protocol	Income and Capital	8 July 2008	28 Dec. 2008	1 Jan. 2009
Spain		Income and Capital	16 June 1971	20 Sep. 1972	1 Jan. 1973
Sri Lanka		Income and Capital	17 Nov. 1982	24 Jan. 1984	1 Jan. 1979 (NL) 1 Apr. 1979 (LK)
Suriname		Income and Capital	25 Nov. 1975	13 Apr. 1977	25 Nov. 1975
Sweden		Income and Capital	18 June 1991	12 Aug. 1992	1 Jan. 1993
Switzerland		Income	26 Feb. 2010	9 Nov. 2011	1 Jan. 2012
Taiwan		Income	27 Feb. 2001	16 May 2001	1 Jan. 2002
Tajikistan		Income and Capital	21 Nov. 1986	27 Sep. 1987	1 Jan. 1988
Thailand		Income and Capital	11 Sep. 1975	9 June 1976	1 Jan. 1976
Tunisia		Income	16 May 1995	15 Dec. 1995	1 Jan. 1996
Turkey		Income	27 Mar. 1986	30 Sep. 1988	1 Jan. 1989
Uganda		Income	31 Aug. 2004	10 Sep. 2006	1 Nov. 2006 1 Jan. 2007 (NL) 1 July 2007 (UG)
Ukraine		Income and Capital	24 Oct. 1995	2 Nov. 1996	1 Jan. 1997
United Arab Emirates		Income	8 May 2007	2 June 2010	2 June 2010 1 Jan. 2011
United Kingdom		Income	26 Sep. 2008	25 Dec. 2010	1 Jan. 2011 (NL) 1 Apr. 2011 (UK) 6 Apr. 2011 (UK)
	Other	Income	8 Sep. 2014	n/a	n/a
	Protocol	Income	12 June 2013	31 Jan. 2014	1 Jan. 2015 (NL) 1 Apr. 2014 (UK) 6 Apr. 2014 (UK)
	Explanatory Note	Income	1 Jan. 2008	n/a	n/a
United States		Income	18 Dec. 1992	31 Dec. 1993	1 Jan. 1994

Country		Scope	Date of signature	Date of entry into force	Effective date
	Protocol	Income	8 Mar. 2004	28 Dec. 2004	1 Jan. 2005
	Protocol	Income	13 Oct. 1993	31 Dec. 1993	1 Jan. 1994
Uzbekistan		Income and Capital	18 Oct. 2001	27 May 2002	1 Jan. 2003
Venezuela		Income	29 May 1991	11 Dec. 1997	1 Jan. 1998
	Protocol	Income	21 Sep. 1995	11 Dec. 1997	1 Jan. 1998
Vietnam		Income	24 Jan. 1995	25 Oct. 1995	1 Jan. 1996
Zambia		Income	19 Dec. 1977	9 Nov. 1982	1 Apr. 1983 (ZM) 1 Jan. 1983 (NL)
Zimbabwe		Income	18 May 1989	21 Apr. 1991	1 Jan. 1992 (NL) 1 Apr. 1992 (ZW)

7.4.1.4. Tax treaties signed but not yet in force

The following treaties, amending protocols or exchanges of notes have been concluded by the Netherlands but have not yet entered into force:

Country		Scope	Date of signature	Date of entry into force	Effective date
Ethiopia		Income	10 Aug. 2012	n/a	n/a
	Protocol	Income	16 Feb. 2015	n/a	n/a
	Protocol	Income	18 Aug. 2014	n/a	n/a
Germany					
	Protocol	Income	11 Jan. 2016	n/a	n/a
Indonesia					
	Protocol	Income	30 July 2015	n/a	n/a
Kenya		Income	22 July 2015	n/a	n/a
Lithuania					
	Memorandum of Understanding	Income and Capital	5 July 2012	n/a	n/a
Malawi		Income	19 Apr. 2015	n/a	n/a
St. Maarten		Income, Capital and Inheritance	9 July 2014	1 Mar. 2016	1 Jan. 2017
Zambia		Income	15 July 2015	n/a	n/a

Country	Scope	Date of signature	Date of entry into force	Effective date

7.4.1.5. Treaty withholding tax rates

There is no withholding tax under domestic law on interest in general and on royalties. Interest on participation loans is, however, treated as dividends and as such subject to dividend withholding tax. Under some treaties, however, interest on profit sharing bonds, which may be considered as participation loans, is treated as interest.

A reduced treaty rate may be applied at source if the appropriate certificate of residence has been presented to the withholding agent making the payment.

See Netherlands - Treaty Withholding Rates Table, Quick Reference Tables IBFD.

7.4.1.6. Special provisions in tax treaties

7.4.1.6.1. Limitation on benefits provisions

Tax treaties concluded by the Netherlands generally include anti-avoidance provisions. They do not include a comprehensive limitation of benefits provision, except for the treaty with the United States.

The following treaties contain provisions that could restrict treaty benefits:

Country	Article
Armenia	Protocol paragraph XII
Azerbaijan	11(9), 12(8), 21(3), Protocol paragraph XIV
Bahrain	10(9)-(12)
Barbados	4(4), 31, Protocol (2006) paragraph IX
Canada	13(4)
China (People's Rep.)	10(7), 11(9), 12(7), 23
Croatia	10(9)
Czech Republic [1]	13
Egypt	10(4)
Ghana	Protocol paragraphs I and II
Greece	13
Indonesia	13
Ireland	11
Israel	14
Japan	21

1 The Netherlands continues to apply the Czechoslovak treaty to the Czech Republic and the Slovak Republic. The treaty has, however, been amended by protocols with both republics.

Country	Article
Jordan	10(3)
Kazakhstan	Protocol paragraph XI(2)
Korea (Rep.)	13
Kuwait	Protocol paragraph 5(2)-(3)
Latvia	10(8)
Luxembourg	13, 29(2) [2]
Macedonia	Protocol paragraph V(2)-(3)
Malaysia	Protocol (1996) paragraph I
Malta	13, 30, Protocol paragraph VI, IX [3]
Mexico	12(7), Protocol (2008) paragraph 3
Morocco	10(2)(a), 13
New Zealand	Protocol paragraph VI [4]
Panama	27
Portugal	Protocol paragraph II(3)-(5) [5]
Romania	10(7)
Singapore	13
Slovak Republic	13
South Africa	10(8)
Spain	13
Suriname	10(2)(a), 13
Switzerland	Protocol paragraph VIII
Thailand	13
United Arab Emirates	10(9), Protocol paragraph 1
United Kingdom	10(3), 11(5), 11(5), 20(4) Protocol paragraph VII

2 The treaty with Luxembourg does not apply to holding companies within the meaning of the Luxembourg Law of 31 July 1929. With effect from 1 January 2011, this provision is obsolete because the transitional regime for existing holding companies expired on 31 December 2010.
3 The agreement does not apply to companies or other persons wholly or partly exempt from tax by a special regime under the laws of either state. It is also not applicable to income from such companies or other persons derived by a resident of the other state, nor to shares, jouissance rights or interests in such companies or other persons.
4 This provision applies to trustees.
5 No treaty benefits for companies benefiting from a harmful preferential regime.

Country	Article
United States	26
Uzbekistan	Protocol paragraph X(2)

7.4.1.6.2. Tax sparing credit

The Netherlands tax treaty policy is that tax sparing credits are granted only in respect of less-developed countries that seek to create economic development by granting non-resident investors tax incentives. The tax sparing credits are to avoid that the effect of these tax incentives is nullified by levies in the Netherlands by granting a fixed foreign tax credit on certain types of income, which credit is higher than the amount of tax actually levied at source.

In general, the tax sparing credits granted do not exceed the withholding tax rates allowed under the tax treaties.

The effect of tax exemptions granted to certain non-resident investors is not intended to be nullified by levies in the investor's country of residence. To that effect, certain tax treaties of the Netherlands contain provisions granting a fixed foreign tax credit on certain categories of foreign income, even if such income is exempt from foreign tax or subject only to a low level of taxation under the law of the source country. In many cases, the relief provision expires after a period of 10 years of the effective date of the treaty, unless renegotiated. Tax sparing credits are mostly subject to specific qualifications. Therefore, the relevant treaty provision should always be consulted.

Tax sparing credits are granted by the Netherlands to its resident companies under the following tax treaties:

Country	Qualifying income [1]	Credit rate (%) [2]	Credit article	Expiry date
Brazil	dividends	20/25	23(4)	none
	interest	20	23(4)	none
	royalties	20/25	23(4)	none
Pakistan	interest	*	22(4) Prot. VIII	none [3]
	royalties	15	22(4), Prot. VIII	none
Philippines	interest	15	22(4)	none
	royalties	15	22(4), Prot. V	none
Sri Lanka	dividends	10/15	23(4), Prot. VII	none
	interest	10	23(4), Prot. VII	none
	royalties	10	23(4), Prot. VII	none
Suriname	dividends	**	24(4), Prot. X	none
	interest		24(5, 6), Prot. X	none
	royalties		24(6), Prot. X	none
Zambia	dividends		22(4), Prot. IV	none

* For interest received by a bank or other financial institution equal to the amount of tax which Pakistan actually has levied thereon increased by twice the difference between this amount and 10% of the gross amount of such interest. 15% for interest paid by a company to another company (other than a partnership) which holds directly at least 25% of the capital of the paying company.

3 After a period of 10 years the contracting states must consult whether to terminate or revise the provisions.

** Tax which would have been payable but for the incentive legislation.

Country	Qualifying income [1]	Credit rate (%) [2]	Credit article	Expiry date

1 Sometimes the tax sparing credit is limited to specific types of qualifying income or to specific types of taxpayer. Therefore, each treaty should be studied carefully.

2 The given rates are maximum rates indicated in the appropriate provisions (often with reference to the withholding tax rate allowed under the treaty). In cases marked by an asterisk (*), no rate can be established because of the very specific conditions set out in the provisions. In all cases, each treaty should be studied carefully.

There are no treaties under which treaty partners grant a tax sparing credit to their resident companies for taxes paid in the Netherlands.

7.4.1.6.3. Special provisions for offshore activities

The following tax treaties concluded by the Netherlands contain special provisions for the taxation of activities on the continental shelf:

Country	Article
Albania	23A
Argentina	26
Armenia	25
Azerbaijan	24
Bahrain	23
Barbados	25
Belarus	24
Belgium	24
Canada	23
Croatia	24
Denmark	24
Egypt	23
Estonia	25
Finland	24
Georgia	24
Hong Kong	22
Iceland	25
Indonesia	25
Jordan	23
Kazakhstan	25
Kuwait	24

Country	Article
Latvia	25
Lithuania	25
Macedonia	25
Moldova	24
Norway	24
Poland	24
Portugal	25
Qatar	23
Romania	25
Russia	24
Slovenia	23
South Africa	24
Sweden	25
Switzerland	23
Uganda	23
Ukraine	25
United Kingdom	23
United States	27
Uzbekistan	25
Venezuela	24

7.4.1.6.4. Excluded individuals

Netherlands tax treaties do not generally contain provisions on excluded individuals. However, to avoid double non-taxation, some treaties contain a remittance basis clause, under which the residence state grants relief under the treaty only with regard to income remitted to that state. Remittance basis clauses are included in the following treaties:

Country	Article
Barbados	31(4)
Ghana	23
Ireland	2(3)
Israel	6
Japan	4(4)
Malaysia	6

Country	Article
Malta	2(5)
Singapore	5
Thailand	27
United Kingdom	22(1)

7.4.1.6.5. Other special provisions

Arbitration clauses are included in the treaties with the following countries:

Country	Article
Albania	25(5)
Armenia	27(5)
Azerbaijan	26(5)
Bahrain	25(5)
Barbados	27(5)
Bermuda	12(5)
Canada	25(5)
Croatia	26(5)
Egypt	25(6)
Estonia	27(5) and article 4 of the 2005 Protocol
Georgia	26(5)
Ghana	26(6)
Hong Kong	24(5)
Iceland	27(5)
Japan	24(5)
Jordan	25(5)
Kazakhstan	27(5)
Kuwait	26(5)
Latvia	27(5)
Lithuania	27(5)
Macedonia	27(5)
Moldova	26(5)
Norway	26(6)

Country	Article
Poland	26(5)
Qatar	26(5)
Russia	26(5)
Slovenia	25(5)
Switzerland	25(5)
South Africa	26(5)
Uganda	25(5)
Ukraine	27(5)
United Arab Emirates	24(5)
United Kingdom	25(5)
United States	29(5)
Uzbekistan	27(5)
Venezuela	26(5)

7.4.2. Treaties on administrative assistance

Regarding EU Member States, Directive 2011/16 on administrative cooperation in the field of taxation (which repeals Directive 77/799 on mutual assistance) was transposed into the domestic law by Law 33246 of 11 October 2012 and applies retroactively from 1 January 2013.

In addition, the multilateral OECD Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988 is effective in respect of the Netherlands from 1 February 1997. The protocol amending the Convention entered into force starting 1 September 2013. The amended Convention is generally applicable from 1 January 2014.

The following countries are currently applying the Convention: Albania (from 1 January 2014), Anguilla (from 1 January 2015), Argentina (from 1 January 2014), Aruba (from 1 January 2014), Australia (from 1 January 2013), Austria (from 1 January 2015), Azerbaijan (from 1 October 2004), Belgium (from 1 December 2000), Belize (from 1 January 2014), Bermuda (from 1 January 2015), BES Islands: Bonaire, St. Eustatius and Saba (from 1 January 2014), British Virgin Islands (from 1 January 2015), Cameroon (from 1 January 2016), Canada (from 1 January 2015), Cayman Islands (from 1 January 2014), Colombia (from 1 January 2015), Costa Rica (from 1 January 2014), Croatia (from 1 January 2015), Curaçao (from 1 January 2014), Cyprus (from 1 January 2016), the Czech Republic (from 1 January 2015), Denmark (from 1 April 1995), Estonia (from 1 January 2015), Faroe Islands (from 1 January 2012), Finland (from 1 April 1995), France (from 1 September 2005), Georgia (from 1 January 2012), Germany (from 1 January 2016), Ghana (from 1 January 2014), Gibraltar (from 1 January 2015), Greece (from 1 January 2014), Greenland (from 1 January 2012), Guernsey (from 1 January 2015), Hungary (from 1 January 2016), Iceland (from 1 November 1996), India (from 1 January 2013), Indonesia (from 1 January 2016), Ireland (from 1 January 2014), Isle of Man (from 1 January 2015), Italy (from 1 May 2006), Japan (from 1 January 2014), Jersey (from 1 January 2015), Kazakhstan (from 1 January 2016), Korea (Rep.) (from 1 January 2013), Latvia (from 1 January 2015), Lithuania (from 1 January 2015), Luxembourg (from 1 January 2015), Malta (from 1 January 2014), Mauritius (from 1 January 2016), Mexico (from 1 January 2013), Moldova (from 1 January 2013), Montserrat (from 1 January 2014), New Zealand (from 1 January 2015), Nigeria (from 1 January 2016), Norway (from 1 April 1995), Poland (from 1 October 1997), Portugal (from 1 January 2016), Romania (from 1 January 2015), Russia (from 1 January 2016), San Marino (from 1 January 2016), Seychelles (from 1 January 2016), St. Maarten (from 1 January 2014), the Slovak Republic (from 1 January 2015), Slovenia (from 1 January 2012), South Africa (from 1 January 2015), Spain (from 1 January 2011), Sweden (from 1 April 1995), Tunisia (from 1 January 2015), Turks and Caicos Islands (from 1 January 2014), Ukraine (from 1 July 2009), the United Kingdom (from 1 May 2008) and the United States (from 1 April 1995).

Most of the treaties concluded by the Netherlands contain provisions on exchange of information and assistance in collection of taxes. In addition, the following agreements on mutual administrative assistance and collection of taxes have been concluded by the Netherlands:

Country	Date of signature	Effective date
Andorra	06.11.09	01.01.11
Anguilla	22.07.09	01.05.11
Antigua and Barbuda	02.09.09	01.12.10
Australia	09.12.02	01.01.01
Bahamas	04.12.09	01.01.11
Belgium	25.09.97	01.01.97
Belize	21.01.10	01.01.10
Bermuda	08.06.09	01.02.10
British Virgin Islands	11.09.09	01.07.13
Canada	17.11.97	01.01.97
Cayman Islands	08.07.09	29.12.09
Cook Islands	01.09.09	07.09.11
Costa Rica	29.03.11	01.07.12
Czech Republic	13.11.06	20.12.06
Denmark	14.12.11	14.11.12
Dominica	11.05.10	01.01.10
Estonia	19.10.04	19.10.04
Germany	16.10.97	16.10.97
Germany	21.05.99	23.06.01
Gibraltar	23.04.10	01.12.11
Grenada	10.02.10	20.01.12
Guernsey	25.04.08	01.01.10
Hungary	21.10.11	21.10.11
Isle of Man	12.10.05	24.07.06
Japan	18.01.12	18.01.12
Jersey	20.06.07	01.03.08
Latvia	02.08.04	02.08.04
Liberia	27.05.10	01.01.11

Country	Date of signature	Effective date
Liechtenstein	10.11.09	01.01.10
Lithuania	05.07.12	05.07.12
Marshall Islands	14.05.10	08.11.11
Monaco	11.01.10	01.12.10
Montserrat	10.12.09	01.12.11
New Zealand	20.12.01	01.01.05
Poland	07.04.05	07.04.05
Samoa	14.09.09	02.03.12
San Marino	27.01.10	01.01.10
Seychelles	04.08.10	01.09.12
Slovenia	13.01.12	13.01.12
Spain	11.04.06	12.04.06
St. Kitts and Nevis	01.09.09	29.11.10
St. Lucia	02.12.09	31.03.11
St. Vincent and the Grenadines	02.09.09	21.03.11
Sweden	26.10.04	26.10.04
Turks and Caicos Islands	22.07.09	01.05.11
Ukraine	03.04.02	03.04.02

7.4.3. Foreign account reporting agreements

7.4.3.1. Foreign account reporting agreements signed

Country		Scope	Date of signature	Date of entry into force	Effective date
United States		FATCA Model 1A Agreement	18 Dec. 2013	9 Apr. 2015	n/a
	Other	FATCA Model 1A Agreement	28 Oct. 2015	n/a	n/a

7.4.3.2. Foreign account reporting agreements not signed

7.4.4. Transportation (tax) treaties

Some comprehensive tax treaties concluded by the Netherlands include provisions covering income from sea and/or air transport. In addition, the Netherlands grants an exemption for profits realized from international air or sea transportation on the basis of reciprocity (article 19 of the Vpb). The exemption is granted if the laws of the other state contain a similar provision. A list of qualifying countries is published annually by the Ministry of Finance.

The Netherlands has concluded treaties for the avoidance of double taxation of income derived by transport companies with the following countries:

Country	Scope	Date of signature	Effective date
Albania	air	25.09.96	01.07.98
Argentina	air/sea	23.11.93	15.01.04
Armenia	air	26.11.99	01.07.02
Azerbaijan	air	11.07.96	10.08.96
Bahrain	air	05.02.07	06.07.11
Barbados	air	27.11.92	27.11.92
Belarus	air	10.04.95	10.05.95
Bermuda	air/sea	08.06.09	01.02.10
Brunei	air	17.01.96	25.09.97
Canada	air	02.06.89	01.02.90
Cape Verde	air	21.12.88	01.07.91
China (People’s Rep.)	air	20.01.79	20.01.79
	air	21.12.04	21.12.04
	sea	14.08.75	18.02.76
Croatia	air	30.04.96	30.05.96
Cuba	air	03.02.93	03.02.93
Czech Republic	air	11.08.93	01.12.93
Dominican Republic	air	15.12.98	09.11.06
Estonia	air	24.03.93	01.02.94
	sea	24.03.93	24.03.93
Georgia	air	03.04.95	01.05.97
Hong Kong	air	16.12.96	01.01.96
	sea	02.11.00	01.01.02
Hungary	air	12.09.91	01.01.94
Iran	air	27.07.56	06.08.56
Isle of Man	air/sea	12.10.05	01.01.07
Korea (Rep.)	sea	03.02.95	01.12.95
Latvia	air	25.03.93	01.03.94
	sea	04.09.96	01.09.97

Country		Scope	Date of signature	Effective date
Lithuania		air	23.03.93	23.03.93
		sea	26.01.94	07.11.94
Macau		air	16.11.94	25.09.95
Macedonia		air	06.02.97	08.03.97
Madagascar		air	06.11.08	07.11.08
Malawi		air	29.01.87	15.09.87
Maldives		air	23.06.94	23.06.94
Moldova		sea	28.05.69	14.09.71
Oman		air	06.02.91	01.01.76
	Protocol	air	03.12.95	25.12.96
Panama		air/sea	28.04.97	01.01.98
Poland		sea	21.05.71	24.02.72
Qatar		air	06.12.80	09.06.81
Russia		sea	28.05.69	14.09.71
Saudi Arabia		air	16.01.91	01.01.88
Senegal		air	27.07.77	22.09.78
Seychelles		air	28.05.85	12.12.85
Slovak Republic		air	16.05.94	01.01.95
Slovenia		air	24.11.93	01.02.95
South Africa		air	26.05.92	13.11.92
Sudan		air	12.02.56	12.02.56
Suriname		air	16.10.90	10.01.96
Syria		air	13.10.01	01.09.02
Taiwan		sea	07.06.89	01.01.88
Togo		air	17.03.81	12.04.83
Uganda		air	21.05.69	21.05.69
Ukraine		air	07.09.93	01.08.94
United Arab Emirates		air	19.01.92	17.11.92
Uruguay		air	21.11.79	02.10.80
Uzbekistan		air	17.11.95	01.07.96
Venezuela		sea/air	18.12.90	01.01.91

Country		Scope	Date of signature	Effective date
Vietnam		air	01.10.93	12.05.94
	Protocol	air	28.09.11	08.08.12

7.4.5. Inheritance and gift tax treaties

Country	Scope [1]	Date of signature	Date of entry into force	Effective date
Austria	i/g	26.11.01	01.01.03	01.01.03
Finland	i	29.03.54	23.12.55	23.12.55
Israel	i	09.09.74	14.07.75	09.09.74
Sweden	i	25.04.52	05.02.53	05.02.53
Switzerland	i	12.11.51	09.01.52	09.01.52
United Kingdom	i/g	11.12.70	26.06.80	17.06.80
United States	i	15.07.69	03.02.71	03.02.71

1 Taxes covered: i = taxes on inheritances; g = taxes on gifts.

In addition, the Tax Regulation for the Kingdom of The Netherlands (BRK) applies between Aruba, the Netherlands, Curaçao and St. Maarten. The Tax Regulation for the country of the Netherlands applies between the European part and the Caribbean part (BES Islands) of the Netherlands.

7.4.6. Social security agreements

With effect from 1 May 2010, EU Regulations No. 883/2004 and No. 987/2009, as amended by EU Regulation No. 465/12, on the coordination of social security systems replaced the former EU Social Security Regulations (No. 1408/71, No. 574/72 and No. 859/2003). EU Regulation No. 883/2004 provides for a common social security territory covering all EEA countries (EU Member States plus Iceland, Liechtenstein and Norway) with effect from 1 June 2012. With effect from 1 April 2012, both regulations are applicable in relations between Switzerland and EU Member States. Since 1 January 2011, Regulation No. 1231/2010 extends the applicability of the EU Regulations No. 883/2004 and No. 987/2009 to nationals of non-EU countries legally resident in the European Union, with the exception of Denmark and the United Kingdom. However, in the case of the United Kingdom, the provisions of EU Regulation No. 859/2003 in conjunction with Regulation No. 1408/71 continue to apply to nationals of non-EU countries.

In addition, the Netherlands has concluded the following social security agreements (as possibly amended by protocols):

Country	Date of signature	Effective date
Australia	02.07.01	01.04.03
Bosnia and Herzegovina	11.05.77	01.04.79
Canada	27.06.01	01.04.04
Cape Verde	18.11.81	01.03.88
Chile	10.01.96	01.03.97
Croatia	11.09.98	01.10.00

Country	Date of signature	Effective date
Egypt	27.07.03	01.09.05
India	22.10.09	01.12.11
Israel	25.04.84	01.09.85
Japan	21.02.08	01.03.09
Korea (Rep.)	03.07.02	01.10.03
Kosovo	11.05.77	01.04.79
Macedonia	17.10.05	01.04.07
Montenegro	11.05.77	01.04.79
Morocco	04.02.72	01.01.73
New Zealand	30.06.00	01.11.03
Philippines	10.04.01	01.11.02
Quebec	14.12.01	01.01.04
Serbia	11.05.77	01.04.79
South Africa	16.05.01	01.01.03
Tunisia	22.09.78	01.12.79
Turkey	05.04.66	01.02.68
United States	08.12.87	01.11.90
Uruguay	11.11.05	01.06.08

7.4.7. Miscellaneous agreements

The Netherlands is a party to the EU Arbitration Convention (90/436), which provides that where the commercial or financial relations between two associated enterprises differ from those which would apply between independent enterprises, the profits of those enterprises should each be adjusted as appropriate to reflect the arm's length position. The Convention provides for disputes with fiscal authorities to be referred to an advisory commission, subject to waiver of rights of appeal under domestic law provisions. The Convention is applicable with respect to all 27 Member States, Bulgaria and Romania being the most recent Member States that acceded to the Convention with effect from 1 July 2008.

8. Group Taxation

8.1. General

From 1 January 2003 new provisions with respect to group taxation (fiscal unity, *fiscale eenheid*) became effective. They are governed by articles 15 to 15a of the Corporate Income Tax Law and by the Decree on Fiscal Unity. The provisions are not only applicable with respect to fiscal unities formed on or after 1 January 2003, but also with respect to existing fiscal unities. If fiscal unities existing prior to 1 January 2003 did not meet the new requirements, they were deemed to be dissolved; however, they could generally request a transitional period of maximum 2 tax years in which the former provisions were still applicable.

Upon joined request, a parent company and its subsidiary or subsidiaries may be considered one entity for corporate income tax purposes (fiscal unity). The activities and assets and liabilities of the subsidiaries are allocated to the parent company. However, the subsidiaries remain formally subject to corporate income tax (article 15(1) of the Vpb). Both the balance sheets and the profit and loss accounts are fiscally consolidated. Corporate income tax is imposed on the parent company (*see* section 8.6.).

There is no limit to the number of companies that may belong to a fiscal unity, nor need there be any relation between their business activities. The fiscal unity treatment applies from any moment chosen by the companies involved, but not earlier than 3 months prior to the date the request is lodged (article 15(5) of the Vpb). There is no minimum or maximum duration of the fiscal unity. For the dissolution of a fiscal unity, *see* section 8.5.

Before the fiscal unity is approved, the following conditions must be fulfilled (article 15(1) and (3) of the Vpb):

(1) the parent company must hold at least 95% of each class of shares and 95% of the voting rights in the subsidiary company, provided that the other shares do not entitle their holder to more than 5% of the company's distributed and retained profits;

(2) the tax years of all companies concerned must coincide. The tax year in which a subsidiary company joins a fiscal unity is considered 1 tax year for this purpose (*see* section 1.2.2.);

(3) all companies involved must be subject to the same fiscal regime. This condition may, however, be waived if certain conditions mentioned in the Decree are met;

(4) all companies involved must be resident in the Netherlands;

(5) the parent company must be an NV, a BV, a cooperative or mutual insurance association (*see* section 11.4.) or an entity incorporated under the law of Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao or St. Maarten, another EU Member State or a country with which the Netherlands has concluded a tax treaty containing a non-discrimination provision. The foreign entity must be comparable to an NV or a BV;

(6) the subsidiary must be an NV, a BV or a foreign entity as mentioned in (5); and

(7) the shares in the subsidiaries involved may not be held as inventory.

With respect to (4), companies incorporated under Netherlands law are deemed to be resident for corporate income tax purposes (*see* section 7.1.1.). However, this does not apply for the purposes of the fiscal unity. Companies involved must be resident according to the Tax Regulation for the Netherlands BRN, the Tax Regulation for the Kingdom of the Netherlands BRK or tax treaties concluded by the Netherlands.

The Lower Court in Haarlem decided that the requirement stating that the parent company in the fiscal unity must be established in the Netherlands is compatible with the freedom of establishment of article 49 of the TFEU (Rechtbank Haarlem, 25 January 2011, AWB08/7950).

In two decisions of 9 June 2011 and 14 September 2012, the Lower Court of Haarlem held that it is incompatible with the EU freedom of establishment, as interpreted by the ECJ in *Papillon* (C-418/07), to deny a fiscal unity between a Netherlands parent company and a Netherlands sub-subsidiary, if the shares of the last-mentioned company are fully or partially held by foreign intermediary companies.

The above-mentioned three cases were appealed to the Court of Appeals of Amsterdam, which has requested a preliminary ruling from the ECJ regarding these cases (ECJ, joined cases C-39/13, 40/13 and 41/13, *SCA Group Holding BV and others*). On 12 June 2014, the ECJ ruled that denying the fiscal unity in the case of Netherlands sub-subsidiaries or Netherlands sister companies held by a foreign intermediary company constitutes a restriction of the freedom of establishment. These cases are currently still pending before the national courts.

On 30 December 2014, the State Secretary for Finance issued a Decree, BLKB2014/2137M, applying from 16 December 2014, which provides that a fiscal unity may also be formed between:

- sister companies owned by a headquarter company established in another Member State; and
- a parent company and a sub-subsidiary owned by an intermediary company established in another EU Member State.

On 22 January 2015, the District Court of Gelderland ruled that fiscal unity treatment between Dutch resident companies is not allowed if the parent company is resident in a non-EU country without a permanent establishment in the Netherlands. Pursuant to the Court, the Israeli parent company could not successfully invoke the indirect non-discrimination clause provided for in the Israel-Netherlands Income and Capital Tax Treaty (1973), inter alia, because such company is not under similar circumstances as a company that is subject to tax in the Netherlands.

However, with respect to (5), non-resident companies conducting a business in the Netherlands through a permanent establishment whose income may be taxed in the Netherlands under the BRN, BRK or a tax treaty, may be eligible for fiscal unity treatment. Several conditions must be met, including (article 15(4) of the Vpb):

- the place of effective management must be situated in Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao or St. Maarten, or a treaty country;
- the company must be an NV, a BV or a foreign entity comparable to an NV or a BV; and
- if the non-resident company is the parent company, the shares of its subsidiary must be attributed to the permanent establishment in the Netherlands.

A non-resident company may not form part of a fiscal unity for purposes of cross-border loss or rollover relief. On 25 February 2010, the ECJ held in *X Holding v. Staatssecretaris van Financiën* (C-337/08) that this restriction is compatible with the EU freedom of establishment, because a non-resident company, without having a permanent establishment or other source of income in the Netherlands, is not subject to corporate income tax the Netherlands. This decision was confirmed by the Supreme Court (HR 7 January 2011, 43.484bis).

Further specific conditions are set out in articles 29 to 40 of the Decree on Fiscal Unity.

8.2. Consolidated income

Under the fiscal unity regime, the separately calculated profits and losses of companies forming a fiscal unity are aggregated, whereby intercorporate transactions within the fiscal unity are disregarded. Assets and liabilities of the subsidiaries are attributed for tax purposes to the parent company. Both the balance sheet and the profit and loss account are fiscally consolidated.

The claim renouncement exemption (*see* section 1.2.3.) is only available if the company involved is able to prove that the exemption would be available if the said company were not part of a fiscal unity (article 15ac(2) of the Vpb).

Losses incurred prior to joining a fiscal unity may only be set off within the fiscal unity if certain conditions are met. Decree DGB 2010/4620M of 13 December 2010 further clarifies these conditions.

From 1 January 2012, a limitation on the deduction of interest may apply for holding companies paying interest on a loan used to finance the acquisition of a subsidiary resident in the Netherlands (*see* section 1.4.5.).

8.3. Intercorporate dividends

Intercorporate dividend distributions between companies belonging to the same fiscal unity are exempt under the participation exemption (*see* section 6.1.3.).

8.4. Intercorporate transfers

Transactions between companies belonging to the same fiscal unity are, generally, disregarded for corporate income tax purposes. Reorganization and rearrangement of activities are thus possible without triggering corporate income tax. No profits arise before goods are sold or services are rendered to a party outside the fiscal unity. However, an anti-avoidance provision may be applicable upon the dissolution of the fiscal unity (*see* section 8.5.). On 8 October 2010, the Supreme Court confirmed (08/04644) that in the case of a merger within a fiscal unity, the fiscal unity provisions prevail over the merger provisions.

8.5. Partial and total dissolution

A fiscal unity is dissolved (article 15(6) of the Vpb):

- if the requirements (*see* section 8.1.) are no longer met;
- if the place of effective management of a non-resident company is transferred to the Netherlands;
- if a company transfers its place of effective management outside the Netherlands, leaving a permanent establishment in the Netherlands; or
- upon joint request of the parent company and subsidiaries concerned. The fiscal unity is dissolved not earlier than the date of the request.

If the fiscal unity ends with respect to a subsidiary, this does not mean that the whole fiscal unity is dissolved. Partial dissolution is possible.

If the shares in the subsidiary are pledged within the existing fiscal unity, the fiscal unity may be breached. The fiscal unity terminates if the pledge on shares in the subsidiary simultaneously results in the parent company not (or no longer) having the voting rights on the shares in the subsidiary. In general, in the case of default of the pledge agreement, the voting rights transfer to the pledgee and/or the pledgee sells the shares in the subsidiary whereby the ownership requirement (at least 95%) may no longer be met. The Collective Decree of 14 December 2010, nr. DGB 2010/4620M further clarifies in which situations the ownership requirement is still met in cases where the shares in the subsidiary are pledged.

Upon dissolution, the consolidated balance sheet and profit and loss account must be deconsolidated. Specific rules apply to the valuation of assets and liabilities.

In general, losses incurred by the fiscal unity remain with the parent company upon the dissolution of a fiscal unity. However, if certain conditions are met, and upon joint request, losses attributable to a subsidiary may be available for carry-forward loss compensation by the subsidiary concerned (article 15af of the Vpb). However, before the allocation of losses to a subsidiary, horizontal loss compensation within the fiscal unity has to take place in the year of dissolution (HR 13 May 2011, 10/01832).

Intercorporate transfers of assets and activities that were not at arm’s length may trigger recapture upon the dissolution of a fiscal unity. No recapture takes place if (article 15ai(3) of the Vpb):

- the transfer took place within the framework of normal business activities of the companies involved;
- at least 3 years have passed since the transfer of an enterprise or an economically independent branch or activity, in exchange for shares issued by the acquiring company (enterprise merger, *see* section 9.2.); or
- at least 6 years have passed since the transfer in general.

Special provisions apply in the case of a juridical merger or division within a fiscal unity.

8.6. Assessment and administration

Under the regime of fiscal unity, the parent company is required to comply with reporting requirements. The aggregation of separately calculated profits and losses serves as the basis of assessment for the parent company. The parent company receives the tax assessments, but all companies belonging to the fiscal unity are jointly and severely liable for the corporate income tax due by the fiscal unity.

For more details on assessment and administration, *see* section 1.11.

9. Restructuring and Liquidation

9.1. Change of business entity

Under the Civil Code, a legal entity may be converted into another legal entity. The conversion does not constitute the dissolution of the entity itself; the entity retains its legal personality (article 2:18(8) of the BW).

For tax purposes, article 28a of the Corporate Income Tax Law provides that upon conversion the legal entity is deemed to be liquidated and the assets and liabilities are to be distributed to the shareholders and subsequently are deemed to be contributed to the capital of the newly incorporated legal entity. Upon request, the Minister of Finance may approve the conversion to be tax exempt and impose conditions to safeguard the future imposition and collection of corporate income tax, individual income tax and dividend withholding tax. The most important conditions set concern the conversion date, a set-off of pre-conversion losses and the value of shares acquired at the value of the participation in the converted entity (Decree of 4 April 2011, BLKB 2011/511M). The conversion takes place at:

- the date of registration of the notarial deed; or
- the beginning of the financial year in which the conversion takes place if the notarial deed is registered within 12 months and the conversion is not merely aimed at obtaining an immediate tax advantage (Decree of 4 April 2011, BLKB 2011/511M).

The above-mentioned article 28a of the Vpb does not, however, apply to the conversion of an NV into a BV or vice versa, nor to the conversion of an association into a foundation or vice versa. These conversions are, therefore, tax exempt without additional conditions and have no tax consequences for the converted entity.

Partnerships are non-legal entities and are, in general, transparent for tax purposes. There are no legal provisions for conversion of partnerships into a legal entity. Therefore, a legal conversion is only accomplished through the liquidation of the partnership, followed by the contribution of assets and liabilities to the capital of the newly incorporated legal entity. The tax inspector may, however, allow rollover relief for individual partners in a partnership who contribute their enterprise to a new NV or BV (article 3.65 of the IB). For tax purposes, it is possible to amend the partnership agreement whereby the limited partnership qualifies as a non-transparent taxable entity ("open CV") for corporate income tax purposes (*see* section 0.2.4.1. and 7.3.4.1.2.).

The tax inspector may impose standard conditions to safeguard the future imposition and collection of taxes. It is not obligatory for all individual partners of a previous partnership to do the same. In general, each partner should contribute his enterprise to his personal NV or BV, but it is also possible for several partners to contribute their enterprise to a joint company.

The conversion of a resident corporate taxpayer into a tax-exempt entity is deemed to be a liquidation for tax purposes (e.g. a company is converted into an investment institution subject to the zero rate; *see* section 12.2.). All hidden reserves must be accounted for and included in taxable income.

Subject to approval by the relevant tax inspector, losses made after the conversion of a legal entity in another legal entity may be set off against profits made before the conversion (Decree of 4 April 2011, BLKB 2011/511M). Regarding the application of the innovation box (*see* section 1.9.7.), any yet to be recovered development costs are also deemed to be transferred to the new legal entity.

9.2. Merger and division

Netherlands tax law on mergers is based on the EU Merger Directive which is implemented into domestic tax law.

9.2.1. Companies

In principle, mergers and divisions should be based on arm's length terms resulting in taxation on hidden reserves and tax-free reserves and provisions on the assets and liabilities transferred. Three types of mergers may, however, qualify for privileged tax treatment for corporate income tax purposes:

- business merger (article 14 of the Vpb);
- legal merger (article 14b of the Vpb); and

- share merger (article 3.55 of the IB).

In addition, juridical divisions may also qualify for privileged tax treatment (article 14a of the Vpb).

These provisions implement articles 1-4, 8, 9 and 11 of the EU Merger Directive.

Exemptions with respect to mergers and divisions may also apply for the purposes of VAT (*see* section 13.) and real estate transfer tax (*see* section 14.2.).

9.2.1.1. Business merger

A business merger (*bedrijfsfusie*) is defined as the transfer of the business or part of the business of one company to another company in exchange for shares newly issued by the acquiring company in order to conclude a merger of the two companies. The business of a company comprises, in general, all assets and liabilities. If a part of the assets and liabilities is considered an economically independent branch or activity, however, such part may be deemed to be a transferable business (article 14(1) of the Vpb).

In addition to the newly issued shares, an amount equal to 1% (with a maximum of EUR 4,500) of contributed share capital may be paid in cash or in the form of a credit note.

Capital gains derived from a business merger are exempt if the shares acquired by the transferring company are not disposed of within a period of 3 years after the transfer, and both merging companies are subject to the same tax regime. In addition, the acquiring company must be liable to corporate income tax, must not have any losses available for carry-forward, not be entitled to any credit for the avoidance of double taxation, not apply the patent box (*see* section 1.9.7.), and not be entitled to any credit for low-taxed investment companies (*see* section 6.1.3.). In addition, the future imposition and collection of corporate income tax must be safeguarded (article 14(1) of the Vpb). This entails that the acquiring company takes over the book values of the assets and liabilities used by the transferring company prior to the merger.

The tax inspector may, upon a joint request by the merging companies, grant the privileged tax treatment even where the merging companies do not comply with the above-mentioned conditions. In such a situation, additional conditions may be imposed to safeguard the future imposition and collection of corporate income tax. Although these conditions are imposed on an individual basis, the State Secretary for Finance has issued standard conditions (Decree of 29 September 2008, CPP2008/1008M).

Further, the business merger must be predominantly based on valid commercial motives, otherwise the exemption is not available. Upon a request lodged prior to the intended transfer, the tax inspector may issue an advance ruling to confirm that the transfer is to be characterized a business merger (article 14(8) of the Vpb).

For business mergers between companies belonging to a fiscal unity, *see* section 8.4.

9.2.1.2. Legal merger

A legal merger (*juridische fusie*) is defined as the legal act of two or more companies whereby either (i) one of the companies acquires all assets and liabilities of the other(s) under general title or (ii) a company, newly incorporated by the merging companies, acquires all assets and liabilities of the merging companies under general title (article 14b(1) of the Vpb; article 2:309 of the BW). All merging companies, except the acquiring company or companies, are automatically dissolved upon the merger. In general, the shareholders of the dissolved company or companies become shareholders of the acquiring company or companies (article 2:311 of the BW). A maximum additional payment of 10% of the nominal value of the issued shares is allowed (article 2:325(2) of the BW).

For tax purposes, the dissolving company is deemed to have transferred all assets and liabilities upon the merger and to have ceased to derive profits in the Netherlands (article 14b(1) of the Vpb).

Gains derived from the merger are exempt from corporate income tax if all merging companies are subject to the same tax regime, have no losses available for carry-forward, are not entitled to any credit for the avoidance of double taxation, do not apply the patent box regime (*see* section 1.9.7.), are not entitled to a credit for low-tax investment companies (*see* section 6.1.3.), and future imposition and collection of corporate income tax is safeguarded. The dissolved company is substituted by the acquiring company for tax purposes (article 14b(2) of the Vpb). This entails that the acquiring company takes over the book values of the assets and liabilities used by the transferring company prior to the merger.

The tax inspector may, upon a joint request by the merging companies, grant the privileged tax treatment even where the merging companies do not comply with the above-mentioned conditions. In such a situation, additional conditions may be imposed to safeguard the future imposition and collection of corporate income tax (article 14b(3) of the Vpb). Although these conditions are imposed on an individual basis, the State Secretary for Finance has issued standard conditions (Decree of 27 January 2015, BLKB 2015/34M).

The legal merger must be based on predominantly valid commercial motives, otherwise the exemption is not available. The dissolving company may obtain an advance ruling from the tax inspector to confirm such motives (article 14b(5) and (7) of the Vpb).

Cross-border legal mergers are also possible under Netherlands civil law. The changes required to align Netherlands company law with EU Directive 2005/56 of 25 November 2005 on cross-border mergers of limited liability companies were included in the Law of 27 June 2008, which entered into force on 15 July 2008. Furthermore, with effect from 1 January 2016, a step-up facility will become available for cross-border mergers and divisions. The facility allows the amount of contributed capital to be increased with the fair market value of the transferred assets (i.e. stepped up) when a foreign company is merged into a domestic company (or when it is divided from a domestic company). However, no step-up will be granted if the merger or division is mainly aimed at tax avoidance.

For legal mergers between companies belonging to a fiscal unity, *see* section 8.4.

9.2.1.3. Share merger

A qualifying share merger (*aandelenfusie*) is deemed to exist in the following situations (article 3.55(2) of the IB):

- a resident company acquires shares in the capital of another resident company such that it obtains more than 50% of the voting rights in that company in exchange for the issue of shares in its own capital to the shareholders of the latter company;
- an EU resident company acquires shares in the capital of another EU resident company such that it obtains more than 50% of the voting rights in that company in exchange for the issue of shares in its own capital to the shareholders of the latter company; and
- a resident company acquires shares in the capital of a non-EU resident company such that it obtains at least 90% of the voting rights in that company in exchange for the issue of shares in its own capital to the shareholders of the latter company.

In addition, a qualifying share merger is also deemed to exist if a participation of more than 50% or 90%, respectively, is extended. A maximum amount equal to 10% of the nominal value of the shares issued may be paid in cash or in the form of a credit note.

Because share mergers are transactions between shareholders, the merger does not, in general, produce any tax consequences for the company subject to the merger. The shares or profit rights alienated enter the balance sheet of the acquiring company at the book value prior to the merger (article 14b(5) of the IB).

For share mergers between companies belonging to a fiscal unity, *see* section 8.4.

9.2.1.4. Division

Divisions (*splitsing*) are distinguished as two basic forms (article 14a of the Vpb; article 2:334 of the BW):

- the split-up (*zuivere splitsing*), which is a legal act whereby all assets and liabilities of the company to be divided are transferred under general title to two or more companies; and
- the split-off (*afsplitsing*), which is a legal act whereby part or all assets and liabilities of the company to be divided are transferred under general title to one or more companies.

In the case of a split-up, the divided company is automatically dissolved (article 2:344c of the BW). In general, the shareholders of the divided company become shareholders of the acquiring company through the issue of new shares (article 2:334e of the BW). An additional maximum payment of 10% of the nominal value of the issued shares is allowed (article 2:334x(2) of the BW).

For tax purposes, the divided company is deemed to have transferred all assets and liabilities upon the division and, in the case of a split-up, to have ceased to derive profits in the Netherlands (article 14a(1) of the Vpb).

Gains derived from a division or partial division are exempt from corporate income tax if all the companies involved therein are subject to the same tax regime, have no losses available for carry-forward, are not entitled to a credit for the avoidance of double taxation, do not apply the innovation box (*see* section 1.9.7.), and are not entitled to a credit for low-taxed investment participations (*see* section 6.1.3.). In addition, the future imposition and collection of corporate income tax must be safeguarded. In case of a full division, the dissolved company is substituted by the acquiring company for tax purposes (article 14a(2) of the Vpb). This entails that the acquiring company or companies take over the book values of the assets and liabilities used by the transferring company prior to the division.

The tax inspector may, upon a joint request by the companies involved in the division, grant the privileged tax treatment even where the merging companies do not comply with the above-mentioned conditions. In such a situation, additional conditions may be imposed to safeguard the future imposition and collection of corporate income tax (article 14a(3) of the Vpb). Although these conditions are imposed on an individual basis, the State Secretary for Finance has issued two Decrees containing the standard conditions with respect to split-offs and split-ups (Decree of 27 January 2015, BLKB 2015/33M and BLKB 2015/38M).

The division must be based on predominantly valid commercial motives, otherwise the exemption is not available. The company to be divided may obtain an advance ruling from the tax inspector to confirm such motives (article 14a(5) and (9) of the Vpb).

In general, losses available for carry-forward are not transferable to another company. In the case of a split-up, however, losses may be transferred to the acquiring company or companies by way of loss allocation to the assets and liabilities which have caused the losses. If loss allocation is impossible or not feasible in practice, the acquiring company or companies may allocate the losses at its own or their own discretion. The transfer of losses in the case of a split-off is not possible.

Cross-border divisions are not possible under Netherlands civil law. If such a division is provided for under the civil law of an EU Member State, the State Secretary for Finance may, however, authorize the competent tax inspector to grant an exemption and impose the necessary conditions. Furthermore, with effect from 1 January 2016, a step-up facility will become available for cross-border divisions (*see* section 9.2.1.2.).

For divisions between companies belonging to a fiscal unity, *see* section 8.4.

9.2.2. Shareholders

Mergers and divisions may have tax consequences for both corporate and individual shareholders of a company involved in a merger or division. The privileged tax treatment for qualifying mergers and divisions may, however, also apply to the shareholders.

9.2.2.1. Business merger

Upon a business merger (*see* section 9.2.1.1.), the transferring company is not liquidated nor are its shares disposed of by the shareholders. Capital gains derived from the transfer of business assets may, however, be exempt if all conditions are met and the merger is predominantly based on commercial motives.

The transferring company becomes a shareholder of the acquiring company. The newly acquired shares may not be disposed of during a period of 3 years after the merger. If they are disposed of within this period, the exemption is retrospectively recaptured, unless the tax inspector grants an exception upon request. The exception may be granted in the following situations (Decree of the State Secretary for Finance of 19 December 2000, CPP2000/3041M):

- the shares are converted into depositary receipts of shares;
- the disposal takes place within a group of related companies; or
- the disposal takes place outside a group of related companies but within the framework of a qualifying merger.

In most situations, the remaining part of the 3-year waiting period is shifted to the new shareholder. In other situations, disposal within 3 years after the merger leads to the retrospective recapture of the exemption.

If the shares are sold after the period of 3 years has passed, any capital gain realized upon the disposal may be taxable under normal capital gain taxation (*see* section 1.7.1.).

9.2.2.2. Legal merger

Upon a legal merger (*see* section 9.2.1.2.), the shareholders of the dissolving company or companies are deemed to have disposed of the shares in, and the debt claims of, the dissolving company or companies (article 3.57 of the IB). Capital gains derived from the deemed disposal may, however, be exempt if all conditions are met and the merger is predominantly based on commercial motives. The shareholder may obtain an advance ruling from the tax inspector to confirm such motives (article 3.57(7) of the IB). The exemption does not apply to the allowable additional payment of up to 10% of the nominal value of the shares issued by the acquiring company.

The disposed shares are substituted by the newly acquired shares for tax purposes. This entails that the acquisition price of the shares in the dissolved company is transferred to the newly acquired shares. If an individual shareholder owns a substantial shareholding (i.e. at least 5% of the issued share capital) in the dissolved company, the new shares in the acquiring company are deemed to be a substantial shareholding even if the 5% condition is no longer met (article 4.41 of the IB).

9.2.2.3. Share merger

Upon a share merger (*see* section 9.2.1.3.), the shareholders of the transferred company exchange their shares for shares in the acquiring company. Therefore, the merger generally brings about tax consequences for the shareholders of the transferred company. Any arising gains are exempt under article 3.55 of the IB unless, however, the main motive or one of the main motives for the merger was the avoidance of taxation. Upon request prior to the merger, the tax inspector may provide an advance ruling to confirm that the share merger is to be characterized as a qualifying share merger (article 3.55(7) of the IB). The exemption, however, does not apply to the allowable additional payment of up to 10% of the nominal value of the shares issued.

For corporate shareholders, the benefit of a qualifying share merger is substantially reduced because in many situations a gain derived from the alienation of shares would be exempt under the participation exemption regime (*see* section 6.1.3.).

For substantial shareholders, the newly acquired shares constitute a substantial shareholding even if the 5% condition is not met (article 4.41 of the IB).

9.2.2.4. Division

Upon a division (*see* section 9.2.1.4.), the shareholders of the divided company or companies are deemed to have disposed of the shares in, and the debt claims of, the divided company or companies (article 3.56 of the IB). Capital gains derived from the deemed disposal may, however, be exempt if all conditions are met and the division is predominantly based on commercial motives. The shareholder may obtain an advance ruling from the tax inspector to confirm such motives (article 3.56(7) of the IB). The exemption does not apply to the allowable additional payment of up to 10% of the nominal value of the shares issued by the acquiring company.

The disposed shares are substituted by the newly acquired shares for tax purposes. This entails that the acquisition price of the shares in the dissolved company is transferred to the newly acquired shares. If the shares in the dissolved company constituted a substantial shareholding (i.e. at least 5% of the issued share capital), the new shares in the acquiring company are deemed to be a substantial shareholding even if the 5% condition is not met (article 4.41 of the IB).

9.3. Purchase/takeover of a company

9.3.1. Companies

A company may be purchased or taken over in exchange for shares or for cash. The exchange for shares may qualify for privileged tax treatment under the share merger regime (*see* section 9.2.2.3.).

In general, a change of ownership of shares in a company has no tax consequences for the company itself, but the loss carry-forward may be lost if the company has suspended its business activities prior to the purchase or takeover (*see* section 1.8.1.).

Revaluation of the underlying assets and liabilities of the acquired company is not possible under Netherlands tax law, if the purchase price of the shares exceeds the aggregated book value of these assets and liabilities.

9.3.2. Shareholders

In general, capital gains on the disposal of shares are taxable, whether for shares or cash. If the company is purchased or taken over in exchange for shares, the privileged tax treatment for share mergers may apply (*see* section 9.2.2.3.).

If the company is purchased or taken over in exchange for cash or a non-qualifying exchange of shares, any capital gain derived by corporate shareholders may still be exempt under the participation exemption (*see* section 6.1.3.). For tax consequences for individual shareholders, *see* section 6.1.6.1.

The transfer of shares in a real estate company may be subject to real estate transfer tax (*see* section 14.2.).

9.4. Purchase of an existing business

An existing business may be purchased under the rules of the EU Merger Directive (2009/133) by purchasing the business as a whole or by purchasing all its assets separately and acquiring the shares subsequently. Capital gains from the disposal of an existing business or its assets are subject to tax. The purchase of an existing business as a whole, however, may qualify for privileged tax treatment as an enterprise merger (*see* section 9.2.2.1.).

The transfer of immovable property may be subject to real estate transfer tax (*see* section 14.2.). The transfer of an existing business as a whole may be exempt from VAT (*see* section 13.).

9.5. Liquidation

For causes of liquidation, *see* sections 0.2.1.4. and 0.2.2.4.

9.5.1. Company

For corporate income tax purposes, an NV or BV is deemed to exist as long as it is registered with the local chamber of commerce (article 2(6) of the Vpb). During the process of liquidation, any hidden reserves, tax-free reserves and provisions must be included in the taxable base. In addition, past investment deductions may be recaptured in the final year of the company (*see* sections 1.9.2. and 1.9.3.).

After winding up the company's assets and liabilities, the remaining capital is distributed to the shareholders (*see* section 9.5.2.).

9.5.2. Shareholders

For the treatment of shareholders, *see* section 6.1.8.

10. Anti-Avoidance

10.1. General anti-avoidance rules

Anti-avoidance measures are incorporated throughout Netherlands tax law and are discussed in the sections dealing with the topic concerned (e.g. set-off of losses, *see* section 1.8.1., and participation exemption, *see* section 6.1.3.).

It is generally accepted that artificial or simulated transactions may be ignored by the tax authorities and the Courts of Appeals through a determination of the facts rather than the form (substance over form). In addition, there are two specific provisions to combat tax avoidance or evasion (i.e. transactions the main purpose of which is avoidance or evasion of tax):

- the just levying (*richtige heffing*), under which the legal act in dispute may be ignored for tax purposes (article 31 et seq. of the AWR). This procedure is subject to prior approval by the Ministry of Finance and involves a lot of administrative work. Therefore, this procedure is not commonly used; and
- the abuse of tax law (*fraus legis*), which is not laid down in tax law but is an interpretation method developed in case law. A transaction is considered to be *fraus legis* when (i) the predominate motive of the transaction is to avoid taxation, (ii) the legal actions are considered artificial and (iii) the objective and purpose of the tax law would be violated if the taxpayer would be followed by the application of the law required. Under this doctrine, the spirit of the law is decisive, rather than the exact wording. The transaction in dispute may be converted to the closest equivalent which does not give rise to an abuse of law. The abuse of law procedure maybe used only as a last resort.

In general, the results of both procedures are the same for the taxpayer.

According to case law (HR 8 January 1986, BNB 1986/127 and HR 28 January 1989, BNB 90/45), the abuse of law procedure may also be applied to the Tax Regulation between the Netherlands and the Netherlands Antilles and Aruba (*see* section 7.4.1.3.). The abuse of law procedure has not been applied successfully in (other) treaty situations (HR 15 December 1993, BNB 1994/259).

Furthermore, with effect from 1 January 2016, the corporate income tax rules for non-residents and the dividend withholding tax rules for Dutch resident cooperatives are amended to implement EU Directive 2015/121 (which introduced a general anti-abuse rule into the EU Parent-Subsidiary Directive 2011/96). As a consequence, non-resident entities that hold a substantial shareholding (5% or more) in a Dutch resident company will become subject to corporate income tax if the substantial interest is held with the main purpose of avoiding taxation and if an artificial structure is put in place (i.e. a structure that does not have sufficient substance). In addition, Dutch resident cooperatives will also be obliged to withhold dividend withholding tax on dividends distributed to their members, if tax avoidance is one of the main purposes and an artificial structure is put in place.

For limitation on benefits articles in tax treaties, *see* section 7.4.1.6.1.

10.2. Transfer pricing

10.2.1. Statutory framework

Netherlands tax law contains a general transfer pricing provision, stating that prices between related companies should meet the arm's length test (article 8b of the Vpb). Furthermore, the law contains a specific provision regarding the transactions of interest and royalty conduit companies (article 8c of the Vpb). The Ministry of Finance has issued various decrees describing transfer pricing issues with respect to certain transactions and whether APAs and/or ATRs may be obtained (*see* section 10.2.2.). The principle that in tax matters substance prevails over form is commonly accepted in case law. If transactions between related parties are not at arm's length, the tax inspector may correct the taxable income.

Non-arm's length transactions may constitute a hidden profit distribution (*see* section 6.1.5.).

Transactions which do not meet the arm's length test may also constitute a granting of a benefit by a shareholder. The benefit may be considered a contribution of informal capital (*see* section 1.4.5.) which is not considered taxable income. In general, informal capital is equity capital for tax purposes. The burden of proof for such a contribution of capital is on the taxpayer. Informal capital contributions include the case of substantial loss financing. If a shareholder grants a loan to his company incurring substantial losses, while at the moment of granting the loan, it is certain or almost certain that the loan will never be wholly or partially paid back, in view of the losses (HR 27 January 1988, BNB 1988/217).

For advance pricing agreements (APAs), *see* section 1.11.7.1.

On 11 August 2004, the State Secretary for Finance described the competencies of the Coordination Group on transfer pricing, which is responsible for the implementation and coordination of the transfer pricing policy (Decree of 11 August 2004, DGB 2004/1339M). This Decree replaces a decree published in 2001. The tax authorities, except if a precedent may be established, must provide information to the Coordination Group in respect of:

- transactions with related companies established in tax havens;
- transfer pricing audits;
- cross-border transactions in a specific line of business which are or will be evaluated by audit;
- details of pricing adjustments made by taxpayers as a result of pricing adjustments effected by a related company resident in another state;
- the possibility that mutual agreement or arbitration procedures are started;
- cross-border transfers of intangible assets within a group of companies; and
- advance tax ruling (ATR) requests with regard to the obligation to maintain or provide documents under article 8b(3) of the Corporate Income Tax Law on transfer prices between related companies.

Cases in which the APA/ATR Team of the Local Tax Office, Rijnmond, Rotterdam Office, issues binding advice to the competent tax inspector do not have to be presented to the Coordination Group because, if necessary, these cases would have been submitted directly to the Coordination Group.

The Netherlands is a party to the EU Arbitration Convention (90/436), which provides that where the commercial or financial relations between two associated enterprises differ from those which would apply between independent enterprises, the profits of those enterprises should each be adjusted as appropriate to reflect the arm's length position. The Convention provides for disputes with fiscal authorities to be referred to an advisory commission, subject to waiver of rights of appeal under domestic law provisions. For more details, *see* section 7.4.6.

10.2.2. Documentation and disclosure requirements (including penalties)

The required information is based on Chapter 1 of the OECD Transfer Pricing Guidelines. The taxpayer is not required to consider all possible methods, and then document and defend why the chosen method leads to the best result under the circumstances. Furthermore, the absence of an actual comparison with third party prices (e.g. by means of a data search in public data bases) does not lead to a shifting of the burden of proof to the taxpayer, as long as the taxpayer is able to provide the information to the tax authorities that enables them to make the comparison (V-N 2001/59A.6 at 6078).

Documentation is expected to be present at the moment of the transaction (article 8b of the Vpb). If the tax authorities request information, the taxpayer must respond within 4 weeks. For complex transactions, this period may (upon consultation with the tax authorities) be extended to 3 months. The documentation obligation applies generally to transactions that take place from 1 January 2002.

Furthermore, with effect from 1 January 2016, new transfer pricing documentation obligations for multinational groups will be introduced. Based on these obligations, multinational companies with consolidated group turnover of EUR 750 million must file an annual country-by-country report. In addition, Dutch taxpayers that are part of a multinational group with a consolidated turnover of at least EUR 50 million in the preceding year should prepare an OECD-style "master file" and "local file" for transfer pricing and branch allocation documentation purposes.

10.2.3. Transfer pricing methods and practice

The basis for the evaluation of the applicable transfer prices is formed by the following laws and guidelines: (i) article 8b of the Vpb, the Transfer Pricing Decree of 2013 (IFZ2013/184M) (the 2013 Decree), (ii) the APA Decree (DGB2014/3098) and (iii) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD in 1995 and amended in 2010.

A taxpayer may choose any of the methods described in Chapters II and III of the OECD Transfer Pricing Guidelines. The only condition is that the chosen method leads to an arm's length result. The 2013 Decree, which was issued by the State Secretary for

Finance on 14 November 2013, clarifies the positions of the Ministry of Finance with regard to the arm's length principle and application of the OECD Transfer Pricing Guidelines.

Regarding the comparable uncontrolled price, it is noted that the reliability of the method depends upon the degree of accuracy with which adjustments for deviations between the targeted transaction and the uncontrolled situation are made. The example makes clear that a correction must be made if the transportation costs in the unrelated transaction are borne by the third party.

Regarding the resale price method, the example clarifies that the margin of the third party must be compared after correction has taken place for additional functions and/or costs that are borne by the associated party.

Regarding the cost-plus method, the costs must be divided into direct and indirect costs that can be allocated to individual transactions between associated enterprises. The remaining other costs constitute the overhead costs. In the case of application of the cost-plus method, the mark-up is applied to direct and indirect costs, while the overhead costs must be covered by the mark-up. This method is thus based on a gross profit margin. In the case of the application of the transactional net margin method (TNMM), the operating profit is calculated either as a percentage of the total costs (including overhead costs), or as a percentage of the turnover.

The profit split method is held to be appropriate where transactions are strongly interconnected, and if these transactions cannot be evaluated separately. The profit split should be made between the parties in a manner that approximates the arm's length outcome.

When using the TNMM, the net operating profit in relation to the appropriate base (costs or turnover) in a controlled transaction is compared with the net profit of third parties operating in comparable circumstances. Two examples are provided that illustrate the differences between the TNMM and the resale price method, respectively, and the cost-plus method.

In cases of double taxation, an arbitration request has to be filed with the competent authority based on the relevant tax treaty. Furthermore, various decrees were published which specify the determination of an arm's length price in various situations.

On 12 and 13 June 2014, the State Secretary for Finance published Decrees DGB 2014/3101, DGB 2014/ 3098, DGB 2014/3099 and DGB 2014/3102 replacing the Decrees of 11 August 2004, Decrees IFZ2004/126M, IFZ2004/127M ,IFZ2004/125M and IFZ2002/124M. The main aspects of the Decrees are summarized below.

Group services and shareholders' activities

Group services are defined as activities that add economic or commercial value and are carried out for the benefit of a group company which would normally be willing to pay compensation for the service. Shareholders' activities are not considered to be group services and, as such, may not be charged to a group company. Examples of shareholder's activities include:

- the fulfilment of obligations under civil law;
- the fulfilment of obligations under the General Law on Taxation;
- the issue, transmission and division of the shares of a company or comparable securities traded on capital markets and the application or continuation of a listing on (foreign) stock exchanges;
- the implementation and enforcement of legal regulations regarding the control of share transactions;
- the implementation and fulfilment of legal regulations and rules of conduct concerning "corporate governance" in respect of the company or the group; and
- communications regarding the company's or group's financial performance and expectations in relation to interested parties.

Companies may request an ATR on the classification of activities, i.e. group services or shareholders' activities, or an APA on the classification of activities and the arm's length character of the transfer price pursuant to Decree DGB2014/3098, DGB 2014/3099 and DGB 2014/3101 of 12 June 2014.

The new Decrees provide that a resident intermediate financial services company applying for an APA is required to meet the minimum substance requirements and to bear a sufficient risk (i.e. the company is considered to bear a sufficient risk if its equity is the lower of 1% of its outstanding loans or EUR 2 million. An intermediate financial services company is a company whose activities in a year consist of, for more than 70%, receiving and charging interest, royalties, rent or lease amounts from and to foreign group companies.

The minimum substance requirements are summarized as follows:

- at least half of the statutory board members with decision-making authority live or are resident in the Netherlands;
- the board members living or resident in the Netherlands possess the required professional expertise to properly perform their tasks;
- the taxpayer employs qualified staff;
- management decisions are taken in the Netherlands;
- the taxpayer's most important bank accounts are held in the Netherlands;
- the financial records are kept in the Netherlands;
- the taxpayer's registered office is located in the Netherlands;
- the taxpayer is not regarded as a tax resident in and by another country;
- the taxpayer runs a real risk within the meaning of the law; and
- the amount of equity held by the taxpayer is at least appropriate for the required actual risk.

Whether or not the substance requirements are met depends on the facts and circumstances. If the taxpayer does not meet the minimum substance requirements, the tax authorities will automatically exchange information with the relevant foreign tax authorities. This applies to all requests of APA with regard to intermediate financial services companies that were submitted after 13 June 2014. Intermediate holding companies and top holding companies that apply for an ATR are also required to meet the minimum substance requirements, or they should be able to demonstrate that they are part of a group which has operational activities in the Netherlands or has genuine plans to establish such operational activities (*see* section 1.11.7.).

With effect from 1 January 2014, intermediate financial services companies must explicitly indicate in their corporate income tax return whether or not the substance requirements are met and whether the company bears a sufficient risk. If the intermediate services company does not comply with all substance requirements, it has to provide to the tax authorities all information necessary to assess whether the substance requirements are met. Furthermore, if the intermediate financial services company applies a tax treaty provision or a provision of EU Council Directive 2003/49/EC of 3 June 2003 on interest and royalty payments (including national rules for implementation of the Directive) and it does not meet the minimum substance requirements, the Netherlands will also automatically exchange information with the relevant foreign tax administration.

Support services

In respect of support services, the arm's length price is, in general, determined using the cost-plus method based on direct and indirect costs. The mark-up should cover overhead costs and a reasonable profit mark-up. Instead of determining arm's length prices, a taxpayer may, in respect of certain services, request an on whether or not the actual costs may be charged. The actual costs include all direct and indirect costs relating to the support services and overhead costs. The taxpayer should ensure that it is likely (i) that the activities are not part of or do not add more than marginal value to the primary business processes of the group or (ii) that the services are only incidentally provided to unrelated parties. In determining whether or not the activities relate to the primary business processes of the group, their character, size in relation to the group and added value are decisive.

Contract research

With regard to contract research activities carried out by a group company for another group company (the principal) under which the group company carrying out the activities develops intangible assets on account and at the risk of the principal, the arm's length price may be based on the cost-plus method if the principal monitors the activities, bears the costs and risks and becomes the economic owner of the developed intangible asset. Each case is determined on the facts and circumstances.

Cost contribution arrangements (CCAs)

In respect of CCAs, the transfer price must be at arm's length and based on a functional analysis. Each participant's contribution to a CCA and its share of the expected benefits must be based on the fair market value. Only if all parties make contributions of a similar amount would it be permitted for the contributions to be valued at cost price. This should be substantiated.

There is no limitation or restriction as to who may enter into a CCA. The Netherlands policy is that a party may participate only if it expects to benefit from the CCA. All the parties must be equally involved in the decision-making processes regarding the CCA.

Determination of arm's length price if value is uncertain at time of transaction

In respect of the transfer of an intangible asset, the arm's length price on the transfer may be difficult to determine. If, in these cases, unrelated parties in the same circumstances would agree that the price depends, inter alia, on future revenues, related parties should also agree a price adjustment clause. In addition, such a clause is deemed to be agreed if a Netherlands company transfers an intangible asset to a foreign group company and subsequently the asset is for more than 50% licensed to the Netherlands transferor or a related Netherlands company, unless it is likely (i) that the transaction was based on business motives and (ii) that the value at the time of the transactions was so certain that unrelated parties would not have included a price adjustment clause in the agreement.

Foreign withholding tax credit

In most tax treaty situations no withholding tax may be withheld in respect of group services and CCA payments. Accordingly, if a payment includes both service fees and royalties, no credit is given if, in this case, withholding tax is deducted from the service fees or CCA payment, unless the treaty provides otherwise. If the foreign tax authorities are not willing to refund the withholding tax, a mutual agreement procedure may be requested.

10.2.4. Corresponding adjustments

Corresponding adjustments are based on article 9(2) of the OECD Income and Capital Model, which has become a standard feature in Netherlands tax conventions.

Because the article imposes only a moral obligation on the revenue authorities of the two states (the two authorities may well disagree on what an arm's length price is, and what would be an "appropriate" adjustment), it adds very little to the taxpayer's rights as they exist under Netherlands tax law, except that a stronger request can be made for consultation between the authorities of the two countries involved "if necessary".

A leading case concerns the "Swedish parent" decision of the Supreme Court (HR 31 May 1978, BNB 1978/252), where the benefit that a company obtained by having an interest-free loan from its shareholder was held not to constitute profit from a business, but a contribution by the shareholder to the company's capital.

Furthermore, the Supreme Court decisions of 8 July 1986 (BNB 1986/295 and 296) restrict application of the negative profit adjustment ("informal capital") to situations where the shareholder is acting in the course of a business enterprise.

If a Netherlands company, being a parent company, has a benefit conferred upon it by its subsidiary by virtue of a non-arm's length transaction, that benefit is recharacterized as a dividend received from the subsidiary. In most cases, such a dividend is exempt from tax under the participation exemption (HR 23 April 1958, BNB 1958/179).

10.2.5. Secondary adjustments

The Transfer Pricing Decree of 2013 stipulates that "the Netherlands tax authorities always require a transfer pricing adjustment to be processed by means of a secondary transaction". This may lead to the attribution of interest to the current account, the levying of the dividend withholding tax on profit distributions, or the levying of capital duty (which is abolished from 1 January 2006) on informal capital contributions. With respect to the levying of the dividend withholding tax, the tax authorities refrain from levying the tax if the taxpayer is able to demonstrate that the tax cannot be credited in the other country, and that there is no situation of abuse aimed at the avoidance of dividend withholding tax.

Note that the Netherlands endeavours to start consultation with its tax treaty partners at an early stage by mutual exchange of relevant facts and circumstances if possible. For example, the taxpayer may file a request with the local tax inspector for an early solution if he is able to prove a plausible risk of double taxation in the area of transfer pricing caused by measures of a treaty partner's administration on the basis of which information may be exchanged or a common audit may be carried out. This policy is published in Decree of 29 of September 2008, IFZ2008/248M, Stcrt. 188.

10.3. Thin capitalization

With effect from 1 January 2013, the Netherlands abolished its thin capitalization regime. Instead, new rules were introduced with effect from the same date to limit the deduction of interest deductions (*see* section 1.4.5.).

Under the thin capitalization provisions, interest paid in respect to excessive debt was generally not deductible (article 10d(1) of the Vpb).

However, the thin capitalization provisions were only applicable to interest paid to related companies belonging to the same group. In this respect, companies were considered to be related and to form a group if they were organizationally related (article 10d(2) of the Vpb; article 2:24b of the BW).

The maximum amount of interest which would not be deductible under these provisions was limited to the amount of interest paid to related companies less the amount of interest received from related companies (article 10d(3) of the Vpb).

Excessive debt was the part of the annual average debt which exceeds three times the annual average equity of the company and the excess exceeds EUR 500,000. Debt was taken into account in so far as it exceeds outstanding loans and the equity did not include reserves and provisions (article 10d(4) of the Vpb).

Upon request, the resident company was allowed to compare its own debt/equity with the debt/equity ratio of the group of companies to which it belongs. Excessive debt would then be the part of the annual average debt of the company which exceeded its annual average equity multiplied by the debt/equity ratio of the group. If there was no excessive debt, then the thin capitalization provisions did not apply. The request for comparing the ratios had to be made in the annual tax return (article 10d(5) of the Vpb). If a company belonged to more than one group, the group with the largest balance total was used as reference (article 10d(6) of the Vpb).

The limitation of the deduction of interest under the thin capitalization provisions preceded other limitations of deductible interest. Further, only interest bearing debts were taken into account, which interest generally would be available for deduction (article 10d(7) of the Vpb). Debts bearing no interest were only taken into account if the fact that they bore no interest would not be at arm's length. In addition, participation loans (*see* section 1.4.5.) were allowed to be considered debts rather than equity. The equity to be taken into account was deemed to be at least EUR 1 (article 10d(8) of the Vpb). The term debts included claims and debts under a financial lease and hire purchase contract (article 10d(7) of the Vpb).

For the effects the thin capitalization provisions had on double taxation relief, *see* section 7.2.6.3.

10.4. Controlled foreign company

There are no special provisions for controlled foreign companies.

10.5. Closely held company

There are no special provisions for closely held companies.

10.6. Other anti-avoidance rules

Dividend stripping

No exemption from, or refund or credit of, dividend withholding tax is granted to the recipient that has paid a consideration in connection with the receipt of dividends as part of a series of transactions, whereby it is assumed that another individual or company is, in fact, benefiting directly or indirectly from the receipt of the dividends (article 4(7) of the DB).

11. Taxation of Special Types of Entity

11.1. Holding company

A Netherlands company acting as a holding company is subject to corporate income tax as any other company. Dividends distributed by its subsidiaries and capital gains derived on the disposal of shares in the subsidiaries may be exempt from corporate income tax in the hands of the holding company by virtue of the participation exemption (*see* section 6.1.3.). Mere holding companies may be subject to a limitation of the set-off of losses. A company is regarded as a mere holding company if its activities for the entire year entirely or almost entirely (i.e. at least 90%) consist of the holding of qualifying participations (*see* section 1.8.1.).

Holding companies performing activities such as central management, administrative services and other head office activities for the benefit of an international group should receive an arm's length compensation.

11.2. Partnership

11.2.1. General partnership

General partnerships (*see* section 0.2.4.) are transparent for corporate income tax purposes. The partners are taxed separately on their share of the proceeds. For income tax purposes, the same tax calculation rules apply for a business and a profession (article 3.5 of the IB).

The income is subject to individual income tax if the partner is an individual and to corporate income tax if the partner is subject to corporate income tax. A non-resident partner is deemed to have a permanent establishment in the Netherlands if the partnership conducts its business through a Netherlands permanent establishment. The tax position of individual partners and companies differs because an individual partner only derives business income if he is directly legally bound to the relations of the enterprise (article 3.4 of the IB). However, the profit of a corporate partner is always taxed as business income and the profit is calculated largely in accordance with the income tax rules applicable to individual partners (article 8 of the Vpb).

11.2.2. Limited partnership

For corporate income tax purposes, an "open" limited partnership is deemed to conduct its business using its entire property (article 2(5) referring to article 2(1)(a) of the Vpb). In determining the taxable profit of an "open" limited partnership, a deduction is allowed for that portion of the profit to which the managing partners are entitled (article 9(1)(e) of the Vpb). If there is more than one managing partner, there is deemed to be a general partnership (VOF) between these managing partners.

A Supreme Court decision (HR 7 July 1982, 20 655, BNB 1982/268), stated that dividends received by an "open" limited partnership are eligible for the participation exemption (*see* section 6.1.3.) only with respect to the share of the limited partners in the "open" limited partnership, and not necessarily with respect to the profit share(s) of the managing partner(s) (in this case, two individuals were each entitled to 5% of the profit of the "open" limited partnership).

A limited partner's participation is deemed to be a share in the limited partnership (article 2(3)(f) of the AWR). Thus, limited partners are taxed on their income from the "open" limited partnership as if they received income from shares. Profit distributions are subject to dividend withholding tax (article 1(1) of the DB).

For corporate taxpayers that are limited partners in an "open" limited partnership, the participation exemption applies to participations of at least 5% in the capital of the limited partnership (article 13(2)(d) of the Vpb). Such capital is, for these purposes, the capital of the limited partners (Resolution of 21 July 1994, DB94/2414M, Info bulletin 94/643). For individuals participating as limited partners in an "open" limited partnership, the same interpretation of the term "capital" applies for the rules on the taxation of capital gains from a substantial shareholding of individual shareholders.

A "closed" limited partnership is treated as a transparent entity. For income tax purposes, the managing partners are treated as if they had formed a general partnership (VOF) among themselves.

A limited partner for whose account the enterprise is conducted is taxed as an entrepreneur only if he is directly legally bound by the legal relations of the enterprise (article 3.4 of the IB). If this condition is not met, the limited partners are taxed for income from capital, in respect of their participation.

Entities that are subject to corporate income tax and derive income from a limited partnership must be divided into two categories: (i) those that are always subject to corporate income tax; and (ii) those that are subject to corporate income tax only if and to the extent that they conduct a business. For the first category, any income is always taxed as business income. For the second category, the Supreme Court has held that only when the limited partnership interest is held in the course of a business, the income may be taxed as business income (HR 11 June 1969, 16 134, BNB 1969/155 and HR 3 April 1985, 22,719, BNB 1985/169). Otherwise these entities are not subject to corporate income tax with respect to the income from the limited partnership.

11.2.3. Partnership limited by shares

There are no partnerships limited by shares in the Netherlands.

11.2.4. Other

A silent partnership which does not operate under a common name is subject to tax in the same manner as a general partnership (*see* section 11.2.1.).

11.3. Economic interest grouping

From 1 July 1989, the European Economic Interest Grouping (EEIG) was introduced in the Netherlands by virtue of the EU Regulation on the European Economic Interest Grouping (85/2137). An EEIG with its legal seat in the Netherlands has a legal personality. For individual and corporate income tax purposes, an EEIG may best be compared with a general partnership, although a Netherlands general partnership has no legal personality.

In his Resolution of 1 March 1990 (WDB90/63) the State Secretary for Finance set out various tax aspects of EEIGs. An EEIG is not subject to corporate income tax. Profits and losses of an EEIG are taxed in the hands of its members according to the EU Regulation. Individual members are subject to individual income tax and corporate members are subject to corporate income tax. Taxable income is computed in the normal way. This means that, among other things, tax incentives (*see* section 1.9.) may be applicable. In addition, shares in other companies held by the EEIG are deemed to be held by the members in proportion to their participation in the EEIG. Members who are subject to corporate income tax are, in respect of such shares, entitled to the participation exemption, provided that they meet the requirements (*see* section 6.1.3.).

The EEIG is not transparent in respect of other taxes. Consequently, the normal rules apply. A transfer of immovable property to an EEIG is exempt from the real estate transfer tax (*see* section 14.2.). Distributions paid by the EEIG to its members are not subject to dividend withholding tax (*see* section 1.10.3.1.).

Non-resident members of an EEIG with its legal seat in the Netherlands are generally considered to have a permanent establishment in the Netherlands. Resident members of an EEIG with its legal seat in another EU Member State are generally entitled to double tax relief (because they have a permanent establishment abroad). An EEIG has no access to any tax treaty relief.

11.4. Association and cooperative

Associations (*see* section 0.2.6.) are subject to corporate income tax only to the extent that they conduct a business (article 2(1) of the Vpb). This means that income derived from non-business activities is not taxable. Consequently, losses from such activities are not deductible. Conducting a business is defined as any activity through which an association competes or potentially competes with other enterprises (article 4 of the Vpb). Business income and the assets related to the business activities are subject to the normal corporate income tax rules. The same rules apply to foundations (*see* section 0.2.7.).

Cooperatives, mutual insurance associations (*see* section 0.2.6.) and other such entities are subject to corporate income tax (article 2(1) of the Vpb). They are deemed to conduct an enterprise using all their assets (article 2(5) of the Vpb). The normal corporate income tax rules apply, except that there are some special provisions with respect to patronage dividends. In addition, resident cooperatives and mutual insurance associations may apply for the fiscal unity treatment (*see* section 8.1.) with respect to their subsidiary NVs or BVs (article 15 of the Vpb). Fiscal unity treatment is also available with respect to their subsidiary cooperatives and mutual insurance associations, although slightly different conditions apply due to the nature of these entities (article 15(4) of the Vpb).

A cooperative is subject to dividend withholding tax to the extent that the cooperative directly or indirectly holds shares in a company with the main purpose (or one of the main purposes) being to avoid dividend withholding tax or foreign tax, and if the shares held are not considered to be part of an active business of the member of the cooperative (article 1(7) of the DB). However, the cooperative is not subject to dividend withholding tax if it is able to successfully demonstrate that it does not hold the shares with the main purpose being to avoid taxes and/or the shares held are considered to be part of an active business of the member of the cooperative.

11.5. Non-taxable entities

There are a number of entities, which may be exempt from corporate income tax. In general, these entities serve the common good, public benefit or the benefit of certain groups or persons. Non-taxable entities include associations and foundations to the extent that they do not conduct an enterprise.

Without any additional conditions, the following entities are exempt from corporate income tax (article 5 of the Vpb; article 2 of the Uitv. besl. Vpb):

- entities the assets of which consist almost exclusively of immovable property falling within the scope of the Nature Protection Law of 1928 (*Natuurschoonwet 1928*);
- certain entities for the care of, among others, employees and former employees in case of disability and old age;
- non-profit general welfare organizations;
- agricultural entities, mutual damage insurance entities and undertakers funds not aimed at making a profit or for which the aim to make a profit is of subordinated importance;
- nursing funds and sickness insurance funds which are only aimed at making a profit for the benefit of public health care institutions;
- public social security organizations; and
- public libraries.

Pension funds and early retirement funds are generally exempt from corporate income tax. Such funds are not exempt to the extent that they perform commercial activities (article 5(1)(b) of the Vpb). Additional conditions are imposed, however, with respect to their profit allocation. Pension funds and early retirement funds in the form of a company are not exempt if a close family group holds a direct or indirect interest of at least 10% in such a company (article 5(2) and (3) of the Vpb; article 5 of the Uitv. besl. Vpb).

Certain non-profit entities are exempt, but additional conditions are imposed with respect to the amount of profit which is allowed and their statutory purpose and activities. These entities include non-profit organizations in the area of health, social care, agriculture, mutual insurance and funerals.

Based on article 6 of the Corporate Income Tax Law and article 1 of the Decree on Exemption from Corporate Income Tax (*Vrijstellingsbesluit vennootschapsbelasting*), entities serving the common good or serving social interests raising revenue with the help of volunteers (e.g. amateur sport clubs) and whose purpose does not include profit making (non-profit entities) are, in general, exempt from corporate income tax if the following conditions are met:

- the annual profit is less than EUR 7,500 or the annual profit and the aggregate profit of the preceding 4 years is less than EUR 37,500; and
- the annual profit may only be used for the benefit of another non-profit entity or the common good.

Non-profit entities may opt to be subject to corporate income tax.

Prior to 12 June 2015, all public bodies, direct and indirectly owned by the State, either as part of the public administration or in the form of publicly owned companies, which carry out economic activities were exempt from corporate income taxation. With effect from 1 January 2016, however, all direct and indirectly owned public bodies that carry out an economic activity are subject to corporate income tax. An exception to this rule applies to certain sea port operators and medical universities.

12. Taxation of Special Types of Activity

12.1. Maritime shipping companies (tonnage tax)

A special tax regime for maritime shipping companies (resident or non-resident with a permanent establishment in the Netherlands), the tonnage tax regime, applies from 1 January 1996. To qualify for the regime, the company must generally own the ship or ships or charter a ship under a bareboat agreement. The exploitation must take place from the Netherlands. It is not necessary to fly the Netherlands flag. However, ships that the taxpayer owns wholly or in part and charters on bareboat charter terms must fly the flag of an EU or EEA Member State.

The tonnage regime applies to profits derived from the exploitation of a ship or ships used for transportation in international sea transport or in connection with the exploration for or exploitation of natural resources at sea, including profits from towing services. However, excluded are such services rendered in and around the ports and inland waterways of the European Union (Decree of 19 December 2002, DGB 2002/7237M). Profits from other activities directly linked to activities mentioned previously fall within the scope of the tonnage regime.

The tonnage regime is applied upon request. The request should be filed in the first or every 10th year in which the profits are derived. After the approval of the request, the regime remains applicable for a period of 10 years or a multiple of 10 years and it may only be terminated after a period of 10 years or a multiple of 10 years.

Under the tonnage tax regime, the computation of taxable income for corporate income tax purposes is based on the net tonnage per qualifying sea ship multiplied by a fixed amount according to the following table (article 3.23 of the IB):

Net tonnage			EUR per day per each 1,000 tonnes
Up to		1,000	9.08
1,000	–	10,000	6.81
10,000	–	25,000	4.54
25,000	–	50,000	2.27
Over		50,000	0.5

The taxable income so computed is subject to the normal corporate income tax rates (*see* section 1.10.).

On 10 March 2009, the European Commission approved the following two changes to the tonnage tax regime:

- the application of a lower tax base of EUR 0.5 per day per each 1,000 tonnes for large vessels (over 50,000 tonnes); and
- the reduction of the tonnage tax base by 75% for ship management companies.

Both measures are applied from 1 January 2009.

12.2. Investment institutions

12.2.1. Investment institutions that are subject to tax

Subject to certain conditions, resident NVs, BVs and mutual funds (*see* section 0.2.7.), permanent establishments and entities established under the laws of Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao, St. Maarten, an EU Member State or a state with which the Netherlands has concluded a tax treaty that contains a non-discrimination provision for companies may qualify for the status of taxable investment institution (*onderworpen fiscale beleggingsinstelling*) for corporate income tax purposes. Investment institutions are governed by article 28 of the Corporate Income Tax Law and by the Decree on Investment Institutions (*Besluit* *beleggingsinstellingen*). It is not required that the foreign entity is actually established in the Netherlands and if the requirements described below are met, such an entity is subject to tax at the rate of 0% on income from its Netherlands investments.

The main requirements which an entity must fulfil to obtain the status of investment institution are:

- the statutory purpose and actual activities of the entity must consist exclusively of investing;
- up to 60% of the book value of investments in immovable property may be financed with borrowed capital. For other investments the limit is 20% of the book value. Loans in respect of immovable property need not be secured by a mortgage;
- the profits must be distributed within 8 months of the close of the financial year;
- if the investment institution is quoted on the Amsterdam Stock Exchange (AEX) or has a licence based on the law on the Supervision of Investment Funds, or is exempt from having a licence, less than 25% of the share capital may be held by a single individual, and less than 45% of the share capital may be held by an entity or group of related entities subject to corporate income tax, unless the company is a quoted investment institution itself;
- if the investment institution is not quoted on the AEX, has no licence, or is not exempt from having a licence, at least 75% of the share capital must be owned by individuals not owning a substantial shareholding, i.e. 5% or more of the share capital, entities not subject to corporate income tax or quoted investment institutions. Partnerships the partners of which are subject to income tax do not qualify as entities not subject to income tax;
- less than 25% of the shares may be held indirectly by resident shareholders through non-resident entities; and
- managers of the institution, and more than 50% of the members of the supervisory board, may not also be a manager or a member of the supervisory board of another company which alone or together with a related company owns at least 25% of the shares or participation rights of the institution or be employed by such company, unless it concerns an authorized investment institution.

Foreign investment institutions may also obtain a licence.

Investment funds may also invest in real estate, but the following limitations apply:

- the investment fund may only hold shares in a subsidiary that carries out real estate development activities, if the subsidiary receives an arm's length remuneration. The investment income received by the investment fund is treated as exempt passive investment income; and
- the investment fund may invest in the renovation or extension of real estate, but not in project development, provided the costs related to the renovation do not exceed 30% of the value of the real estate.

From 2009, the term "investment" also includes:

- granting of guarantees for the benefit of companies related to an investment company, if its assets for at least 90% consist of real estate (article 28(3)(c) of the Vpb); and
- lending of money obtained from third parties, including banks, by an investment company to a related company if its assets for at least 90% consist of real estate (article 28(3)(d) of the Vpb).

As from 2014 the term "investment" also comprises of holding shares in a subsidiary which purpose and actual activities consist of performing auxiliary activities directly related to the real estate investments made by the fiscal investment institution. These auxiliary activities may also be performed for an entity affiliated with the fiscal investment institution (e.g. a parent company, a subsidiary or a sister company). If the activities are performed for the parent company, the parent company must also be a fiscal investment institution. Furthermore, the fiscal investment institution may act as the manager of the subsidiary (article 28(3)(e) of the Vpb).

This facilitation ensures that auxiliary activities related to leasing activities are not limited for tax reasons. However, since the subsidiary is subject to tax, it competes on a level playing field with other providers of such services.

As stated above, the activities must be auxiliary to investing in real estate (the primary activity) and must be performed by a normal taxpaying subsidiary. In addition, three other conditions must be met:

(1) the tax value of the shares in the taxpaying subsidiary must not exceed 15% of the fiscal investment institution's (fiscal) equity;

(2) the turnover from the auxiliary activities performed by the subsidiary must not exceed 25% of the turnover (such as leasing income) derived from investing in the investment property for which the ancillary activities are performed. Each investment property must be assessed separately, whereby multiple real estate properties that function as a single real estate complex (a shopping mall, for example) are to be regarded as one investment property. The (taxable) payment for the auxiliary activities performed by the subsidiary must, of course, be determined in line with arm's length principles, i.e. as between independent parties. A deemed split may be applied between the salary costs for the (taxable) activities to be allocated to the subsidiary and the salary costs for the investment activities to be allocated to the fiscal investment institution (that is, in effect, not subject to corporate income tax), without also having to include the personnel of the fiscal investment institution on the subsidiary's payroll; and

(3) the subsidiary is solely equity financed (apart from the usual customer and supplier's credit). This prevents erosion of the tax base and reduction, in effect, of the above-mentioned condition (1). Nevertheless, the investment in the shares of the subsidiary may be fully or partly debt-financed at the level of the fiscal investment institution, thereby taking its overall funding limit into account (article 28(3)(e) of the Vpb).

The income of an investment institution is computed under the normal rules, subject to a few exceptions. The participation exemption (*see* section 6.1.3.) does not apply to income received by an investment institution, except for a participation in a real estate investment company which, on a consolidated basis with its subsidiaries, (indirectly) owns more than 90% (foreign) real estate, and simultaneously qualifies as an investment institution. Capital gains on items of investment, however, may be placed in a reinvestment reserve. The annual allocations to the reserve and the reserve's maximum size are subject to restrictions. Capital losses reduce the reinvestment reserve.

If, upon establishing the amount of profits to be distributed, an amount remains available because sums are rounded off, this amount may be placed in a rounding-off reserve. The maximum of this reserve is 1% of the issued share capital of the investment institution.

The applicable corporate income tax rate is 0%.

If an investment institution no longer meets one or more of the requirements in a certain financial year, it loses its status as such. The company becomes a regular corporate taxpayer from the beginning of that financial year. The reinvestment reserve and the rounding-off reserve must be included in the taxable income of that year.

Under Netherlands tax law and tax treaties, foreign withholding tax may, in general, be set off against corporate income tax payable by a resident company. As an investment institution is subject to corporate income tax at a rate of 0%, it may not benefit from this facility. Therefore, the investment institution may obtain a credit effected by direct payment from the tax authorities for foreign withholding tax. The maximum amount of credit is the amount of foreign taxes withheld. The reason for this gracious treatment is that individuals investing directly in shares or debt claims can, by virtue of tax treaties or unilateral relief, credit foreign withholding taxes against their income tax due.

Shares in an investment institution must be valued according to the normal rules of sound business practice. If an entity subject to corporate income tax owns, together with its related entities, at least 25% of the share capital of an investment institution quoted on the AEX, such a shareholding must, however, be valued at the lower of the fair market value or the fiscal intrinsic value.

Upon request, a taxable investment institution may be converted into an exempt institution (*see* section 12.2.2.). In that case, the fiscal reserves and/or goodwill of the institution are taxable before the conversion. After the conversion, the investment institution is still obliged to distribute the net investment income of the preceding year. According to the Ministry of Finance, the converted fund may still benefit from Netherlands tax treaties during the first 8 months after the conversion.

12.2.2. Tax-exempt investment institutions

Subject to certain conditions, resident NVs, BVs, mutual funds (*see* section 0.2.7.), permanent establishments, and entities established under the laws of Aruba, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao, St. Maarten, an EU Member State, or a state with which the Netherlands has concluded a tax treaty containing a non-discrimination provision for companies, may, upon request, qualify for the status of an exempt investment institution (*vrijgestelde fiscale beleggingsinstelling*) for corporate income tax purposes.

Exempt investment institutions are governed by article 6a of the Corporate Income Tax Law.

An exempt investment institution is exempt from corporate income tax and dividend withholding tax. Furthermore, no shareholder requirement, gearing limitations, and distribution obligations apply.

The main requirements that an entity must fulfil to obtain the status of exempt investment institution are:

- the institution must have more than one shareholder;
- the institution must invest collectively, which implies that the costs and risks must be split between more than one shareholder; and
- the institution may only invest in qualifying financial instruments.

The material purpose and actual circumstances are decisive for the satisfaction of requirement on collective investment(Decree of 10 March 2008, CPP2008/291M).

Qualifying financial instruments include the following:

- investments based on article 1:1 of the Law on Financial Control (*Wet financieel toezicht*), i.e.
  - shares;
  - participation rights in an investment company not being shares;
  - money market instruments;
  - options, futures, swaps, interest forward contracts or other derivative contracts concerning shares, currency, interest rates or yield or other derivative instruments, indexes or standards which must be paid in kind or in cash;
  - options, futures, swaps, interest forward contracts or other derivative contracts concerning raw materials which must or may be paid in cash depending on the choice of the contracting parties unless the contract is terminated due to default or any other event;
  - options, futures, swaps or other derivative contracts concerning raw materials and traded at a regulated market or a multilateral trade facility;
  - other options, futures, swaps, forward contracts or derivative contracts concerning raw materials to be paid in kind and not intended for commercial purposes and bearing the characteristics of other derivative instruments;
- derivative contracts for the transfer of a credit risk;
- options, futures, swaps, forward contacts and other derivative contracts concerning climate variables, emission permits, inflation rates, or other economic statistics that must be paid in cash;
- financial contracts to credit balances; and
- bank balances.

An exempt investment institution is not entitled to benefit from the Netherlands tax treaty network.

The participation exemption (*see* section 6.1.3.) does not apply to a participation in an exempt investment institution, except for a participation in a real estate investment company that, on a consolidated basis with its subsidiaries, owns more than 90% (foreign) real estate, and simultaneously qualifies as an exempt investment institution.

Because all investment income may be retained at the level of the exempt institution, the (in)direct shareholding in the institution must be revalued annually at the fair market value. The (un)realized capital gains must be added to the taxable income. The obligation to revalue does not apply to shareholders owning at least 5% of the share capital in a real estate investment company.

Upon request, an exempt investment fund may be established with retrospective effect from the beginning of a financial year. A shortened financial year could be applied during 2007, to apply the regime shortly after its introduction on 1 August 2007.

In a Decree of 10 March 2008, CPP2008/291M, the State Secretary for Finance has indicated that a split-up of a company aiming to obtain the exempt investment companies' regime is not regarded as tax avoidance or tax deferral.

12.3. Group finance company

The group finance company regime was abolished by a Law of 15 September 2005 with retrospective effect from 12 July 2001.

With effect from 1 January 2011, the group finance regime is not applicable anymore as the transitional regime for existing group finance companies expired on 31 December 2010.

Group interest box

On 10 February 2010, the government published a report of the discussions of the Financial Committee of the parliament of 14 January 2010, on amendments of the corporate income tax with respect to multinationals.

The report clarifies that an interest box regime will not be introduced.

12.4. Special profit calculation rules for insurance companies

Insurance companies may set up various special reserves, which are based on the Decree on profit calculation and reserves of insurance companies (*Besluit winstbepaling en reserve verzekeraars 2001*). A distinction is made between life insurance and damage insurance companies.

Life insurance companies may set up the following reserves:

- a special reserve for their payment obligations (*voorziening verzekeringsverplichtingen*). This reserve is equal to the difference between the cash value of the of the expected life insurance payment obligations which must be made less the cash value of the net premiums which will be received; and
- a fluctuation reserve. The maximum amount of the reserve may be 2.25% of the payment obligation reserve. The maximum yearly contribution to the reserve may not be higher than:
    - 4% of the maximum amount of the reserve; or
    - 22.5% of the profits.

Damage insurance companies may set up the following reserves:

- a reserve for premiums yet to receive (*voorziening verzekeringsverplichtingen*). The reserve is based on the net premiums received or various pro rata methods if premium payments cover a period of more than 1 year;
- a damage reserve. This reserve is equal to the expected payment obligations on 31 December; and
- a fluctuation reserve with a maximum of 22.5% of the premiums received. The maximum annual amount of the profits that may be contributed to the reserve is 6% of the permitted maximum reserve.

12.5. Taxation of banks

12.5.1. Bank tax

From 1 August 2012, Netherlands banks and branches of foreign banks in the Netherlands are subject to a bank tax (*bankenbelasting*), which is levied on the balance sheet total at the end of the preceding financial year.

The taxable amount is the balance sheet total less the amount of original own funds, the amount of deposits covered by the deposit insurance scheme, liabilities to be allocated to insurance activities and an efficiency threshold of EUR 20 billion.

For branches of foreign banks, the balance sheet total is also reduced by the amount of the liabilities that are not attributable to the branch.

The tax is levied at the rate of 0.044% for short-term liabilities and of 0.022% for long-term liabilities. The tax so calculated is increased by a 10% surcharge if a director receives a bonus exceeding his salary by more than 25% (by 100% for the first 2 years, i.e. until 31 July 2014).

The bank tax is due, on the self-assessment basis, on the first day of the tenth month after the end of the financial year. The tax is not creditable against the corporate income tax and also not deductible for corporate income tax purposes.

Banks which are part of a group headed by a Netherlands parent may opt for consolidation with respect to the bank tax. In that case, the parent is considered as the taxpayer. The parent is not, however, liable to pay the bank tax (but the consolidated banks are) if:

- the balance sheet total of all banks taken together does not exceed EUR 20 billion; or
- the balance sheet total of all banks taken together amounts to less than 10% of the consolidated balance sheet total of the parent company for purposes of the corporate income tax (*see* section 8.).

12.5.2. Resolution levy

A temporary levy for the banking sector was introduced for 2014. Banks that participate in the Netherlands Deposit Guarantee Scheme (*depositogarantiestelsel*, DGS) on one or more of three relevant dates in 2014 (i.e. 1 March, 1 May and 1 July) were subject to the resolution levy, provided that they participated in the Netherlands DGS on 1 February 2013. This also included Netherlands resident subsidiaries of foreign banks. The tax rate was 0.075% of the guaranteed deposits held under the DGS as at 1 February 2013, and is derived from the projected tax revenue of EUR 1 billion. Because the resolution levy was levied on three separate occasions, the total tax rate effectively amounted to 0.225% (3 x 0.075%). The banks had to pay the levy by way of a tax return within 1 month of the above-mentioned dates. The resolution levy was not deductible for corporate income tax purposes.

13. Value Added Tax

13.1. General

The VAT Law of 28 June 1968 (*Wet op de omzetbelasting 1968*, OB), which entered into effect on 1 January 1969, replaced the cumulative turnover tax with value added tax (VAT).

VAT (*belasting over de toegevoegde waarde*, BTW, generally known as *omzetbelasting*) is a general tax on supplies of goods and services made in the Netherlands (article 1 of the OB). VAT is imposed on all supplies of goods and services made by entrepreneurs at every stage of the production and distribution process. In order to prevent accumulation of the tax at subsequent stages, the general principle of the VAT mechanism is that entrepreneurs are entitled to deduct the VAT paid on the purchase of goods and services, which they use for taxable business purposes (input VAT), from the VAT due on supplies of goods and services made to third parties (output VAT) (*see* section 13.9.). Where, for the tax period, output tax exceeds input tax, the entrepreneur must pay the balance to the tax authorities, whereas, if input tax exceeds output tax, the tax authorities refund the balance to the entrepreneur. VAT is generally based on the destination principle, which implies that also imports of goods are subject to VAT, and exports of goods are relieved of the tax, i.e. they are zero rated (*see* section 13.7.).

The VAT Law was initially based on Second Directive (Directive 67/228 of 11 April 1967) and, from 1 January 1979, on the Sixth Directive (Directive 77/388 of 17 May 1977). On 1 January 2007, the Sixth Directive has been replaced by Directive 2006/112 of 28 November 2006. That replacement has not given rise to substantive changes of the European VAT system or the VAT Law.

On 1 January 1993, the fiscal frontiers between the Member States were abolished, and the Sixth Directive was supplemented with rules aimed at ensuring that, despite the fact that the customs authorities no longer monitor and control movements of goods between the Member States, intra-Community supplies of goods remain subject to VAT in the Member State of destination. To that end, the Community VAT legislation provides that, from 1 January 1993, instead of paying import VAT to the customs authorities or under postponed accounting (*see* section 13.5.), entrepreneurs must account for VAT on goods purchased from a supplier in another Member State through their periodic VAT return on the intra-Community acquisition of the goods. Just like postponed accounting, that method of taxation of intra-Community transactions has the advantage that the customer may deduct the acquisition VAT through the same return. Instead of the customs authorities, from 1 January 1993, the tax authorities monitor movements of goods between the Member States, on the basis of information provided by entrepreneurs involved in the intra-Community transactions. Those entrepreneurs provide that information through their periodic recapitulative statements (*see* section 13.10.4.). In addition, entrepreneurs involved in intra-Community transactions in goods must file Intrastat returns for statistical purposes (*see* section 13.10.4.).

13.2. Taxable persons

Instead of the Community term "taxable person", the VAT Law uses the term "entrepreneur".

13.2.1. General

Article 7 of the VAT Law defines the concept of "entrepreneur" as any person who independently carries out a business activity, which includes free professions and the exploitation of tangible or intangible assets for the purpose of obtaining income therefrom on a permanent basis (article 7(2)(a) and (b) of the OB). In this context, the business's legal form is irrelevant, which means that entrepreneur may be self-employed individuals, associations of individuals (e.g. partnerships), legal persons (e.g. limited-liability companies, foundations, trusts), combinations of legal persons (joint ventures), or any other economic entity.

The following are also treated as entrepreneurs, if they do not otherwise qualify as such:

- any organization which receives services from a non-resident entrepreneur which are subject to VAT under the reverse charge mechanism (*see* section 13.4.1.1.); and
- any person who makes an intra-Community supply (*see* section 13.3.1.) of a new means of transport on an incidental basis (*see* section 13.3.2.).

Holding companies, which merely hold shares in their subsidiaries and which are not actively involved in their management, are not treated as entrepreneurs for VAT purposes (i.e. they are non- taxable). Based on the holding resolution of 18 February 1991, VB91/347, non-taxable holding companies maybe included in a Netherlands VAT group (fiscal unity). The holding company should, however, be actively involved in the group (i.e. it should have an active participation in the decision-making process), whether or not this takes place in exchange for remuneration and irrespective of the fact that other VAT taxable activities are performed. The ECJ confirmed this treatment of non-taxable holding companies on 25 April 2013 (C-65/11). With effect from 1 January 2010, the definition of the term "entrepreneur" is extended to include the following two categories (article 7(7) of the OB):

- a taxable person who partially carries out non-taxable supplies of goods and services; and
- a legal entity, not being a taxable person, but having a VAT identification number.

In respect of their activities as a public authority, i.e. activities assigned to them by law, public bodies are not considered to be entrepreneurs for VAT purposes. In so far as their activities are in competition with those of entrepreneurs, public bodies are subject to VAT.

Natural persons who carry on a business as an entrepreneur and whose annual net VAT liability does not exceed EUR 1,883 (article 25 of the OB) may in effect be excluded from the concept of entrepreneur because they are eligible for a generic exemption, regardless of the nature of their activities.

Non-resident entrepreneurs are those who are neither established in the Netherlands nor have a fixed establishment there. The concept of "fixed establishment" for VAT purposes is different from that of "permanent establishment" for income tax purposes.

13.2.2. Groups

Natural persons and legal entities that qualify as entrepreneurs and are established in the Netherlands, or have a permanent establishment in the Netherlands, may be treated as a single taxpayer or *fiscale eenheid* (VAT group) if they are closely related to one another by means of financial, organizational and economic links (article 7(4) of the OB). The qualifying VAT taxable entrepreneurs to be regarded as one taxpayer may either be natural persons or entities. However, based on the holding resolution of 18 February 1991, VB91/347, non-taxable holding companies may also be included in a Netherlands VAT group under certain conditions.

If the entities concerned fulfil all the above conditions, group registration is compulsory (article 7(4) of the OB). Group registration has the effect that transactions between the members of the group are not subject to VAT and that the members are jointly and severally liable for payment of the VAT debts of the entire group.

13.3. Taxable events

The following transactions are taxable (article 1 of the OB):

- supplies of goods and services made in the Netherlands by entrepreneurs in the course of their business (*see* section 13.3.1.);
- the supply of services by an entrepreneur established in another EU Member State to an entrepreneur established in the Netherlands or to a legal entity that is not an entrepreneur but which has a VAT identification number;
- the importation of goods (from outside the European Union) into the Netherlands (*see* section 13.3.2.);
- the intra-Community acquisition of goods in the Netherlands by entrepreneurs in the course of their business or by non-taxable legal entities (*see* section 13.3.2.); and
- the intra-Community acquisition in the Netherlands of new means of transport by any person (*see* section 13.3.2.).

13.3.1. Supplies of goods and services

Article 3 of the VAT Law defines supply of goods as:

- transfer of the power to dispose of goods as owner;
- handing-over of goods under a lease-purchase contract;
- delivery of an immovable property by the entrepreneur who has constructed it on the customer's land. This also applies to the supply of unbuilt land following the demolition of existing buildings (*Woningstichting Maasdriel,* ECJ C-543/11);
- transfer of goods against a consideration pursuant to a demand by or on behalf of the government; and

- assignment, transfer, amendment, etc. of rights in rem relating to immovable property, unless the consideration is below the open market value of the property.

The following are deemed to constitute a supply of goods:

- withdrawal of goods by entrepreneurs from their business for their private purposes or those of their staff;
- application of self-produced goods for exempt purposes;
- retention of goods when the entrepreneur ceases his business activities; and
- transfer by entrepreneurs of goods that form part of their business to another Member State.

An export is a supply of goods in the framework of which the goods are transported to a destination outside the European Union, whereas an intra-Community supply is a supply of goods in the framework of which the goods are transported to a destination in another Member State of the European Union.

A supply of services is any transaction for consideration, which is not a supply of goods (article 4 of the OB). The application of goods that form part of the entrepreneur's business, and of services for the private purposes of the entrepreneur or his staff or, more generally, for non-business purposes, is treated as a deemed supply of services.

13.3.2. Importation and intra-Community acquisition

Article 18 of the VAT Law defines importation of goods as the entry of goods coming from a place outside the European Union into the territory of the Netherlands, unless, on entry into the country, the goods are placed under a customs regime. In the latter case, the release or unlawful removal of the goods from the customs regime constitutes the importation of the goods.

By implementing order of 23 December 2010, the Netherlands has implemented Directive 2009/69 concerning the exemption of the importation of goods destined to be supplied or transferred as a zero-rated intra-Community supply of goods. The exemption applies if the importer provides the following information to the tax authorities:

- his or his tax representative's VAT identification number issued in the Member State of destination;
- the VAT identification number of the customer in the Member State of destination; and
- evidence that the imported goods are intended to be transported or dispatched to another Member State.

Article 17a(1) of the VAT Law defines intra-Community acquisition as the acquisition of goods other than new means of transport by an entrepreneur pursuant to a supply made by another entrepreneur in the framework of which the goods are transported from one Member State to another. Where the recipient of the goods is subject to VAT on the intra-Community acquisition of the goods, the corresponding supply constitutes a intra-Community supply, which is zero rated (*see* section 13.7.).

Since the transfer to another Member State by entrepreneurs of goods that form part of their business constitutes a deemed supply of goods (*see* section 13.3.1.), that transfer results in an intra-Community acquisition of the goods effected by the same entrepreneur in the Member State of arrival of the goods.

However, no intra-Community acquisition takes place, where non-taxable legal persons and entrepreneurs exclusively engaged in exempt transactions or subject to the flat-rate scheme for farmers (*see* section 13.8.) purchase goods other than new means of transport from another Member State and,

- the annual value of those purchases, in the current or preceding year, has not exceeded a threshold of EUR 10,000, or
- below that threshold, the recipients of the goods have not opted for taxation of their intra-Community acquisitions.

As regards new means of transport, different rules apply. Anyone, even private individuals, must pay VAT on the intra-Community acquisition of a new means of transport from another Member State. By the same token, anyone who makes an intra-Community supply of a new means of transport is treated as an entrepreneur, in that respect only (*see* section 13.2.1.).

In the context of intra-Community transactions, article 2a(1)(f) of the VAT Law defines the term "new means of transport" as:

- motorized land vehicles with an engine capacity of more than 48 cm3 or engine power of more than 7.2 kW, provided that the supply takes place within 6 months after the vehicle was first taken into use or before it has travelled more than 6,000 kilometres;
- vessels with a length of more than 7.5 metres, provided that the supply takes place within 3 months after the vessel was first taken into use or before it has sailed more than 100 hours; and
- aircraft with a take-off weight of more than 1,550 kg, provided that the supply takes place within 3 months after the vessel was first taken into use or before it has flown more than 40 hours.

13.4. Place of taxation

Transactions are only subject to VAT where, for VAT purposes, they are deemed to be carried out in the Netherlands, i.e. the place of supply is within the territory of the country.

13.4.1. Place of taxation of domestic events

The domestic events covered by this subsection are supplies of goods and services. Those categories of transactions are subject to different place-of-supply rules.

13.4.1.1. Place of taxation of supplies of goods

Supplies of goods are subject to three main place-of-supply rules (article 5 of the OB):

- where they are transported in the framework of the supply, goods are deemed to be supplied at the place of departure. However, under the arrangements for distance selling, the place of supply may shift to the place where transport of the goods ends (*see* below);
- where they are not transported, goods are deemed to be supplied at the place where they are located at the time of supply; and
- where they are to be assembled or installed by or for the account of the supplier, the goods are deemed to be supplied at the place where assembly or installation takes place.

Separate rules apply to goods supplied on board ships, aircraft or trains during an intra-Community passenger transport, gas supplied through the distribution system, and electricity.

Special rules apply to distance selling, which is a regime applicable to supplies of goods (other than new means of transport) made to customers in another Member State, who are not registered there for VAT purposes (article 5a of the OB) and who do not have to account for VAT on the intra-Community acquisition of the goods (*see* section 13.3.2.). For the purposes of the distance selling arrangements, the goods must be transported or dispatched to another Member State by or on behalf of the supplier.

As regards supplies of goods made by distance sellers established in the Netherlands, the general rule is that the goods are deemed to be supplied in the Netherlands because transport of the goods begins there. However, where the value of his distance sales to customers in a specific Member State has exceeded a threshold of (approximately) EUR 100,000 or EUR 35,000 in the current or preceding year, the distance seller must register in his customers' Member State and account for VAT there on the distance sales made to the unregistered customers in that Member State. Below that threshold, the distance seller may also opt for registration in his customers' Member State and account for VAT there. It should be noted that the distance selling threshold of (approximately) EUR 100,000 only applies to distance sales to unregistered customers in Austria, France, Germany, Luxembourg, the Netherlands and the United Kingdom. In respect of distance sales to unregistered customers in all other Member States, the threshold is (approximately) EUR 35,000.

Non-resident distance sellers who supply goods to unregistered customers in the Netherlands, must register for VAT if, in the current or preceding calendar year, their distance sales to the customers in the Netherlands have exceeded EUR 100,000 or, if their distance sales are below the threshold, they opt for taxation in the Netherlands. Distance sellers established outside the European Union must appoint a VAT representative (*see* section 13.11.4.).

Where non-resident entrepreneurs, including non-resident distance sellers, supply goods to entrepreneurs and organizations established in the Netherlands, and where the supply is deemed to be made there, the transaction is subject to the reverse charge mechanism (article 12(3) of the OB). Under the reverse charge mechanism, the supplier does not charge the VAT due on the supply of goods to the customer but, instead, the customer must account for VAT through his periodic VAT return on the value of the received goods. This method of collection of the VAT due on the goods has the advantage that non-resident suppliers do not have to be registered in the Netherlands, unless they supply goods to private individuals.

13.4.1.2. Place of taxation of services

With effect from 1 January 2010, there is a change in the rules dealing with the place of supply of services. Before 1 January 2010, services were deemed to be supplied in the country where the supplier had his fixed business establishment or residence.

With effect from 2010, a distinction is made between business to business services ("B2B services") and business to consumer services ("B2C services").

The general rule for B2B services is that they are deemed to take place at the place where the customer is established (article 6(1) of the OB). The general rule for B2C services is that they are deemed to take place at the place where the supplier is established (article 6(2) of the OB).

There are, however, many exceptions to the place-of-supply rule of the OB). The main exceptions are:

- services relating to immovable property are deemed to be supplied at the place where the immovable property is located (article 6b of the OB);
- transport services (other than intra-Community transport of goods) are deemed to be supplied at the place where the transport takes place, by reference to the actual distance covered. Intra-Community transport of goods is however deemed to be supplied at the place of departure of the goods, unless the customer is registered in another Member State. In the latter case, the services are deemed to be supplied in the Member State where the customer is registered (article 6c of the {OB));
- services auxiliary to the transport of goods (e.g. loading, unloading and handling) are deemed to be supplied at the place where they are physically carried out, unless the services are auxiliary to the intra-Community transport of goods and the customer is registered in another Member State. In the latter case, the services are deemed to be supplied in the Member State where the customer is registered (article 6e(a) of the OB);
- cultural, artistic, sporting, scientific, educational and entertainment services are deemed to be supplied at the place where those services are physically carried out (article 6d of the OB);
- work on movable goods, including valuation, is deemed to be supplied at the place where the work is physically done, unless the customer is registered in another Member State and, after the work is done, the goods leave the Member State where the services were rendered. In the latter case, the services are deemed to be supplied in the Member State where the customer is registered (article 6e(b) of the OB); and
- listed intangible services, including the services of lawyers, accountants and consultants, etc, advertising services, telecommunications services, radio and television broadcasting services, electronically supplied services, etc. are deemed to be supplied at the place where the recipient of the services is resident or established, unless the customer is resident in a Member State and does not qualify as an entrepreneur (articles 6h and 6i of the OB). However, where they are rendered by a service provider established outside the European Union to a customer, who is established in the Netherlands and does not qualify as an entrepreneur, the intangible services are generally deemed to be supplied at the place where they are effectively used and enjoyed (article 6j of the OB).

Where the services referred to above are deemed to be supplied at the place where the customer is established or registered, and where that customer is an entrepreneur or organization established or registered in the Netherlands, the services are subject to the reverse charge mechanism (*see* section 13.4.1.1.), provided that the service provider is not established in the Netherlands.

With effect from 1 January 2015, the above place-of-supply rules also apply with respect to telecommunications, broadcasting and e-services (TBE services).

13.4.2. Place of taxation of cross-border events

The cross-border events cover the importation and intra-Community acquisition of goods.

13.4.2.1. Place of taxation of imports

Goods are deemed to be imported into the Netherlands if they are brought into free circulation there, either directly, i.e. on their entry into the Netherlands from a place outside the European Union, or indirectly, i.e. on their release or unlawful removal in the Netherlands from the customs regime under which they were placed on entry into the Netherlands (*see* section 13.3.2.) or another Member State. Import VAT must be paid only once within the European Union, i.e. in the Member State in which the goods are brought into free circulation.

13.4.2.2. Place of taxation of intra-Community acquisitions

The intra-Community acquisition of goods (*see* section 13.3.2.) is generally effected at the place where the dispatch or transport of the goods ends, unless the customer effects the acquisition under a VAT identification number issued in another Member State (*see* below) or the acquisition takes place under the simplification measures applicable to intra-Community triangulation (*see* below) (article 17b of the OB).

Where he has effected the intra-Community acquisition under a VAT identification number that was not issued in the Member State where the dispatch or transport of the goods ends, the customer effects the acquisition (under the safety net provision) in the Member State of registration, unless he shows that he has paid the acquisition VAT in the Member State of arrival of the goods.

Triangulation occurs when A sells goods to B and B subsequently sells them to C, but delivery is directly from the first supplier (A) to the final customer (C). Triangulation may occur in a domestic, intra-Community or international context. In an intra-Community context, i.e. where A is registered in Member State 1, B in Member State 2, and C in Member State 3, triangulation has the effect that the intermediate supplier (B) must also be registered in either Member State 1 or 3, just for the purposes of that transaction because, where, in the framework of a series of transactions, the goods only physically move once from one Member State to another, only one supply may be zero rated as an intra-Community supply. The other supply is a domestic supply which is deemed to be made in either the Member State of origin (Member State 1) or the Member State of destination (Member State 3). The zero-rated intra-Community supply is the supply to which transport of the goods must be ascribed, which means that there are two possible scenarios.

Scenario 1

If the transport of the goods must be ascribed to the supply from A to B, A makes a zero-rated intra-Community supply to B in Member State 1, and B effects the corresponding intra-Community acquisition in Member State 3 (place of arrival of the goods) and must be registered there, account for the acquisition VAT and charge the VAT of Member State 3 on his subsequent domestic supply to C.

Scenario 2

If the transport of the goods must be ascribed to the supply from B to C, A makes a domestic supply to B, which is subject to VAT in Member State 1 and B makes a zero-rated intra-Community supply (in Member State 1) to C, who effects the corresponding intra-Community acquisition in Member State 3 (place of arrival of the goods). Consequently, B and C must be registered in Member State 1 in order to fulfil the administrative obligations related to the intra-Community supply.

Simplification

Where C is established in the Netherlands, the following simplification applies on the basis of scenario 1. It should however be noted, that although it is based on scenario 1, the simplification does not require that transport of the goods must be ascribed to the transaction between A en B. Under the simplification, B's acquisition in Member State 3 (the Netherlands) is not subject to VAT and his subsequent supply to C is deemed to be made in C's Member State and is subject to the reverse charge mechanism (section), which means that C must account for VAT in respect of that supply. The simplification has the effect that B does not have to be registered in Member State 3 (the Netherlands).

Where B is established in the Netherlands, he effects the intra-Community acquisition of the goods there under the safety net provision and is entitled to deduct the acquisition VAT, in view of his subsequent supply to C, which is subject to VAT in C's Member State under the reverse charge mechanism. In addition to the regular invoicing requirements, B must mention on the invoice that his supply to C forms part of a "triangular transaction" and he must also include the domestic supply on his EU sales list (*see* section 13.10.3.), under his customer's VAT identification number.

13.5. Time of taxation

The time of taxation is the time when VAT becomes chargeable, which only serves the purpose of attributing the entrepreneur’s tax liability in respect of supplies of goods and services and the importation and intra-Community acquisition of goods to a specific tax period.

Under article 13 of the VAT Law, in respect of supplies of goods or services, VAT becomes chargeable:

- where issue of a VAT invoice is compulsory: at the time of issue of the invoice or, if the invoice has not been issued, at the latest on the 15th day of the month following that in which the supply was made;
- where VAT that is not legally due has been mentioned on an invoice or credit note: at the time of issue of the relevant invoice or credit note (article 37 of the OB);
- for services to which the reverse charge mechanism applies: at the time when the services are supplied; and
- in other cases: at the time the supply is made, which is the time the goods are delivered to the customer or the services are completed.

However, where the supplier receives an advance payment, the corresponding VAT becomes chargeable on the date of receipt of the payment.

Specific categories of retailers are legally obliged, and other categories of retailers may apply for authorization to account for VAT on the basis of cash receipts.

Tax in respect of self-supplies, i.e. private use of goods or appropriation of goods for an exempt activity, becomes due at the time the goods are appropriated or withdrawn from business stock.

VAT on the importation of goods becomes chargeable at the time the customs duties on the imported goods become chargeable or would become chargeable, i.e. at the time the imported goods are leased from customs control. Import VAT must be paid to the customs authorities, unless the importer is authorized to account for VAT on the importation of goods under postponed accounting. Under postponed accounting, the importer accounts for import VAT through his periodic VAT return. Even non-resident entrepreneurs may be authorized to account for import VAT under postponed accounting, on the condition that, even if they are established in another Member State, they have appointed a VAT representative.

In respect of intra-Community acquisitions of goods, VAT becomes chargeable on the date of issue of the related invoice or, at the latest, on the 15th day of the month following that in which the acquisition was effected.

13.6. Taxable amount

The taxable amount is the total price that the supplier charges to the recipient of the supply, excluding the VAT itself (article 8 of the OB). The taxable amount includes the value of services directly connected with the transaction, e.g. costs of insurance, transport and commissions. It does not include discounts granted by the supplier to the customer and “transitory expenses”. Transitory expenses are expenses paid by the supplier of the goods or services on behalf and for the account of the customer (e.g. taxes and fees due on the use of the supplied goods). Transitory expenses are only excluded from the taxable amount if they are separately charged on the invoice to the customer.

In respect of deemed supplies of goods and services, the taxable amount is generally the purchase or cost price of the goods and services (article 8(3) and (4) of the OB).

In respect of the importation of goods, the taxable amount is the customs value of the imported goods, including any customs duties and additional charges levied before they reach their destination. The VAT due on the importation of the goods is excluded from the taxable amount (article 19 of the OB).

In respect of the intra-Community acquisition of goods, the taxable amount is generally identical to that applicable to supplies of goods.

The VAT Law provides for a special regime for dealers of second-hand goods, works of art, antiques and collectors’ items. Just like travel agents, those dealers may account for VAT on their margin only.

13.7. Rates

The following three rates are used (article 9 of the OB):

- a standard rate of 21% (19% before 1 October 2012) applies to all taxable supplies of goods and services, which are not exempt from VAT or subject to the reduced or zero rate;
- the reduced rate of 6% applies to supplies of goods and services listed in Table I to the VAT Law, including foodstuffs, pharmaceuticals, bandages, artificial limbs, listed articles for the blind, visually impaired, deaf and invalids, water, books, magazines and newspapers, flowers and plants, small repairs of bicycles, clothing and shoes, renovation (painting and plastering), hairdressing, hotel accommodation and restaurant transactions, specific agricultural services and admission to circuses, zoos, museums, musical and theatre performances, cinemas, sports events and amusement parks, isolation works for housing older than 2 years, digital information on physical data carriers, painting and plastering, and cleaning activities inside housing; and
- the zero rate normally applies to exports and intra-Community supplies of goods and, in addition, to supplies of goods under customs control or under VAT warehousing, supplies of sea vessels and aircraft and services relating thereto, the provisioning of specific vessels and aircraft, international passenger transport by water or air, and inward-processing of goods (*see* Table II to the VAT Law).

13.8. Exemptions

Exemptions and zero rates (*see* section 13.7.) have in common that the supplier does not charge VAT to his customer in respect of supplies of goods or services. The difference is that entrepreneurs, who make exempt supplies cannot deduct input VAT on associated expenses, whereas those who make zero-rated supplies can.

Under article 11 of the VAT Law, the exempt transactions include:

- supplies of immovable property, with the exception of new buildings and building land. Buildings are new until a period of 2 years has lapsed since they were first taken into use;
- leasing and renting of immovable property, with the exception of permanently installed equipment and machines, hotel accommodation, parking spaces and safe deposit boxes;
- services of hospitals;
- sports and specific social and cultural services;
- health care services;
- financial services and insurance transactions;
- specific postal services;
- betting and lotteries;
- educational services;
- services of authors, composers and journalists;
- services of specific civic organizations;
- services of cost-sharing associations; and
- fund-raising activities of specific organizations.

In respect of the supply of immovable property and the rental of immovable property other than housing, the exemption may be waived by the parties involved in the transaction by opting for a taxable rental. Pursuant to the application of the VAT reverse-charge mechanism, the lessor may deduct the VAT charged on the purchase of the immovable property (including maintenance costs) which should result in the calculation of a lower rental price. The option of taxable rental is only available where the property is used by the lessee for purposes in respect of which at least 90% of the input VAT is deductible.

For the generic exemption applicable to small businesses, *see* section 13.2.1.

Special schemes apply to farmers, tobacco products, and investment gold. Under the special scheme for farmers, supplies of agricultural goods and services by the farmers are not subject to VAT. Their taxable customers are compensated for the fact that the farmer's non-deductible input VAT is included in his selling prices by means of a flat-rate input tax deduction. Importers and producers of tobacco products must account for VAT on the retail price for the goods, which implies that other transactions in the distribution process are not subject to VAT. Supplies of investment gold are in principle exempt from VAT; the exemption is however accompanied by a limited right to deduct input tax.

13.9. Input tax deduction

Article 15 of the VAT Law deals with deduction of input VAT. Input VAT is VAT on goods and services purchased by the entrepreneur for the purposes of his business. Input VAT consists of:

- VAT charged to the entrepreneur by other entrepreneurs in respect of goods and services supplied to him;
- VAT on the importation of goods paid to the customs authorities or payable under postponed accounting (*see* section 13.5.);
- VAT payable under the reverse charge mechanism (*see* sections 13.4.1.1. and 13.4.1.2.) in respect of goods and services received from, inter alia, non-resident suppliers; and
- VAT payable on intra-Community acquisitions of goods (*see* section 13.3.2.).

13.9.1. General

In principle, entrepreneurs are entitled to deduct VAT in respect of goods and services that they use for the purposes of carrying out taxable activities. Consequently, VAT in respect of goods and services used for the purposes of carrying out exempt activities or for the entrepreneur's private purposes is non-deductible.

On 19 June 2012, the ECJ held in the case of *X. v. Staatssecretaris van Financiën* (C-334/10) that input VAT on expenses for the temporary private use of a capital item is also deductible.

On 18 July 2013, the ECJ held in the case of PPG Holdings BV c.s. v. Inspecteur van de Belastingdienst/Noord/kantoor Groningen (C-26/12) that a taxable person who has set up a pension fund in the form of a legally and fiscally separate entity in order to safeguard the pension rights of his employees and former employees, is entitled to deduct the VAT he has paid on services relating to the management and operation of that fund, provided that the existence of a direct and immediate link is apparent from all the circumstances of the transactions in question.

For the purpose of exercising the right to deduct input VAT, the entrepreneur must hold a valid VAT invoice, which states the correct amount of VAT due on the supply, or a customs document, which shows the amount of import VAT paid or due to the customs authorities on the imported goods.

Where, for the tax period, the amount of deductible input tax exceeds the entrepreneur's VAT liability, the tax authorities refund the balance ("excess input tax") (article 17 of the OB).

VAT cannot be deducted in respect of:

- the provision of food or drink in restaurants, hotels, bars, pubs, etc. (article 15(5) of the OB);
- goods and services used to maintain personal status;
- goods used for making gifts to recipients who are not entitled to deduct VAT;
- goods and services used by entrepreneurs to remunerate their employees in kind, or to provide them with private transport, housing or sports and entertainment facilities.

In respect of the items referred to under the last three indents, an annual deduction threshold of EUR 227 per beneficiary applies. Only where the benefit exceeds the threshold, input tax is non-deductible.

Entrepreneurs who purchase agricultural products from farmers under the special scheme for farmers (*see* section 13.8.) are entitled to a flat-rate deduction of 5.1% of the amount charged to them (article 27(4) of the OB).

13.9.2. Partial deduction

VAT on goods and services exclusively used by the entrepreneur for the purposes of making taxable or zero-rated supplies is deductible in full, whereas VAT on goods and services exclusively used for the purposes of making exempt or non-business supplies is not deductible at all. Entrepreneurs who use specific goods and services for the purposes of making both taxable and exempt supplies, such as general overheads that are not directly attributable to either category, must apportion the input VAT.

The standard method of apportionment is based on the entrepreneur's ratio of taxable turnover (excluding VAT) to the total turnover (certain revenue is not included in the total turnover) (article 11(1) of the Uitv. besch. OB). The resulting ratio (pro rata) may vary from year to year.

However, where attribution of the goods and services to the categories of taxable and exempt supplies on the basis of actual use produces a more appropriate result, that criterion must be used as method of apportionment (article 11(2) of the Uitv. besch. OB).

With respect to purchased real estate, which is used for mixed purposes, the deductable amount of VAT in the year of purchase must be based on the actual use. Before 2011, the entire amount of VAT was initially deductible, followed by adjustments in subsequent years. The Netherlands did not use the possibility provided for by Directive 2009/162 to expanded that rule to other goods.

13.9.3. Adjustment of input tax deduction

Initial deduction of VAT paid on capital goods (i.e. immovable goods and rights to which they are subject, and movable goods which are subject to depreciation for income tax purposes) depends on the use of the goods in the year of acquisition. A proportional part of the initial deduction must be adjusted where, in subsequent years of the adjustment period, the use of the goods changes (article 15(6) of the OB). For movable goods and intangible assets (valuable rights), the adjustment period is 5 years, and for immovable property, 10 years, including the year of purchase.

13.10. Administration

For the general rules regarding administration, *see* the General Law on State Taxes (*Algemene wet inzake rijksbelastingen,* AWR).

13.10.1. Registration

Entrepreneurs established in the Netherlands and fixed establishments of non-resident entrepreneurs that are liable for payment of VAT must register with the local VAT authorities. If they are involved in intra-Community transactions or cross-border services, they are assigned a VAT identification number with the prefix "NL".

For group registration, *see* section 13.2.2.

From 1 January 2015, entrepreneurs supplying electronic services in various EU Member States have the option to apply for a mini one-stop shop (MOSS) system to avoid the need for registration in each of the Member States separately. Under the MOSS system, entrepreneurs that supply telecommunications, broadcasting and e-services (TBE services) to consumers in Member States in which they do not have an establishment may account for the VAT due on those supplies via a web portal in the Member State of establishment. Entrepreneurs who opt to apply the MOSS regime are obliged to apply it for all B2C supplies of telecommunications, broadcasting and e-services in Member States in which they do not have an establishment.

13.10.2. Invoices

Entrepreneurs must issue VAT invoices in respect of:

- supplies of goods and services made to other entrepreneurs or non-taxable legal persons; and
- supplies of goods under the arrangements for distance selling (*see* sections (13.4.1.1. and 13.4.1.2.).

The invoice must be issued before the 15th day of the month following that in which the supply of goods or services is made (article 35(5) of the OB). VAT invoices must be drawn up in duplicate, one for each party, and contain, inter alia (article 35a(1) of the OB):

- date of issue and date of supply;
- name, address and VAT identification number of the supplier;
- name, address and VAT identification number of the customer;
- a clear description of the goods or services supplied;
- quantity of the goods supplied;
- consideration payable;
- applicable VAT rate; and
- amount of VAT.

VAT invoices may be issued electronically, provided that the authenticity of their origin and integrity of their content are guaranteed by means of an advanced electronic signature or exchange through the EDI procedure (article 35b of the OB). VAT invoices may also be issued by the customer (if accepted by the supplier) or, on behalf of the supplier, by a third party.

13.10.3. Records

Entrepreneurs must keep business records in such a manner that their VAT liability can easily be determined and must preserve the records for a period of 7 years (article 52(4) of the AWR). Records relating to immovable assets must be preserved for 10 years, including the year of acquisition (article 34a of the OB).

13.10.4. Returns and payment

Depending on the amount of VAT payable, entrepreneurs must file monthly, quarterly or annual VAT returns. The standard tax period is the quarter. Where the amount of VAT payable per quarter structurally exceeds EUR 7,000, the entrepreneur must file monthly returns. Where the amount of VAT payable per year does not exceed EUR 2,000, the tax authorities may authorize the entrepreneur to file annual returns.

Where, for the tax period, the amount of deductible input tax exceeds the VAT liability, the tax authorities refund the “excess input tax” (*see* section 13.9.) to the entrepreneur upon application. The application is made by means of filing a “negative” VAT return (article 17 of the OB), which may be filed monthly.

Monthly and quarterly VAT returns must be filed at the latest on the last working day of the month following the reporting period and must be accompanied by payment of the VAT due. Annual VAT returns must be filed at the latest on 31 March of the following year. All VAT returns must be filed in electronic format.

Entrepreneurs who have made intra-Community supplies of goods must not only report those supplies through their periodic VAT returns, but also in the form of a quarterly list (*opgave intracommunautaire leveringen*) of the VAT identification numbers of the respective customers and the value of the goods supplied to them in the reporting period. If the amount of these supplies exceeds EUR 50,000 per quarter, or this amount was exceeded in one of the preceding 4 quarters, the list must be reported on a monthly basis (article 37 of the OB).

Pursuant to the new place-of-supply rules (*see* section 13.4.1.2.), entrepreneurs must also list intra-Community supplies of services. These supplies may be reported quarterly, regardless their amount. Zero-rated and exempt supplies, however, do not have to be listed.

The information provided through those lists (recapitulative statements or EU sales lists) is fed into the VAT Information Exchange System (VIES) and forwarded to the tax authorities of the customers’ Member States. Recapitulative statements must be filed in electronic format.

The authority in charge of processing recapitulative statements is:

Belastingdienst/Central Liaison Office

Antwoordnummer 28000

7600 XW Almelo

The Netherlands

In addition to VAT returns and recapitulative statements, entrepreneurs involved in intra-Community supplies and acquisition of goods of a value of more than EUR 900,000 per year, must also provide statistical information in respect of those transactions to the Central Bureau of Statistics (CBS) in Heerlen, through Intrastat returns. Intrastat returns must be filed electronically by means of the IRIS software provided by the CBS. Those returns must be filed on a monthly basis before the eighth day of the following calendar month.

The CBS is established at:

Centraal Bureau voor de Statistiek

Kloosterweg 1

6412 CN Heerlen

The Netherlands

Pursuant to the new place-of-supply rules for TBE services, entrepreneurs that apply the MOSS scheme are obliged to submit MOSS returns quarterly with respect to their supplies to consumers in Member States in which they are not established, together with the VAT due in these Member States.

13.10.5. Interest and penalties

If the entrepreneur fails to file a VAT return or files it late or for an incorrect amount, the tax authorities assess him for unpaid or underpaid VAT on the basis of an estimate of the amount of tax due. In the case of an assessment or where he fails to pay the declared amount of VAT on time, the entrepreneur is liable for payment of a penalty and interest relating to the period of the delay. On the other hand, where it appears that the entrepreneur has overpaid VAT, the tax authorities pay interest on the refund.

In the event of late filing of VAT returns a minimum penalty of EUR 61 and a maximum penalty of EUR 123 is imposed. Omission or late payment of taxes triggers a penalty ranging from EUR 50 to EUR 4,920.

Penalties relating to violations that directly affect payment of VAT are expressed as a percentage of the amount of VAT involved, for example, 1% (late payment, first offence), 5%, 10%, 25% (gross negligence), 50% (intent) or 100% (substantial fraud) of the unpaid tax.

13.10.6. Appeals

Entrepreneurs may lodge an objection against an assessment or the amount of VAT declared through their periodic VAT return with the tax authorities, within 6 weeks of the date of the notice of assessment or submission of the return. Objections against an unfavourable decision of the tax authorities may be lodged with the *Rechtbank* (regional tribunal), within 6 weeks, and appealed before the *Gerechtshof* (regional court). The decision of that court may be appealed before the *Hoge Raad* (Supreme Court), within 6 weeks.

13.11. Non-resident taxable persons

Under certain circumstances, entrepreneurs not established in the Netherlands ("non-resident entrepreneurs") may have to fulfil VAT obligations.

13.11.1. Registration

Non-resident entrepreneurs (*see* section 13.2.1.), who are liable for payment of VAT in respect of supplies of goods or services that are deemed to be made in the Netherlands (*see* section 13.4.) must be registered and account for the VAT due. In view of the broad scope of the reverse charge mechanism (*see* section 13.4.1.1.), non-resident entrepreneurs normally only have to register in respect of supplies of goods and services made to private individuals (for distance selling, *see* section 13.4.1.1.). In view of the accompanying administrative obligations (*see* section 13.10.4.), non-resident entrepreneurs must also be registered if they only make zero-rated intra-Community supplies from the Netherlands. Finally, non-resident entrepreneurs must be registered if they only effect intra-Community acquisitions of goods in the Netherlands; even if the acquisition is not subject to VAT, the non-resident entrepreneur still needs a VAT identification number to ensure that the accompanying intra-Community supply is zero rated.

Non-resident entrepreneurs must apply for registration to:

Belastingdienst Limburg, Foreign Office

P.O. Box 2865

6401 DJ HEERLEN

Upon registration, the non-resident entrepreneurs are provided with a VAT identification number, which they must use in respect of transactions taxable in the Netherlands.

13.11.2. Returns and payment

Non-resident entrepreneurs who are liable for payment of VAT must, generally, file quarterly VAT returns through which they must declare VAT due and claim input VAT. Under specific circumstances (*see* section 13.10.4.), they must or may file monthly VAT returns. The VAT return must be accompanied by payment of the VAT due for the tax period. Where, for the tax period, deductible input tax exceeds output tax, the tax authorities refund the balance to the non-resident entrepreneur.

13.11.3. VAT refunds

Netherlands VAT is refunded to non-resident entrepreneurs in the following ways:

- a non-resident entrepreneur who is established in another EU Member State and who does not make taxable supplies in the Netherlands may ask for a refund of Netherlands VAT on the basis of Directive 2008/9. Such an application must be filed electronically via a portal provided by the tax administration of the state of residence. The refund application must, with respect to VAT paid in the preceding year, be filed before 30 September, and the amount of VAT to be refunded may not be less than EUR 50. If the refund application relates to a refund period of less than 1 calendar year but not less than 3 months, the amount of VAT for which a refund is applied may not be less than EUR 400. The non-resident entrepreneur must attach electronic invoices to the refund request if the amount of the refund exceeds EUR 1,000 (EUR 250 for the supply of fuel); and
- a non-resident entrepreneur who is established outside the European Union and who does not make taxable supplies in the Netherlands may ask for a refund on the basis of the Thirteenth VAT Directive. Only VAT in excess of EUR 200 may be reimbursed for a claim period of more than 3 months but less than a calendar year. If the application relates to a calendar year or a period shorter than 3 months, VAT claims in excess of EUR 25 may be granted.

For the address of the refund office, *see* section 13.11.1.

13.11.4. VAT representatives

Where they are liable for payment of VAT, entrepreneurs established outside the European Union must, and entrepreneurs established in another Member State may, appoint a VAT representative (article 33a of the OB). In view of the broad application of the reverse charge mechanism, appointment of a VAT representative is limited to supplies of goods and services made to private individuals. However, all non-resident entrepreneurs must appoint a VAT representative if they wish to apply postponed accounting on the importation of goods (*see* section 13.4.1.2.) or the VAT warehousing arrangements.

VAT representatives (with a general or limited licence) fulfil the non-resident entrepreneur's VAT obligations, on his behalf. VAT representatives with a general licence represent their non-resident principals as regards their total package of VAT obligations, whereas VAT representatives with a limited licence represent their non-resident principals as regards specific, individual transactions – in respect of each individual transaction, the non-resident entrepreneur may appoint a different VAT representative with a limited licence.

VAT representatives must:

- be established in the Netherlands;

- not be convicted for a tax offence in the last 5 years;
- keep business records that meet minimum standards;
- provide a security to the tax authorities; and
- provide information at the request of the tax authorities.

14. Miscellaneous Indirect Taxes

14.1. Capital duty

There is no capital duty levied in the Netherlands.

14.2. Transfer tax

14.2.1. Immovable property

Real estate transfer tax (*overdrachtsbelasting*) is levied on the acquisition of the legal economic ownership and certain rights in immovable property, including buildings, located in the Netherlands (article 2 of the WBR). The tax is imposed on the transfer by notarial deed. The tax is payable by the transferee, but the notary or transferor may also be liable for the tax (article 42 of the Iw).

This transfer tax is also levied on the direct or indirect acquisition of an interest of at least one third in real estate entities (including shares and rights already in its possession). If no preferential shares are issued, the tax is levied if the acquirer obtains, directly or indirectly, at least one third of the nominal paid-up capital of the entity. A real estate entity is a resident or non-resident entity whose purpose is to invest in immovable property or immovable property rights (e.g. usufruct and economic ownership) and whose assets consist at the time of acquisition or at any moment in the preceding year of at least 50% of immovable property (or rights in immovable property) and at least 30% is located in the Netherlands and/or foreign countries (article 4 of the WBR). Before 1 January 2011, a real estate entity's assets had to consist of at least 70% of immovable property or rights in immovable property located in the Netherlands.

By virtue of the Tax Plan 2014 the unequal treatment with respect to the real estate transfer tax between funds without legal personality qualifying as a real estate entity and those funds that do not qualify as such an entity has been corrected. This is achieved by amending the Law on Taxation of Various Legal Transactions so that acquisition of a financial interest of less than one third in an investment fund or in a fund for the collective investment in transferable securities is subject to real estate transfer tax. This means that, in contrast to legal entities, the composition of the assets of these funds is no longer relevant.

Foreign real estate funds without legal personality owning real estate mainly in the Netherlands benefit from this bill, as the acquisition of minimal participations in these investment funds is no longer subject to Netherlands real estate transfer tax. However, this must involve an investment fund or fund for the collective investment in transferable securities as referred to in section 1:1 of the Law on Financial Supervision. This means that acquisitions of interests in funds without legal personality that operate a business involving real estate are subject to real estate transfer tax, regardless of the size of the interest acquired.

Therefore, differences will still exist between the direct acquisition of real estate (by way of funds without legal personality) and the indirect acquisition of real estate by way of acquiring shares in a legal entity.

The taxable base is, in general, the fair market value of the acquired property. The minimum base, however, is the consideration paid. The rate is 2% (6% before 1 July 2011) for owner-occupied housing and 6% in other cases.

In the case of mixed use, the 2% rate only applies for the part of the property which is used as an owner-occupied housing. If at least 90% of the property is used as owner-occupied housing, the 2% rate applies to the entire property. The reduced rate also applies to shares in real estate companies to the extent that the company's assets consist of housing.

Exempt transfers include the following (article 15 of the WBR):

(1) the transfer of newly constructed buildings if the transfer is subject to (non-deductible) VAT (*see* section 13.9.);

(2) transfers to children, grandchildren, foster children, brothers, sisters, half-brothers, half-sisters, foster brothers, foster sisters or their spouses in the context of a business succession;

(3) the transfer as a contribution to the capital of a company if (i) its capital is not divided in shares or (ii) it is converted to an NV, BV or similar entity;

(4) the transfer as a result of a winding-up of a company among the shareholders;

(5) the transfer as a result of a merger, division or internal reorganization within a group of companies (i.e. a direct or indirect shareholder relationship of at least 90%); and

(6) transfers of real estate, rights on real estate, or economic ownership of real estate in the context of a legal merger.

Further clarifications concerning the exemption under (2) are included in the Decree of 27 September 2010, DGB 2010/1004M.

Exemptions are available only if a tax return is filed within 1 month of the transfer. With respect to the exemption in (4), the situation after the transfer should generally remain for a period of 3 years; otherwise the exemption is recaptured (articles 5a-5c of the Uitv. besl. WBR).

The transfer of immovable property within 6 months after an earlier transfer is not taxed to the extent that the consideration does not exceed that for the previous transfer (article 13 of the WBR). With effect from 1 September 2012, in the case of a transfer within 36 months of immovable property that has been acquired in the period 1 September 2012 through 1 January 2015, transfer tax was only payable on the capital gain realized. This is effected by deducting the amount on which the transfer tax or VAT is charged (where VAT may not be deducted as input VAT) from the tax base for the transfer tax in respect of the subsequent transfer of that property.

The transfer tax forms part of the acquisition price of the property and is, in general, deductible for corporate income tax purposes through depreciation of the property. Transfer tax on the acquisition of shares in a real estate company is not deductible if the participation exemption applies to these shares.

14.2.2. Shares, bonds and other securities

There is no transfer tax due on the transfer of shares, bonds and other securities. Transfer tax may, however, be imposed on the transfer of shares in real estate companies (*see* section 14.2.1.).

14.2.3. Other (transfer tax on assets other than immovable property and securities)

There are no other transfer taxes.

14.3. Stamp duty

There are no stamp duties.

14.4. Customs duty

Customs duties are imposed on imports from countries outside the European Union on the basis of the EU Common Customs Tariff (87/2658). Once duty has been paid in the Netherlands, the goods may circulate within the European Union free of any further duties.

No customs duties are levied on importation from EU Member States and on exportation. Customs duties paid are incorporated in the price of the goods and are deductible for corporate income tax purposes.

14.5. Excise duty

Excise duties are levied on various types of commodities listed in the Law on Excise Duties (*Wet op de accijns*). These commodities include beer, wine, spirits, cigarettes and other tobacco products, and mineral oil.

These duties are not creditable or refundable, except in the case of re-exportation. Excise duties paid are incorporated in the price of the goods and deductible for corporate income tax purposes.

Non-alcoholic drinks and certain other commodities are subject to a separate consumption tax, which is levied in the same manner as the excise duties.

14.6. Miscellaneous indirect taxes

14.6.1. Insurance premium tax

Insurance premium tax (*assurantiebelasting*) is imposed with respect to insurances covering risks situated in the Netherlands (article 20 of the WBR). The risk is deemed to be situated in the Netherlands if a company or any other permanent presence of the company (i.e. branch, permanent establishment) to which the insurance applies is located in the Netherlands. The risk insured is also situated in the Netherlands with respect to immovable property located in the Netherlands and for motor vehicles, ships and aircraft duly registered in the Netherlands. Risks with respect to immovable property located in an EU Member State and motor vehicles, ships and aircraft duly registered in an EU Member State are not deemed to be situated in the Netherlands (article 21 of the WBR).

The tax base is the net premium, excluding the tax itself (article 22 of the WBR). The tax rate is 21% (article 23 of the WBR) and is generally paid by the insurer or its representative (article 25 of the WBR).

Premiums for life, accident, disablement, sickness, health, unemployment, transportation and export credit insurances are exempt from insurance premium tax. Also exempt are premiums for reinsurance and insurances for sea-going vessels and aircraft used in international traffic (article 24 of the WBR).

The tax is deductible for corporate income tax purposes.

14.6.2. Motor vehicle taxes

Tax on passenger cars and motorcycles (*belasting van personenauto's en motorrijwielen*) is levied on the registration of passenger cars and motorcycles in the Netherlands, as well as on vehicles registered abroad but available for use in the Netherlands. The tax is governed by the Law on Tax on Passenger Cars and Motorcycles of 1992 (*Wet op de belasting van personenauto's en motorrijwielen 1992*, BPM).

The tax must be paid by the applicant for a licence number. The importer of the vehicle may file a tax return and pay the tax on behalf of and in the name of the consumer who is ultimately liable for the tax. For persons residing in the Netherlands and using a vehicle in the Netherlands with a foreign licence, the tax is levied upon the vehicle's entry into the Netherlands. Such persons, both individuals and companies, have to file a tax return and pay the tax before using the vehicle in the Netherlands.

For passenger cars, the basic tax for petrol, gasoline and diesel cars varies from EUR 0 in case of CO2 emissions not exceeding 82 g/km (88 g/km before 2015), up to EUR 12,539 in case of CO2 emissions of 180 g/km (203 g/km before 2015). The basic amount is increased by EUR 434 per gram for CO2 emissions in excess of 180 g/km (EUR 474 before 2015 for CO2 emissions in excess of 203 g/km).

Before 2015, there was a different regime for diesel cars: the basic tax varied from EUR 0 in case of CO2 emissions not exceeding 85 g/km, up to EUR 15,819 in case of CO2 emissions of 197 g/km. The basic amount was increased by EUR 474 per gram for CO2 emissions in excess of 197 g/km.

The basic amount of tax is increased by EUR 86 in the case of CO2 emission exceeding 70 g/km.

Electrically powered passenger cars are exempt (article 9c(1) of the BPM).

The tax is deductible for corporate income tax purposes.

14.6.3. Road tax

Road tax (*motorrijtuigenbelasting*) is due on the possession of a vehicle covered by the Law on Road Tax of 1994 (*Wet op de motorrijtuigenbelasting 1994*), regardless of whether the vehicle is used or not. Registration of the vehicle under the purchaser's name serves as a road tax return. This return remains valid until the ownership of the vehicle is transferred. The road tax must be paid periodically by the owner of the vehicle. In general, the tax is due every 3 months.

The taxable base is generally the weight of the vehicle. The amount of road tax due depends on the type of vehicle, the tare weight of the vehicle (for passenger cars and delivery vans) and the fuel used (for passenger cars). In addition, the government of the province in which the owner of the vehicle is situated may impose a surcharge on the road tax. The rates of this surcharge vary for each province. With effect from 1 January 2016, a non-resident liable for road tax is deemed to reside in the province with the lowest surcharge.

Modifications to the vehicle may influence the taxable base. The tax is deductible for corporate income tax purposes.

14.6.4. Environmental taxes

There are a number of environmental taxes in the Netherlands, governed by the Law on Environmental Taxes (*Wet belastingen op milieugrondslag*). These taxes include a tax on ground water, a tax on tap water, a tax on waste products, a tax on fuel, a tax on energy and, from 1 April 2014, a tax on waste landfill. In addition, taxes are levied on pollution of inland waters, air pollution, and pollution of the soil. These taxes are deductible for corporate income tax purposes.

Paul te Boekhorst, Netherlands – Corporate Taxation, IBFD (accessed 28 January 2016)