Netherlands

Corporate Taxation

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Latest Information:

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Abbreviations

Abbreviation	English definition	Dutch definition
AWR	General Tax Law	Algemene wet inzake rijksbelastingen
Bvdb	Decree on Avoidance of Double Taxation of 2001	Besluit voorkoming dubbele belasting 2001
DB	Dividend Withholding Tax Law of 1965	Wet op de dividendbelasting 1965
IB	Income Tax Law of 2001	Wet op de inkomstenbelasting 2001
IW	Tax Collection Law of 1990	Invorderingswet 1990
LB	Wage Withholding Tax Law of 1964	Wet op de loonbelasting 1964
OB	VAT Law of 1968	Wet op de omzetbelasting 1968
Regulation 29/11	Regulation of the Minister of Health, Welfare and Sport of 29 November 2016, amending the Regulations for health insurance, establishing the amounts and percentages for 2017	Regeling van de Minister en de Staatssecretaris van Volksgezondheid, Welzijn en Sport van 29 november 2016, houdende wijziging van de Regeling zorgverzekering en de Regeling langdurige zorg ter vaststelling van bedragen en percentages voor het jaar 2017
Regulation No. 2016-0000248239	Regulation of the Minister for Social Affairs and Employment of 21 November 2016 establishing the social security and childcare contribution percentages and ceilings for 2017	Regeling van de Minister van Sociale Zaken en Werkgelegenheid van 21 november 2016, 2016-0000248239, tot vaststelling van de premiepercentages en het maximumpremieloon werknemers- en volksverzekeringen en de opslag kinderopvangtoeslag voor 2017
Vpb	Corporate Income Tax Law of 1969	Wet op de vennootschapsbelasting 1969
WBR	Law on Taxation of Various Legal Transactions	Wet op belastingen van rechtsverkeer
WMWII	Law on measures for the housing market of 2014 II	Wet maatregelen woningmarkt 2014 II
WVA	Law on the Reduction of Wage Tax and Social Security Premiums	Wet vermindering afdracht loonbelasting en premie volksverzekeringen

Introduction

Corporate taxpayers are subject to a national corporate income tax. Employers must make social security contributions. A VAT system applies.

Before 10 October 2010, the Kingdom of the Netherlands consisted of the Netherlands, the Netherlands Antilles and Aruba. From that date the Netherlands Antilles ceased to exist and was 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 Aruba.

All parts of the Kingdom have their own jurisdiction in respect of taxation. Consequently, Netherlands tax law is not applicable in the other parts of the Kingdom. Tax treaties concluded by the Netherlands do not automatically apply to Aruba, Curaçao and St. Maarten. The BES Islands may, depending on the outcome of the treaty negotiations between the Netherlands and a (new) treaty partner, also be covered by that treaty.

With effect from 1 January 2016, the Income, Inheritance and Gift Tax Arrangement (Belastingregeling voor Nederland en Curaçao, BRNC) between the Netherlands and Curaçao applies. The new arrangement replaces the Tax Regulation for the Kingdom of the Netherlands (Belastingregeling voor het Koninkrijk, BRK), in respect of Curaçao and the Netherlands. With respect to St. Maarten, a similar new arrangement will be effective from 1 January 2017. With respect to Aruba, the Tax Regulation for the Kingdom of the Netherlands covers double taxation issues.

The Tax Regulation for the country of the Netherlands applies between the European geographical part and the Caribbean part (BES Islands) of the Netherlands.

The applicable currency is the euro (EUR).

1. Corporate Income Tax

1.1. Type of tax system

The Netherlands corporate income tax is based on the classical system, which means that corporate profits are taxed and distributions from the taxed profits are again taxed in the hands of the shareholders. However, in the case of qualifying distributions to corporate shareholders, double taxation is eliminated through the application of the participation exemption (*see* section 2.2.). In the case of individual shareholders with a substantial shareholding (generally, at least 5%), economic double taxation is mitigated through a lower flat rate of income tax on dividends. Dividends and other profit distributions are subject to dividend withholding tax (with many exceptions), which is normally creditable against the shareholders' income tax liability. For non-resident shareholders, *see* section 6.3.1.

1.2. Taxable persons

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

- public companies (NV) and private companies with limited liability (BV);
- open limited partnerships, i.e. the limited partners can dispose of their share without the permission of all other limited or general partners (the profit share of the general partners is deductible);
- cooperative societies and other associations based on the cooperative principle;
- mutual insurance companies and other associations which act as insurance or credit organizations on the principle of mutuality;
- associations with or without legal personality and foundations to the extent that they conduct a business;
- funds for joint account;
- building corporations; and
- a number of government-owned companies.

The above entities are subject to unlimited tax liability as residents. Non-resident entities of similar description are subject to tax only in so far as they derive certain types of Netherlands-sourced income (*see* section 6.2.).

Limited partnerships, other than the above-mentioned open limited partnerships, and general partnerships are not taxed as companies. Their partners are taxed separately on their share of the profits (article 3.5 of the IB).

This survey is restricted to Netherlands-incorporated public and private companies, as well as to foreign-incorporated entities of similar description, whether resident or non-resident. For this survey these entities are referred to as companies.

1.2.1. Residence

Entities that are incorporated under Netherlands law are generally deemed to be resident in the Netherlands for corporate income tax and dividend withholding tax purposes (article 2 of the Vpb). Exceptions to this rule are provided, inter alia, for the purposes of the participation exemption regime.

In the case of companies incorporated under foreign law, the place of residence of a company is to be determined according to the facts and circumstances (article 4 of the AWR), the most important being the place where the company is effectively managed.

1.3. Taxable income

1.3.1. General

Generally speaking, resident companies are taxed on their worldwide income. Taxable business profits are defined as the sum of all profits and gains of whatever description or nature (article 8 of the Vpb). For capital gains, *see* section 1.4.

The computation of the annual business profits is based on the balance sheet and profit and loss account, which are determined on an accruals basis. In general, the fiscal balance sheets and profit and loss accounts correspond to the commercial balance sheets and profit and loss accounts. However, adjustments are made in the case of, for example, reinvestment reserves (*see* section 1.3.5. and any applicable tax incentives (e.g. investment deduction, *see* section 1.7.).

Companies, regardless of their activities, are deemed to conduct a business by using all of their assets. Therefore, a company's taxable income also includes income from portfolio investments and any capital gains.

1.3.2. Exempt income

The most important items of exempt income are domestic and foreign dividends and capital gains qualifying for the participation exemption regime (*see* section 2.2.) and foreign business profits attributable to permanent establishments situated in other states (*see* section 6.1.1.).

1.3.3. Deductions

1.3.3.1. Deductible expenses

Expenses directly or closely connected with the conduct of a business are deductible (article 8 of the Vpb). Some expenses are explicitly listed as non-deductible or only partially deductible (*see* section

1.3.3.2.). Royalties and service fees are, in principle , deductible as business expenses, except to the extent they are hidden distributions of profits or do not conform with the arm's length principle.

Directors' remuneration is deductible, unless such remuneration is considered as a hidden profit distribution to a shareholder. Remuneration paid to members of the supervisory board is also deductible; restrictions apply if a member of the supervisory board is an individual who has a substantial interest in the company (generally at least 5%).

1.3.3.2. Non-deductible expenses

Consideration paid for funds contributed by founders, shareholders or other participants as such are not deductible. Interest expenses and currency exchange losses are not deductible if paid for, or relating to, various types of loans from related companies (shareholding of at least 33.33%), unless the loan agreement was proven to be mainly based on business reasons. With effect from 1 January 2017, the definition of related party is expanded so that "collaborating groups" of companies that may not meet the 33.33% threshold each but that do so collectively are now also covered by the interest deduction limitation.

The interest deduction for takeover holdings acquiring Netherlands subsidiaries as well as expansions of existing shareholdings is also restricted (article 15ad of the Vpb). The restriction applies if: (i) the interest exceeds EUR 1 million; and (ii) the interest paid is higher than the profits of the takeover company. A safe harbour rule applies, under which the interest is fully deductible as long as the loan does not exceed 60% of the purchase price of the acquired company. However, in order to keep full deductibility of the interest, the acquiring company must repay 5% of the purchase price per year for the 7 years following the takeover, i.e. until 25% (60% minus (7 x 5%)) of the purchase price remains. Thereafter, the interest is fully deductible on a continuous basis. With effect from 1 January 2017, the rules regarding the interest deductibility are sharpened to counter so-called debt push-downs and to ensure that the 7-year period cannot be refreshed by transferring the acquired company to another group company.

The deduction of interest paid on loans to acquire participations is restricted. Interest exceeding EUR 750,000 is not deductible.

The excessive portion of interest paid is defined as the part of the interest expenses that is proportional to the ratio of participation debts to total debts. Participation debt is defined as the amount by which the purchase price of the participation exceeds the parent company's equity.

The restriction does not apply to:

- loans used to finance expansions of operational activities (e.g. production, distribution and sales activities) of participations. Investment activities are not considered operational activities;
- interest payments attributable to a foreign permanent establishment (an exemption applies to foreign permanent establishments; *see* section 6.1.1.).

Dividend distributions, including hidden distributions, are not deductible (article 10 of the Vpb). Royalties and service fees are not deductible if they are hidden distributions of profits or do not conform with the arm's length principle (*see* section 1.3.3.1.).

Costs of acquisition and alienation of a participation in a resident or non-resident company qualifying for the participation exemption (*see* section 2.2.) may not be deducted.

In addition, expenses in respect of yachts and all other vessels used for business entertaining are not deductible. The corporate income tax itself, most criminal fines and tax penalties are not deductible.

Mixed costs (costs that have both a business and a private character, e.g. food and representation) are only deductible within certain limits. 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, with a minimum of EUR 4,500. Upon request, this amount is not added to taxable income, in which case the deduction of the total of such expenses is limited to 73.5% (for entrepreneurs subject to income tax, this limit was raised to 80%, *see* Individual Taxation section 1.4.).

1.3.4. Depreciation and amortization

Depreciation of tangible business assets (capital assets used in the production process which diminish in value over time) is compulsory and must take place whether the company is profitable or whether it sustains losses (article 3.30 of the IB). Depreciation is based on the historic cost price, useful life and the salvage value of the asset. The maximum annual depreciation is 20% of the historic cost price. Assets with a low acquisition price, in general those with a cost price under EUR 450, may be written off in the year of acquisition.

All systems of depreciation (straight-line method, declining-balance method, etc.) are permitted, provided that the system is in accordance with "sound business practice" and that it is consistently applied. This means, inter alia, that changes in the system are only allowed where there is good reason for them and are not allowed if made only for tax purposes.

For arbitrary and accelerated depreciation regimes, *see* section 1.7.5.

Intangible business assets may be amortized if they are purchased for a lump-sum consideration and are subject to wear and tear. The maximum annual amortization allowance is generally 20% of the historic cost price. Acquired goodwill, patents and concessions may, in general, be amortized over 10 years with a maximum of 10% per year. Self-created goodwill and patents are not treated as capital assets and therefore are not amortizable.

Immovable property (land and buildings) may be depreciated as long as the book value does not drop below the "minimum value", which is equal to:

- 100% of the value according to the Law on Valuation of Immovable Property ("WOZ value") determined for the calendar year to which the depreciation relates, if the property is rented out (investment property); or
- 50% of the WOZ value, if the property is used by the taxpayer or a related company or person. A company is deemed to be related if the taxpayer (or a group company) has an interest of at least 5% of the share capital of the company. A related person is a spouse, partner or child of the taxpayer. If a child is minor, related persons also include his grandparents and partners of the parents.

However, immovable property may be depreciated to the lower economic value which it has for the business of the entrepreneur, i.e. the business value if proof can be provided. Revaluation must take place if the value of immovable property increases in a subsequent year.

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 (*see* section 1.4.). If certain conditions are met, taxation of the gain may be deferred by allocating the gain to a reinvestment reserve (*see* section 1.3.5.). Conversely, if an asset is sold at a price lower than the current book value, the loss is deductible (*see* section 1.5.).

1.3.5. Reserves and provisions

A provision may be formed for future expenses, the cause of which exists on the balance sheet date. An increase in such a provision leads to a decrease in taxable income and vice versa (article 3.53 of the IB). Provisions may be formed for the payment of certain pensions, for events that may occur in the future and for bad debts.

A company alienating an asset may create a reinvestment reserve with the sale proceeds if the company genuinely intends to reinvest this amount. The reinvestment must take place within a period of 3 years, otherwise the reserve must be added to taxable profits. It is not required that the new asset has the same economic function, unless the alienated asset is not depreciated or is depreciated over a period of more than 10 years. A reserve formed after alienation of immovable property located in the Netherlands may also be used for reinvestments in immovable property outside the Netherlands.

The taxation of profits from the conversion, transfer or renouncement of a depreciated debt claim on a company in which a participation of at least 5% is held is deferred until the value of the participation increases. 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. 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 or 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.

1.4. Capital gains

Capital gains and losses are included in ordinary taxable income (article 3.8. of the IB). Capital gains and losses are computed as the difference between the sales proceeds and the book value of the asset. The general rule of sound business practice is that capital gains are not taxed until they are realized, but capital losses may be deducted as soon as they can reasonably be expected.

Capital gains or losses realized on the disposal of a qualifying shareholding are exempt under the participation exemption (*see* section 2.2.). For capital gains realized on other assets, a rollover relief is available under certain conditions (*see* section 1.3.5.).

1.5. Losses

1.5.1. Ordinary losses

Losses sustained may be carried back to be set off against profits of the preceding year and carried forward for 9 years (article 20 of the Vpb). Depreciation must be taken, even in a loss-making year (*see* section 1.3.4.).

Loss carry-over is restricted upon changes in ownership. In general, losses incurred by a company that wholly discontinues its business may only be carried forward if at least 70% of its shares continue to be held by the same individual shareholders ("the ownership test"). If more than 30% of the shares are held by new shareholders, a more restrictive carry-forward regime applies. For the transfer of losses within a group, *see* section 2.1.

In addition:

- losses incurred before the acquisition of the company cannot be set off against subsequent profits; and
- losses incurred after the acquisition of the company cannot be set off against profits made before the company was acquired.

With effect from 25 February 2015, the ownership test (*see* above) was further tightened. From that date, for the determination of whether the ownership has changed for more than 30%, the baseline is the ownership as it was at the start of the year from which the oldest uncompensated loss stems.

Losses sustained by a company whose activities have consisted during almost the entire year for at least 90% of the holding of participations or (in)direct financing of related companies may (under conditions) only be set off against the profits of years in which the company's activities also consisted for almost the entire year for at least 90% of the holding of participations or (in)direct financing of related companies.

For the treatment of foreign losses, *see* section 6.1.2.

1.5.2. Capital losses

In general, all losses sustained from a business activity in a tax period are deductible. Therefore, a loss realized on the disposal of an asset is also deductible.

An important exception to this rule is the capital loss realized on the disposal of a substantial shareholding under the participation exemption (*see* section 2.2.). However, a loss sustained in the event of the liquidation of the entity in which the participation is held is, in general, deductible (if the liquidated entity was resident abroad, this only applies in the case of a shareholding of at least 25%).

1.6. Rates

1.6.1. Income and capital gains

The corporate income tax rates are 20% on the profits up to EUR 200,000, and 25% on the excess (article 22 of the Vpb). The same rates also apply to capital gains.

The threshold under which the 20% rate applies will be increased from the current EUR 200,000 to EUR 250,000 (in 2018), to EUR 300,000 (in 2020) and to EUR 350,000 (in 2021).

1.6.2. Withholding taxes on domestic payments

A withholding tax of 15% is imposed on dividends, liquidation proceeds and other profit distributions, whether in cash or in kind, paid by resident companies to resident shareholders (articles 1 and 3 of the DB). The same withholding tax also applies to participation loans, because such loans are deemed to be equity of the debtor.

No tax needs to be withheld if the recipient shareholder qualifies for the participation exemption (*see* section 2.2.), and/or falls under the conditions of the EU Parent-Subsidiary Directive, or the distributing company and the shareholder are part of the same fiscal unity (*see* section 2.1.).

The tax withheld is normally credited against the recipient's corporate income tax liability (*see also* section 1.8.3.).

Under the dividend stripping rules, no credit for dividend withholding tax is granted if the recipient of the dividends is not the beneficial owner of the dividends. This is deemed to be the case if the recipient has provided 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 companies entitled only to a lower credit or refund and these companies have (in)directly obtained or retained shares, profit-sharing certificates or participation loans in the dividend paying company to such an extent that the legal position is the same as before the related transactions took place.

There is no withholding tax on interest and royalties other than that on participation loans. For withholding taxes on payments to non-resident companies, *see* section 6.3.1.

Employers are also subject to a tax on excessive severance payments, *see* Individual Taxation section 1.9.2.1.

1.7. Incentives

1.7.1. General investment deduction

A deduction is granted for small scale investments in certain assets, calculated as a percentage of the investment (article 3.40 of the IB). Assets destined to be used in a permanent establishment abroad or to be put at the disposal of others are not eligible. Investments in land, dwellings, private cars, securities, goodwill, concessions, animals and certain other items do not qualify. Self-produced assets may qualify. Transactions between close family members are excluded.

The deduction is only available if the total annual qualifying investment is between EUR 2,300 and EUR 311,242. For 2016, the amounts of investment deduction are:

Invested amount (EUR)			**Deduction**
Up to		2,300	0
2,300	-	56,192	28% of the invested amount
56,192	-	104,059	EUR 15,734
104,059	-	312,126	EUR 15,734 minus 7.56% of the invested amount in excess of EUR 104,059
Over		312,176	0

If in a tax year more than EUR 2,300 worth of assets on which the investment deduction was granted is alienated, the percentage of investment deduction that has been granted for such assets (now applied to the selling price or the original investment costs if lower) is included in taxable profits. This provision applies only if the alienation occurs within 5 years of the beginning of the calendar year in which the investment was made.

1.7.2. Energy saving investment deduction

In addition to the general investment deduction (*see* section 1.7.1.), an energy saving investment deduction is granted (article 3.42 of the IB). In order to qualify for this deduction, an investment of at least EUR 2,500 (per asset) must be made in assets that enhance energy saving. The energy investment deduction is equal to 55.5% (58% in 2016) of the total amount of energy investments in a calendar year. The deduction is zero to the extent that the investment exceeds EUR 120 million.

1.7.3. Environmental investment deduction

An environmental investment deduction is granted for investments which (i) further environmental protection, (ii) are listed in the decree on qualifying assets, and (iii) exceed EUR 2,500 (article 3.42a of the IB). The deduction is 36%, 27% or 13.5%, depending on the type of investment. The maximum deduction is EUR 25 million.

However, the deduction does not apply to companies that opt for the energy saving investment deduction (*see* section 1.7.2.).

1.7.4. Research and development deduction

A wage tax reduction of 32% is granted to employers with respect to salaries, up to EUR 350,000, paid to employees who carry out certain research and development (R&D) activities (article 23 of the WVA) (40% for start-up companies developing technological products). For wage costs above this threshold, the reduction is limited to 16%. Before 1 January 2016, the maximum wage costs on which the reduction could be applied was EUR 14 million per employer or fiscal unity (*see* section 2.1.). Qualifying activities must be systematically organized in the Netherlands and be directly and exclusively aimed at technical and scientific research of new technical physical products or production processes. A prior feasibility study must be made; the reduction also applies to wages paid for this feasibility study.

The wage tax reduction may not be computed on the 30% tax-free allowance granted to foreign employees (*see* Individual Taxation section 6.2.1.). The income generated by qualifying R&D activities may qualify for the application of the innovation box (*see* section 1.7.7.).

With effect from 1 January 2016, the additional 60% deductions that companies could apply in relation to qualifying R&D activities was abolished.

1.7.5. Accelerated depreciation

Arbitrary depreciation is allowed for assets which are important for environmental protection (specified by the government) (article 3.34 of the IB). Furthermore, assets which are used for production in certain regions (specified by the government) and assets that have a high technological value or are used for research and development (specified by the government) may qualify for arbitrary depreciation. If the value of the investment exceeds EUR 25 million, arbitrary depreciation is only allowed after approval by the European Commission.

1.7.6. Tonnage tax

Upon request, companies (and private entrepreneurs) engaged in shipping may elect to report taxable income for corporate income tax purposes as a certain percentage of the volume transported (article 3.22 of the IB). The regime applies to profits derived from the use of ships owned by the taxpayer (i) in international sea transportation, (ii) in sea transportation in connection with the exploitation of natural resources and (iii) in towing services. The exploitation of the ship must take place from the Netherlands but is not required to operate under 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 EEA country.

The regime applies for a period of at least 10 years (or a multiple thereof), after which application may be terminated by the taxpayer.

1.7.7. Innovation box

Under the innovation box regime, qualifying income derived from qualifying assets is subject to an effective tax rate of 5%, instead of the regular corporate income tax rate (article 12b of the Vpb). With effect from 1 January 2017, the innovation box regime is amended to bring it in line with the "nexus approach" as contained in Action 5 of the OECD's Base Erosion and Profit Shifting initiative.

Qualifying assets are defined as (i) patents; (ii) utility models, breeders' rights, orphan drugs and supplemental protection certificates; (iii) software; and (iv) non-obvious assets that are a novelty item. This last category is, however, only available for taxpayers with a net group turnover of no more than EUR 50 million per year over 5 years and gross profits from innovative assets of no more than EUR 37.5 million over 5 years.

Further, for any qualifying asset, an R&D certificate (issued by the government agency for entrepreneurship in the Netherlands) is necessary for application of the innovation box. However, for taxpayers with a net group turnover of EUR 250 million over 5 years or gross profits from innovative assets of more than EUR 37.5 million over 5 years, the innovation box will only apply if the taxpayer has a qualifying asset mentioned under (i) to (iii) above.

Qualifying income is calculated according to the following formula:

	(Qualifying expenditure x 1.3) Qualifying expenditure is defined as expenditure incurred in the carrying on of R&D activities that result in the development of the qualifying asset (article 12bb of the Vpb). The law explicitly excludes from the scope of qualifying expenditure (i) acquisition costs in relation to the qualifying asset and (ii) payments to a related group member to carry on R&D activities (i.e. R&D outsourced to a group member). To provide some relief for the exclusion from qualifying expenditures of acquisition and group outsourcing costs, an uplift of 30% of qualifying expenditure is allowed.
x Profits from the qualifying assets [3]	Overall expenditure The overall expenditure consists of qualifying expenditure, as well as the acquisition costs and the group outsourcing costs.

Capital gains derived from the transfer of above-mentioned intangible assets are also subject to the 5% rate.

Foreign withholding taxes on royalties may be credited in the normal manner (*see* section 6.1.4.), even if those royalties are taxed under the innovation box regime.

If a taxpayer opts to apply the innovation box regime, specific administrative obligations apply under which, inter alia, the taxpayer must show how the profits are attributed to the qualifying assets.

Transitional rules apply for intangible assets that were developed before 1 July 2016 and for intangible assets that were developed before 1 January 2017, but for which no R&D statement has been issued yet.

The main differences between the current innovation box regime and the one that existed prior to 1 January 2017 are that under the latter, there was (i) no fraction to determine qualifying profits; (ii) a qualitative test to determine if the asset (assuming other formal conditions were satisfied) contributed for at least 30% to the profits derived from the use of the intangible asset; and (iii) non-exclusion of outsourced development costs.

3 The profit from qualifying assets is determined on an individual basis, taking into account the facts and circumstances (article 12bb(2) of the Vpb). Methods to determine the profit have their basis in transfer pricing (the arm's length principle) and include a variation of the profit split method and the cost-related method. The profits are only taken into account insofar as they exceed a threshold. In short, this threshold consists of the development costs of the qualifying asset.

Alternatively, as before 2017, the taxpayer may, instead of applying the above-mentioned innovation box regime, opt to attribute 25% of profits, with a maximum of EUR 25,000, to the innovation box if the taxpayer has developed an intangible asset qualifying for the box in the current year or 2 preceding years.

1.8. Administration

1.8.1. Taxable period

In general, the tax year is the calendar year. Corporate taxpayers may, however, adopt a different tax year in accordance with their articles of association. A company with a tax year other than the calendar year is subject to tax according to the law applicable to the replaced tax year. Taxable income is the income that is derived during a tax year.

1.8.2. Tax returns and assessment

The deadline for filing a corporate income tax return is set by the tax authorities when sending a company the corporate income tax return form (article 9 of the AWR). The company must be given at least 1 month to file the return from the receipt of the form. Generally, corporate income tax returns must be filed before 1 June of the year following the tax year (provided that the tax and calendar years coincide). Upon request, the deadline may be extended.

Preliminary assessments may be made during the tax year, and final assessments must be made within 3 years of the end of the tax year (articles 11 and 13 of the AWR). Additional assessments are allowed within 5 years if new facts have become available, which the tax inspector could not reasonably have been aware of at the time the final assessment was made. With respect to foreign-source income, the 5-year period is extended to 12 years.

1.8.3. Payment of tax

Preliminary assessments may be imposed during the tax year. If a preliminary assessment is higher than the final assessment, the excess is refunded (with interest), while if a preliminary assessment is lower than the final assessment, the shortfall is payable (with interest) (article 30F of the AWR). Interest payments (and penalties) are not deductible for tax purposes.

Preliminary assessments are set off against the final tax liability and dividend withholding tax is credited against the corporate income tax due.

The final tax due is payable within 6 weeks of the date of assessment (article 9(1) of the IW).

1.8.4. Rulings

Advance rulings may be requested by both resident and non-resident taxpayers on the tax consequences of certain transactions or acceptable transfer prices. They can also be obtained with respect to certain activities of an auxiliary or preparatory nature performed in the Netherlands on behalf of an internationally operating group of companies. In addition, advance rulings can be obtained concerning the deductibility of fees paid in respect of certain financial activities and of royalties paid. The ruling practice comprises specific advance pricing agreements and advance tax rulings.

In general, an advance tax ruling is treated as 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. Such rulings are generally valid for a specified period of time and may be terminated or amended in a number of cases (e.g. if the conditions are no longer met, a relevant legislative change takes place or the facts and circumstances have changed).

With respect to related transactions carried out by intermediate financial services companies or holding companies, no advance rulings are issued if the company does not have sufficient substance in the Netherlands.

With effect from 1 January 2017, EU Member States are obligated to automatically exchange information on advance cross-border tax rulings and advance pricing arrangements. For more details, *see* European Union - Corporate Taxation - Country Surveys section 1.8.1.

2. Transactions between Resident Companies

2.1. Group treatment

If a resident company holds, directly or indirectly, at least 95% of the *full* legal and economic ownership of the shares of one or more other resident companies, these companies may upon joint request apply to be treated as a fiscal unity (articles 15-15a of the Vpb). Foreign companies with a permanent establishment in the Netherlands may, under certain conditions, as a parent company or subsidiary be part of a fiscal unity.

A fiscal unity may not be formed with a foreign subsidiary. However, with effect from 16 December 2014 (following the Court of Justice of the European Union's decision in *SCA Group Holding* (Case C-39/13)), a fiscal unity may be formed between:

- a resident parent company and a resident sub-subsidiary, where the parent holds that sub-subsidiary through non-resident companies which do not have a permanent establishment in the Netherlands; and
- resident sister companies, the common parent company of which neither has its seat in the Netherlands nor has a permanent establishment there.

The parent company of a fiscal unity files a tax return on a consolidated basis. A fiscal unity allows the offset of losses of one company against profits of another company in a particular year and a tax-free transfer of assets and liabilities and dividend distributions between the companies that belong to it. After dissolution of the fiscal unity, tax may become due on the hidden reserves of assets transferred within a fiscal unity. Losses of a company originating from tax years before the commencement of group consolidation may only be set off against profits of that company. Intra-group dividends are exempt from withholding tax.

There are restrictions to the deductibility of interest on loans received from a related company to acquire shares in a resident company (not applicable to loans taken to finance a business succession). All companies in the fiscal unity are jointly and severally liable for the total corporate income tax debt of the fiscal unity.

A fiscal unity is dissolved if the requirements are no longer met, or at the joint request of the parent company and subsidiaries concerned. It is possible that only part of the unity is dissolved. Losses incurred by the fiscal unity remain with the parent company, unless the parent company and the respective subsidiary formally request the tax inspector to allow loss deduction at the level of the subsidiary to which that loss belongs.

2.2. Intercompany dividends

Where a resident company or a permanent establishment of a non-resident company receives domestic or foreign-source dividends, the gross amount less expenses is, in principle, taxable. However, dividends, currency gains and capital gains on shares are exempt from corporate income tax if the participation exemption applies (article 13 of the Vpb). For foreign-source dividends, *see* section 6.1.1.

The participation exemption is applicable if the following conditions are met:

(1) the recipient resident company owns at least 5% of the nominal paid-up capital of the resident or non-resident subsidiary or, if the subsidiary is established in an EU Member State and the tax treaty with that state provides for a reduction of the dividend withholding tax on the basis of voting rights, 5% of the voting rights in that subsidiary (e.g. the treaties with Germany, Ireland and the United Kingdom). A percentage of less than 5% of capital or voting rights may qualify if a related company owns a shareholding of at least 5% of the capital or voting rights; and

(2) the participation is held for business reasons and not as a mere portfolio investment.

If the condition under (2) is not met, the participation exemption nevertheless applies if one of the following conditions is met:

- not more than 50% of the subsidiary's assets usually consists of portfolio investments, which do not have any business function. Participations of less than 5% in the capital or voting rights are always classified as a portfolio investment;
- the subsidiary which owns more than 50% portfolio investments is taxed in its state of residence at a statutory rate of at least 10%. This condition is not met if the tax base is very small or the subsidiary benefits from a preferential regime.

The participation exemption does not apply if the subsidiary is classified as a low-taxed investment company, and subsequently a 5% credit is granted for the underlying corporate income tax borne by the subsidiary. However, when the subsidiary is established in another EU Member State the actual underlying corporate income tax may be credited. A credit which cannot be taken into account in a tax year may be carried forward to the following year.

The participation exemption may apply to participating loans, which de facto function as equity. However, under the new anti-hybrid mismatch rules (which took effect on 1 January 2016), the participation exemption does not apply to a payment made by a foreign subsidiary to its Dutch parent company if that payment is deductible at the level of the subsidiary.

Furthermore, under the application of the participation exemption regime, changes in the value of a qualifying participation do not affect the taxable income of the parent company.

If the participation exemption applies, dividends are also exempt from withholding tax (*see* section 1.6.2.).

From 1 May 2015, but with retroactive effect to 14 June 2013, a "compartmentalization" regime came into effect (article 28c of the Vpb). This regime provides for the formation of a reserve (a "compartmentalization" reserve) in cases where the treatment of share income changes because:

- the participation exemption becomes applicable to the shareholding (in which case a taxable reserve must be formed); or
- the participation exemption no longer applies to the shareholding (in which case an untaxed reserve must be formed).

The reserve, which is to be formed at the moment the change in the treatment takes place, is equal to the difference between fair market value and the book value of the participation. The amount of the reserve is then added to the book value. In the event income is derived that stems from before the change in treatment, the reserve is reduced by the amount of that income. The income received is, in the case of a taxable reserve, then added to taxable income. If there is an untaxed reserve, the income is exempt. Specific rules apply, inter alia, in cases of reorganizations and liquidation.

For the treatment of dividends derived by non-resident companies, *see* sections 6.2.1. and 6.3.1.

3. Other Taxes on Income

There are no other taxes on the income of companies.

4. Taxes on Payroll

4.1. Payroll tax

There is no payroll tax.

Employers must withhold wage tax from salaries and other taxable remuneration paid to their employees (article 6 of the LB). In addition, employers must pay tax on excessive severance payments. For details, *see* Individual Taxation section 1.9.2.

4.2. Social security contributions

Employers must pay social security contributions calculated on the total gross salaries of employees, including directors (not being majority shareholders). For 2017, the rates are (Regulation No. 2016-0000248239 and Regulation 29/11):

Contribution for	Rate [1] (%)
Health insurance (ZVW)	6.65
General disability insurance contribution (WIA)	6.16
General unemployment insurance contribution (AWF)	2.64
Child care contribution	0.5

1 The premiums in this table are all levied over a maximum annual income of EUR 53,701.

For social security contributions payable by employees, *see* Individual Taxation section 3.1.

5. Taxes on Capital

5.1. Net worth tax

There is no net worth tax.

5.2. Real estate tax

Real estate tax is levied annually by the municipalities on the owners of immovable property. The taxable base is the WOZ value (*see* section 1.3.4.). The tax rate differs for each municipality. Different rates may apply for commercial property and private property. Real estate tax is deductible for corporate income tax.

Upon a transfer of real estate, companies may also be subject to a transfer tax; *see* section 9.2.1.

5.3. Other taxes

5.3.1. Landlord charge

A tax on renting out housing applies. Subject to the tax are resident and non-resident taxpayers (i.e. landlords) who rent out more than 10 houses in the regulated housing sector (article 1.4 of the WMWII). The tax base is generally the total WOZ value (*see* section 1.3.4.) of the properties minus 10 times the average WOZ value of the properties. The rate is 0.536% (0.491% in 2016).

6. International Aspects

6.1. Resident companies

For the concept of residence, *see* section 1.2.1.

An exit tax regime applies (*see* section 6.1.1.).

6.1.1. Foreign income and capital gains

A resident company is subject to corporate income tax on its worldwide income and capital gains. The rules described in sections 1.3. and 1.4. generally apply.

Foreign-source business income, interest and royalties are taxable. Foreign dividends are also taxable, unless the participation exemption applies (*see* section 2.2.). Capital gains derived through a permanent establishment abroad are treated as business income. The participation exemption may apply to capital gains on the disposal of a qualifying participation.

The profits (and losses, *see* section 6.1.2.) of a foreign permanent establishment (PE) are exempt (article 15e of the Vpb). However, the exemption does not apply to passive PEs that are taxed at low rates. These PEs receive instead a (fixed) 5% credit. A foreign PE is treated as 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% (in the state where it is located).

The current exit tax regime, under which unrealized capital gains are taxed upon transfer of assets abroad (exit tax), provides that:

- the exit tax may be paid at the time of emigration;

- a deferral for payment of the tax, until the moment that the capital gains on assets are realized, may be requested; or
- the exit tax due may be paid in 10 equal annual instalments.

6.1.2. Foreign losses

Losses (and profits, *see* section 6.1.1.) attributable to a foreign permanent establishment (PE) of a Netherlands resident company are ignored for the corporate income tax purposes in the Netherlands (article 15e of the Vpb).

Liquidation losses of the foreign PE are deductible. However, the deductible amount is reduced by the amount of loss compensation granted by the PE country. Liquidation losses are, in principle, also deductible if the activities of the PE are sold to a third party (unless such losses can be transferred to such third party).

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 taxable profits.

6.1.3. Foreign capital

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

6.1.4. Double taxation relief

Where none of the methods to avoid double taxation described below applies, income and withholding taxes (including local taxes) paid abroad may be deducted as expenses from the gross foreign income that is taxable in the Netherlands. As stated above in section 6.1.1., income derived through a permanent establishment abroad is generally exempt.

There is no general double taxation relief for foreign-source dividends, interest and royalties unless derived through a permanent establishment abroad (in which case exemption applies; *see* section 6.1.1.). However, credit relief is granted for dividends (other than those qualifying for the participation exemption; *see* section 2.2.), interest and royalties (including service fees) arising in certain developing countries, provided that such income is subject to income tax (including withholding tax) in the source country (article 36 of the Bvdb). No credit is granted for dividend withholding tax if the recipient is not the beneficial owner of the dividends (*see* section 1.6.2.). Foreign withholding taxes on royalties may also be credited if those are taxed in the innovation box (*see* section 1.7.7.). 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.

Instead of the general exemption method, a tax credit equal to one half of the corporate income tax rate (*see* section 1.6.1.) applies to income mainly (i.e. more than 50%) derived through passive group finance or investment branches. Group finance activities of a foreign branch are not passive if they meet certain conditions determined by regulations of the Ministry of Finance.

Interest and royalty payments made by a non-resident conduit company are exempt from corporate income tax in the hands of a resident recipient company if the latter does not bear a sufficient risk with respect to such payments. Consequently, no relief for double taxation is available. 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.

Tax treaties have priority over domestic law, even if that results in a less favourable tax treatment. Under most tax treaties concluded by the Netherlands, double taxation is generally avoided by the exemption with progression method. However, the credit method applies with respect to withholding tax on dividends, interest and royalties. For a list of tax treaties in force, *see* section 6.3.5.

6.2. Non-resident companies

Non-resident companies are defined, for tax purposes, as companies which are neither incorporated under Netherlands law nor have their place of effective management in the Netherlands.

6.2.1. Taxes on income and capital gains

Non-resident companies are taxed on the following types of Netherlands-source income (article 17(3) of the Vpb):

- business income derived from a Netherlands permanent establishment or permanent representative;
- 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 situated in the Netherlands or the Netherlands part of the continental shelf;
- all remuneration derived from a directorship of a resident entity;
- income from rights to the profits of an enterprise (bonds and shares excluded) the management of which is situated in the Netherlands; and
- income and capital gains, from debt claims related to a substantial shareholding.

For situations where there is a substantial shareholding in a resident company by a non-resident company, dividend withholding tax (15%) is levied if (one of) the main aim(s) of the shareholding is the avoidance of dividend withholding tax by a shareholder (direct or indirect) of the non-resident company.

Capital gains on the disposal of a substantial shareholding in a resident company by a non-resident company that does not hold the shares as part of its business property are subject to corporate income tax. For situations where a non-resident company derives capital gains from a substantial shareholding in a resident company, corporate income tax is levied if (one of) the main aim(s) of the shareholding is the avoidance of corporate income tax by a shareholder (direct or indirect) of the non-resident company.

Income and capital gains derived by non-residents are subject to corporate income tax at the same progressive rates as those derived by residents (*see* section 1.6.1.).

There is no branch profits tax in the Netherlands.

For withholding taxes on payments to non-residents, *see* section 6.3.

6.2.2. Taxes on capital

There is no net worth tax. Non-residents are subject to real estate tax (*see* section 5.2.) in respect of their immovable property located in the Netherlands.

The landlord charge (*see* section 5.3.) also applies to non-residents.

6.2.3. Administration

Permanent establishments of non-resident companies are taxed by assessment. For details, *see* section 1.8.3. For withholding taxes, *see* section 6.3.

With effect from 1 January 2017, a new dividend withholding tax refund procedure applies under which:

- the non-resident beneficial owners of the income may request a refund of the tax withheld insofar as that tax is higher than the corporate income tax that would have been due had they been resident/established in the Netherlands; and
- an exemption from the obligation to withhold may be requested for payments to certain non-resident exempt entities (i.e. entities that are (partly) exempt from corporate income tax in the country in which they are resident) that qualify as a beneficial owner of the income.

For the automatic exchange of rulings, *see* section 1.8.4.

6.3. Withholding taxes on payments to non-resident companies

6.3.1. Dividends

6.3.1.1. General

A final dividend withholding tax is levied on dividends, liquidation proceeds and other profit distributions, whether in cash or in kind, paid by resident companies to non-resident shareholders (article 1 of the DB). The rate is 15%, unless a reduced rate applies under a tax treaty (*see* section 6.3.5.).

The same withholding tax also applies to interest from participation loans (treated as dividends).

In situations where foreign-source dividends are redistributed, a credit is granted to the redistributing resident company for withholding tax levied abroad at a rate of not less than 5% on dividends received from holdings of at least 25% in non-resident companies against the Netherlands withholding tax which is payable upon redistribution of such foreign income. The distributing non-resident subsidiary must be resident in a state with which the Netherlands has concluded a tax treaty, and the resident company must be eligible for the participation exemption with respect to the received dividends (*see* section 2.2.). The credit for foreign withholding tax is the lower of 3% of the distributed dividend or 3% of the gross foreign dividends received. The redistributed dividends are subject to Netherlands withholding tax and are not eligible for the exemption granted to EU companies (*see* section 6.3.1.2.) or companies resident in the EEA (*see* section 6.3.1.3.). For distributions to parent companies in Iceland, Liechtenstein, Norway and Switzerland, *see* section 6.3.1.3.

6.3.1.2. EU Member States

Under the domestic law implementing the provisions of the EU Parent-Subsidiary Directive (2011/96/EU), dividends, liquidation proceeds and other profit distributions paid by resident companies to their EU parent companies are exempt from dividend withholding tax (article 4 of the DB).

For this exemption, it is required that the EU parent is subject to corporate income tax in its state of residence and owns at least 10% of the capital (or 10% of the voting rights under tax treaties where this criterion is used, i.e. the treaties with Germany, Ireland, Italy and the United Kingdom) of the Netherlands subsidiary. The foreign parent may not be a transparent entity and may not have a function comparable with a Netherlands taxable or exempt investment institution.

6.3.1.3. Iceland, Liechtenstein, Norway and Switzerland

The exemption also applies to companies resident in Iceland, Liechtenstein and Norway (which together with the EU Member States complete the European Economic Area, EEA) which are subject to tax and own at least 10% of the capital of the Netherlands subsidiary (article 4 of the DB).

In addition, by virtue of the EU-Switzerland Savings Agreement, the Netherlands exempts dividend payments to Swiss companies under essentially the same conditions as those of the EU Parent-Subsidiary Directive before the amendments effective from 1 January 2005; thus 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 all other cases.

6.3.2. Interest

There is no domestic withholding tax on interest, except for interest on participation loans (*see* section 6.3.1.1.).

6.3.3. Royalties

There is no domestic withholding tax on royalties.

6.3.4. Other

There are no other domestic withholding taxes on payments to non-resident companies.

6.3.5. Withholding tax rates chart

See Netherlands - Treaty Withholding Rates Table , Quick Reference Tables IBFD.

7. Anti-Avoidance

7.1. General

There are two different general anti-avoidance rules, i.e. the just levy procedure (article 31 of the AWR) and the abuse of law doctrine (developed through case law). In practice, only the abuse of law doctrine is applied as it is considered the more effective.

Under the abuse of law doctrine, the tax authorities may disregard a legal transaction or a series of legal transactions if the following conditions are met:

- the principal motive for entering into the transaction(s) is the avoidance of tax; and
- by entering into the transactions, the taxpayer violates the purpose and objective of the tax legislation.

With effect from 1 January 2016, the general anti-abuse rule contained in EU Directive 2015/121/EU (which incorporates the anti-abuse rule into the Parent-Subsidiary Directive (2011/96/EU)) was transposed into domestic law. Under this rule, the participation exemption is denied for artificial tax arrangements whose (main) purpose is the avoidance of taxation.

7.2. Transfer pricing

Where transactions between a parent and a subsidiary, or between sister companies, take place, a non-taxable capital contribution or a non-deductible profit distribution is assumed if such transactions are not considered to have taken place at arm's length (article 8b of the Vpb). A relationship in this respect can be based on shareholding, management or supervisory activities. There is no quantification of the shareholder relationship, the management relationship or the control relationship: it must be ascertained that there is sufficient power for the parties (or person) to influence or control the transfer pricing of intercompany transactions.

Such a transaction (distribution) is also subject to dividend withholding tax (which may be reduced by a tax treaty). An advance ruling may be requested on acceptable transfer prices. Moreover, taxpayers may enter into an agreement with the tax authorities for the determination of binding transfer prices in cross-border transactions between related parties (*see* section 1.8.4.).

Furthermore, with effect from 1 January 2016, new transfer pricing documentation obligations for multinational groups apply. Under these obligations, multinational companies with a 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-prescribed "master file" and "local file" for transfer pricing and branch allocation documentation purposes.

For the automatic exchange of advance pricing agreements, *see* section 1.8.4.

7.3. Thin capitalization

The thin capitalization rules are abolished with effect from 1 January 2013. For the current restrictions on interest deduction, *see* section 1.3.3.1.

7.4. Controlled foreign company

There is no CFC legislation.

8. Value Added Tax

8.1. General

Value added tax 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).

8.2. Taxable persons

Taxable persons are, in general, all entrepreneurs (article 7 of the OB). “Entrepreneur” is defined as any person who independently carries out a business activity, which includes liberal professions and the exploitation of tangible or intangible assets for the purpose of obtaining income therefrom on a permanent basis.

Natural persons and legal entities that qualify as entrepreneurs and are established in the Netherlands, or have a fixed establishment there, are treated as a single entrepreneur (VAT group) if they are closely related to one another by means of financial, organizational and economic links.

For non-resident companies supplying goods or services in the Netherlands, *see* section 8.7. No registration threshold exists.

With effect 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 who supply telecommunications, broadcasting and electronic 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 TBE services in Member States in which they do not have an establishment.

8.3. Taxable events

The following events are taxable (articles 3 and 4 of the OB):

- the supply of goods and services in the Netherlands by an entrepreneur in the course of a business;
- the intra-Community acquisition of goods in the Netherlands by an entrepreneur in the course of a business or by a legal entity that is not an entrepreneur;
- the intra-Community acquisition in the Netherlands of new means of transport by any person;
- the import of goods from outside the European Union into the Netherlands;
- the supply of electronic services (e-commerce) to a resident company by a non-resident company (*see also* section 8.2.);
- the supply of electronic services (e-commerce) to an individual or entity that is not an entrepreneur from a country outside the European Union; and
- the supply of services by an entrepreneur established in another EU Member State to an entrepreneur established in the Netherlands or a legal entity that is not an entrepreneur.

8.4. Taxable amount

The taxable amount is the consideration received (excluding VAT) for taxable supplies of goods and services or the value at importation including customs duties (article 8 of the OB). The consideration 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 (e.g. taxes and fees due on the use of the supplied goods).

In computing the final tax liability, the input tax on purchases of goods and services may be deducted or refunded, so that, in effect, only the value added is taxed.

8.5. Rates

The standard rate is 21%. A reduced rate of 6% applies to basic goods and services (article 9 of the OB).

For the period 1 March 2013 until 1 July 2015 (originally until 31 December 2014), the reduced 6% rate also applied to the rebuilding, renovation and repair of owner-occupied dwellings (including the expenses of architects, gardeners). The rate only applied to the labour costs associated with these works performed on owner-occupied dwellings that were more than 2 years old at the time the work was performed.

Exports and certain services rendered in connection with exports are zero-rated. The export of electronic services to customers outside the European Union is also zero-rated.

8.6. Exemptions

The supply of newly constructed immovable property is exempt when it takes place at least 2 years after the first actual use (article 11 of the OB). Thereafter, an option is available to make such transactions subject to VAT. Further exemptions include the supply of social and cultural goods and services, the supply of insurance services, financial services and, under conditions, health services. Public education is exempt under certain conditions. The transfer of a whole or a part of a business is exempt if the transferee continues the business.

8.7. Non-residents

Non-residents are taxable in the same manner as resident taxpayers if they carry out any taxable transactions in the Netherlands (*see* section 8.3.). Generally, non-resident entrepreneurs must register with the VAT authorities. Upon registration, the non-resident entrepreneurs receive a VAT identification number which they must use for taxable transactions in the Netherlands. Furthermore, non- resident entrepreneurs must pay VAT on a periodic VAT return.

In situations where non-resident entrepreneurs supply goods to entrepreneurs and organizations established in the Netherlands, the reverse charge mechanism applies. 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. In these cases, the non-resident suppliers are not required to be registered in the Netherlands, unless they supply goods to private individuals.

Netherlands VAT is refunded to non-resident entrepreneurs in the following three ways:

(1) 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 application must be filed electronically via an electronic portal provided by the tax administration of the state of residence;

(2) 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; and

(3) a non-resident entrepreneur who has a VAT identification number in the Netherlands may deduct input VAT on his Netherlands VAT return.

With effect 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 (*see* section 8.2.).

9. Miscellaneous Taxes

9.1. Capital duty

There is no capital duty or similar duty on the formation and expansion of capital of companies.

9.2. Transfer tax

9.2.1. Immovable property

A transfer tax is levied on the acquisition of the legal and economic ownership or certain rights on immovable property in the Netherlands (article 2 of the WBR). 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% for owner-occupied dwellings and 6% in other cases.

The acquisition of shares in a real estate company is also subject to this tax if the acquisition gives the acquirer a substantial interest in that company. A real estate company is a resident or non-resident company whose purpose or actual activity is to invest in real estate or real estate rights and 50% or more of whose assets consists of real estate (or real estate rights) of which at least 30% is located in the Netherlands. A substantial interest is deemed to exist if the acquirer owns, directly or indirectly, at least one third of the subscribed share capital of the real estate company.

Various transfers are exempt, the most important being (article 15 of the WBR):

- transfers upon various corporate reorganizations;
- transfers of real estate, rights on real estate, or economic ownership of real estate in the context of a legal merger;
- transfers of newly constructed buildings if the transfer is subject to (non-deductible) VAT (if a building is transferred within 6 months following first use or rent, this exemption also applies if the VAT can be (partially) deducted);
- transfers because of the death of the owner;
- transfers subject to gift tax; and
- transfers of business property from the grandparent or parent to children, stepchildren, foster children and grandchildren.

The tax is payable by the buyer and the public notary adds the transfer tax to the selling price and collects it from the buyer in order to pay it to the tax collector.

9.2.2. Shares, bonds and other securities

There is no transfer tax on securities other than shares in real estate companies (*see* section 9.2.1.).

9.3. Stamp duty

There are no stamp duties.

9.4. Customs duty

In the European Union, customs law is harmonized and applies only to movements of goods between the European Union and third countries. Customs duties, as possibly other indirect taxes (e.g. VAT (*see* section 8.3.)), are imposed on the import of goods into the EU Customs Union.

The EU Customs Union consists of the EU Member States, as well as the areas of Akrotiri and Dhekelia (Cyprus), the Channel Islands, the Isle of Man and Monaco. Andorra, San Marino and Turkey have separate customs agreements with the European Union.

The basis for calculating the customs duty is the customs value, which is generally the sum of the price paid for the goods and any related insurance and shipping costs. A percentage (tariff), which depends on the type and origin of the good being imported, is then applied to the customs value to determine the customs duty payable. The applicable tariff can be found in the Common Customs Tariff (Council Regulation (EEC) 2658/87 of 23 July 1987).

EU customs legislation comprises the Union Customs Code (Regulation (EU) 952/2013), the Common Customs Tariff, the Customs Duty Relief Regulation and various international agreements. The Union Customs Code, supplemented by the Delegated Act and Implementing Act, replaced the Community Customs Code (Regulation (EEC) 2913/92) with effect from 1 May 2016.

One of the main differences between the Union Customs Code and the Community Customs Code relates to the mandatory use of the "last sale" amount for valuation purposes (i.e. the sale price immediately before the goods are brought into the territory of the European Union). Previously, a "first sale for export" valuation basis was possible, under which duties were imposed on the manufacturer-to-middleman transaction price (which is generally lower than for any subsequent sales).

9.5. Excise duty

Excise duties are levied on various types of commodities, such as beer, wine, spirits, cigarettes and other tobacco products, and mineral oil.