



LEXOLOGY

Getting The Deal Through

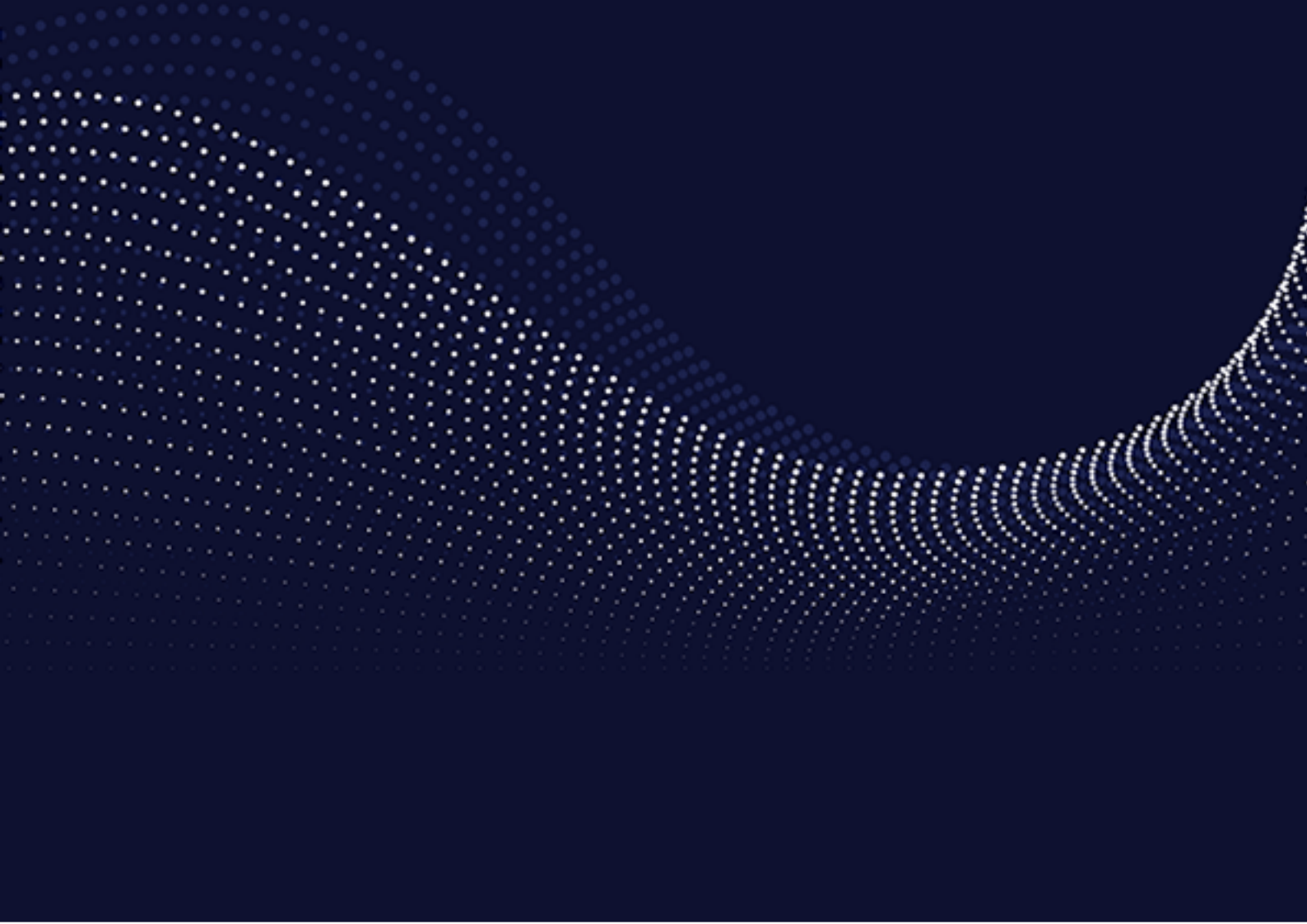
PRIVATE CLIENT

Netherlands

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LEGAL FRAMEWORK

Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

If a foreign individual has been living or working in the Netherlands for more than 90 days, the individual will be considered to have immigrated to the Netherlands. What the individual needs to arrange before moving to the Netherlands depends on the specific situation. The [government website](#) has a checklist with the specific organisations the individual needs to deal with for each part of the process.

If a foreign individual wishes to invest in the Netherlands there are no specific regulations or laws applicable. Whether the investment will result in a yearly non-resident personal income tax obligation for the individual depends on the type of investments (real estate or shares in a Dutch company or other securities).

Real property

Are there any particular rules or restrictions on foreign individuals purchasing or investing in real property in your jurisdiction?

There are no particular rules or restrictions that apply to foreign individuals purchasing or investing in real estate in the Netherlands. However, some municipalities require that the owner of a house lives in the property rather than renting it to a third party. The obligation to live in the purchased house means that the municipality can fine the owner if the house is rented to a third party.

Establishing a business

Are there any particular rules or restrictions on foreign individuals establishing a business in your jurisdiction?

There are no particular rules or restrictions that apply to foreign individuals establishing a business in the Netherlands. The same rules apply to foreign individuals as to locals.

TAX

Residence and domicile

How does an individual become taxable in your jurisdiction?

An individual becomes taxable in the Netherlands when they become a Dutch resident or non-resident taxpayer.

A Dutch resident taxpayer is an individual who has their main residence in the Netherlands. Residency is assessed on all relevant factual circumstances. The most important criteria include the following (the list is not exhaustive):

- where a permanent home is maintained;
- where employment duties are performed;
- where the individual's family resides;
- where the individual is registered with the local authorities;
- where bank accounts and other assets are maintained; and
- the intended length of stay in the Netherlands.

A Dutch non-resident taxpayer is an individual who has their main residence outside the Netherlands and who has Dutch source income.

A Dutch non-resident taxpayer who is a tax resident in the EU, EEA, Switzerland or the BES islands (Bonaire, St Eustatius and Saba) and who earns at least 90 per cent of their worldwide income in the Netherlands may be treated as a 'qualifying non-resident taxpayer'. Qualifying non-resident taxpayers are eligible for a range of deductions and tax credits that are normally only available to Dutch resident taxpayers.

Individuals who have been granted a 30 per cent ruling (ie, a tax-free reimbursement amounting to 30 per cent of the income) are considered resident taxpayers and may opt to be treated as partial non-resident taxpayers. In short, that means that they are treated as resident taxpayers for box 1 and as non-resident taxpayers for box 2 and box 3 purposes (see below for an explanation of the boxes system).

Irrespective of their place of residence, any person will in principle be subject to Dutch inheritance and gift tax upon the receipt of assets from a person (ie, deceased or donor) who is a (deemed) resident in the Netherlands at the time of death or gift.

Income

What, if any, taxes apply to an individual's income?

Dutch tax residents are subject to personal income tax on their worldwide income. Non-residents are subject to personal income tax only for income derived from specific Dutch sources. Dutch sources can, for example, be employment (including directors' fees), business income, income derived on Dutch entities and immovable property in the Netherlands.

For Dutch personal income tax purposes, the worldwide income of Dutch taxpayers is categorised into three types of taxable income, also referred to as 'boxes'. Each box has its own set of rules and tax rates.

Box 1 – income from work and home ownership

Box 1 includes all income from work and home ownership. Among others, box 1 includes employment income, business income (ie, derived by a self-employed entrepreneur), income from other professional activities (including income from 'lucrative investments' such as carried interest arrangements) and deemed income of residential home ownership as forms of taxable income.

Income in box 1 is taxed at a progressive tax rate whereby income up to and including €69,398 is taxed at a tax rate of 37.07 per cent and all income exceeding this first bracket is taxed at a tax rate of 49.50 per cent (2023 rates). Within the first bracket of box 1, national insurance tax is levied at a rate of 27.65 per cent up to a maximum income of €37,149. Non-resident taxpayers are typically not subject to national insurance tax and may therefore be eligible for a lower tax rate for their box 1 income not exceeding €37,149.

Box 2 – substantial interest income

Box 2 includes income in relation to a 'substantial interest'. A Dutch tax resident that holds at least 5 per cent of the shares (or a class of shares) in a company has a substantial interest. Having the right to purchase 5 per cent or more of the shares (eg, via call options) is also a substantial interest. The income derived from a substantial interest is considered taxable income in box 2. Taxation in box 2 will apply to a non-resident only if he or she holds a substantial interest in a Dutch-based company.

Any substantial interest income is subject to 26.9 per cent personal income tax (2023 rates). As of 2024, box 2 will comprise two brackets. The first bracket will tax box 2 income up to €67,000 per person at a rate of 24.5 per cent while a rate of 31 per cent will apply to income exceeding the first bracket. The House of Representatives has adopted a motion to increase the top rate in box 2 by an additional two percentage points. If the motion passes, the top rate will be 33 per cent for income above €67,000. This motion has not been definitively passed at the time of writing.

Substantial interest income includes – among others – (deemed) dividend income and capital gains from a (deemed) transfer of a substantial interest or a part thereof. We note that the transfer of a substantial interest by way of inheritance or gift is also a taxable event. Furthermore, emigration is considered a deemed transfer for substantial interest purposes.

As from 2023, in principle, all debts of a substantial interest holder (and their partner) to one or more of 'their' companies exceeding the aggregate amount of €700,000 at reference date 31 December are taxed in box 2 as a deemed dividend payment in box 2 in the hands of the substantial interest holder. Only the excess part of the loan (ie, the part exceeding the amount of €700,000) is taxed. This anti-abuse measure was introduced in 2023 to combat the deferral of tax for personal income tax purposes in box 2. More specific rules apply in respect of loans granted to minor and adult children of the substantial interest holder. An exemption may apply to mortgage loans.

Box 3 – income from savings and investments

Box 3 includes (deemed) income from savings and investments that do not fall under the scope of box 1 or box 2 and can be seen as the Dutch equivalent of a net wealth tax. Assets that are intended for the daily use of a taxpayer are excluded from the tax base. Box 3 income is taxed at a flat rate of 32 per cent (2023). The box 3 tax rate will be increased in 1 per cent increments from 32 per cent in 2023 to 34 per cent in 2025, following the Tax Plan 2023. Under the Tax Plan 2024, the increase in the box 3 tax rate from 32 per cent to 34 per cent is suggested to be implemented as of 1 January 2024 already (rather than as from 2025). In addition, the House of Representatives has adopted a motion to increase the tax rate by

an additional two percentage points. If the motion passes, the tax rate in box 3 will be 36 per cent. This motion has not been definitively passed at the time of writing.

The box 3 system has been a point of political and legal discussions during the past few years as the taxation of deemed returns is not in line with actual returns and in some cases is considered to be unfair (especially for taxpayers with bank savings or negative returns). The Dutch Supreme Court ruled in December 2021 that the box 3 system as it has been in place between 2017 and 2022 violates the right to property and the prohibition on discrimination of the European Convention on Human Rights in cases where the actual return is lower than the taxable fictitious return. Consequently, the Dutch government needs to convert the box 3 system to one that taxes actual returns. This system is intended to be introduced as of 2027 at the earliest.

From 1 January 2023, new transitional box 3 legislation over the tax treatment of savings and investments has entered into force until the introduction of new legislation that is expected from 2027. During the transitional period, a taxpayer's actual assets will be categorised under one of three categories, namely bank deposits (savings), other assets and debts. The value under each category per reference date on 1 January of each year will be deemed to yield a fixed percentage. The weighted average yield over all categories will be applied to the total net assets (assets -/- debts) that exceed a tax-free asset threshold of €57,000 (2023) to determine the taxable income, which will be subject to tax at a flat rate of 32 per cent (2023). As long as the amount of net assets is negative or remains below the threshold of €57,000, no box 3 tax is due.

The table below provides an overview of the fixed yield percentages for recent years. The fixed percentages for 2023 with regard to bank deposits and debts are yet to be determined, although estimates have been announced.

Year	Category 1: Bank deposits	Category 2: All other assets	Category 3: Debts
2021	0.01 per cent	5.69 per cent	(-/-) 2.46 per cent
2022	0.00 per cent	5.53 per cent	(-/-) 2.28 per cent
2023	0.36 per cent (preliminary estimate)	6.17 per cent	(-/-) 2.57 per cent (preliminary estimate)

For Dutch personal income tax purposes, all box 3 assets of children up to 18 years old should be allocated to their parents. Once the children turn 18, they become independently subject to Dutch personal income tax.

In September 2023, the Dutch government has submitted draft legislation for public consultation to introduce a box 3 tax on actual returns based on the value increase of assets and by taxing regular (actual) income (such as interest, dividends, rents and leases minus costs). The aim is to introduce this new system in 2027. The exact details of the new box 3 system have not yet been determined.

Capital gains

What, if any, taxes apply to an individual's capital gains?

Under the current tax system, an individual's capital gains can be taxed in box 1 (as business income or other income from 'other activities') or in box 2 (as income from substantial interest), depending on the type of capital gains. Assets that are attributable to an individual's business or other professional activities – and as such capitalised on their balance sheet – are in principle taxed in box 1 when a profit is realised upon sale. The taxable gain in box 1 is in principle calculated as the difference between the book value and the fair market value. A gain derived from the sale of a home that qualifies as the primary residence of the homeowner is not taxed in box 1. A shareholder who holds 5 per cent or more of the share capital in a company (ie, a substantial interest) will be taxed in box 2 if he or she realises a profit upon the (deemed) disposal of shares.

The current box 3 system does not tax actual capital gains; however, capital gains are deemed to be included in the deemed taxable income.

Lifetime gifts

What, if any, taxes apply if an individual makes lifetime gifts?

Dutch gift tax is imposed on the fair market value of the gift, less an exempt amount that varies depending on the relationship with the donor. The rate levied on the net gift (10 per cent to 40 per cent) also depends on this relationship. The tax is due if:

- the gift is received from a resident of the Netherlands;
- the gift is received from a former resident of the Netherlands who is a Dutch national within 10 years of their emigration from the Netherlands; or
- the gift is received from a former resident of the Netherlands within one year of their emigration from the Netherlands.

Rates of gift tax 2023:

Value gift	Partner (foster or step) child/child with disability	Grandchildren and further descendants	Other heirs such as a brother, sister or parents
€0 – €138.641	10 per cent	18 per cent	30 per cent
€138.642 – more	20 per cent	36 per cent	40 per cent

Inheritance

What, if any, taxes apply to an individual's transfers on death and to their estate following death?

Dutch inheritance tax is imposed on the fair market value of the inheritance, less an exempt amount that varies depending on the relationship with the deceased and the heir. The rate levied on the net inheritance (10 per cent to 40 per cent) also depends on this relationship. The tax is due if:

- the inheritance is received from a resident of the Netherlands; or

- the inheritance is received from a former resident of the Netherlands who is a Dutch national, within 10 years of their emigration from the Netherlands.

Rates of inheritance tax 2023:

Value inheritance	Partner (foster- or step) child/child with a disability	Grandchildren and further descendants	Other heirs such as a brother, sister or parents
€0 – €138.641	10 per cent	18 per cent	30 per cent
€138.642 – more	20 per cent	36 per cent	40 per cent

Real property

What, if any, taxes apply to an individual's real property?

In the Netherlands, a municipal tax applies to the ownership of immovable property. The circumstances at reference date 1 January of each year are decisive. The tax is payable upon an annual assessment that is based on the value of the property (as determined by the municipality). Non-residents and residents are subject to municipal tax applicable to the ownership of immovable property.

The transfer of immovable property or certain rights thereto (eg, buildings, houses, shares in real estate companies) is, in principle, subject to 10.4 per cent (2023) real estate transfer tax, payable by the new owner.

The real estate transfer tax on a home is subject to a lower rate of 2 per cent if the acquirer is to use the real estate as his or her primary residence. Under certain conditions, an exemption may apply to a first-time homeowner between the ages of 18 and 35 who uses the real estate asset as its primary residence and the total real estate asset value, including appurtenances, does not exceed €440,000 (2023). This limit applies to the entire dwelling and not to the value of the part of the dwelling acquired. As from 2024, the maximum value increases to €510,000.

Residences to be acquired for other purposes, such as rental purposes, are subject to the general transfer tax rate of 10.4 per cent based on market value (2023).

Non-cash assets

What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Customs duties, excises (only for goods that qualify as excise goods) and import value added tax (VAT) will, in principle, become due when goods are brought into Netherlands from outside the European Union. However, goods having no commercial character (therefore for personal use and enjoyment) contained in personal luggage may be exempted from duties and taxes, but only if they remain below a total amount of €430 per traveller. For tobacco and alcohol products, different thresholds apply. If the total amount of goods exceeds these thresholds (even if they are transported into the Netherlands for personal use) will trigger

taxes. There are no customs duties payable when travelling from another EU member state to the Netherlands. The same applies to excise duties and VAT as long as the goods are purchased tax included, are destined for personal use and are transported by the private individual when crossing the border.

EU and Netherlands legislation foresee certain general reliefs of import duties, excise and VAT, such as for persons transferring their normal residence from outside the EU to the Netherlands. In principle, there are no customs duties, excise or VAT due if goods are taken out of the Netherlands (eg, export). Individuals having their residence outside the EU can apply for a refund of the VAT paid on goods purchased in the Netherlands and intended for personal use if they are exported to a place outside the EU in their personal luggage.

In the Netherlands, the standard rate for VAT relating to consumer goods amounts to 21 per cent.

Other taxes

What, if any, other taxes may be particularly relevant to an individual?

Social security contributions

The Netherlands has an extensive compulsory social security system that can be categorised into national insurance tax, employee's insurance and health insurance. Under the national insurance tax regulations, contributions are levied on income up to a maximum of €37,149 (2023). In 2023, the contribution was capped at €10,272 *per annum*. From this amount several levy rebates may be deducted. National insurance contributions paid by an employee are not deductible from taxable income. National insurance contributions and income taxes are included as a single tax in the first income tax bracket (also referred to as box 1 income).

Under the employee insurance regulations, contributions are levied up to a maximum income of €66,956. The contributions are paid by the employer. The contribution rate depends on the employer's industry, but on average the maximum annual contribution amounts to approximately €7,887 for an employee with a permanent employment contract and €11,235 for an employee with a temporary employment contract.

It is compulsory for all residents of the Netherlands and all employees who are subject to Dutch wage tax to be covered under the Dutch Health Insurance Act and to have a statutory health insurance policy. For employees, the contribution will consist of:

- a nominal contribution of approximately €1,522 (including €385 own-risk), to be paid to the health insurance company; and
- an income-related contribution (6.7 per cent on income up to a maximum of €59,706, with a maximum of €4,200), to be paid to the Dutch tax authorities by the employer.

Consumption taxes

Value added tax (VAT) is payable on sales of goods and on services rendered in the Netherlands as well as on the importation of goods and on the 'intra-European' acquisition of goods. There are three VAT rates: 21 per cent, 9 per cent and 0 per cent.

The main VAT rate is 21 per cent. The reduced 9 per cent VAT rate is applicable to certain prime necessities (and also to certain energy-saving insulation activities on houses). The special 0 per cent VAT rate is applicable mainly to intra-EU supplies, exports, imports stored in bonded warehouses, services rendered in connection with the above, and certain other services.

The following are exempt from VAT:

- the supply of immovable property two years after putting it into use and lease. However, if the lessee's use of the immovable property is 90 per cent or more for input VAT-deductible purposes, the lessor and lessee may opt to be subject to VAT on rent, in which case the lessor may deduct the VAT charged in respect of the property;
- medical, cultural, social and educational services;
- services provided by banks and other financial institutions in connection with payment transactions and the granting of credit facilities;
- insurance transactions; and
- transactions in shares.

Road tax

An individual who owns or uses a car in the Netherlands may become liable to Dutch road tax. The individual who owns the car at the start date of each quarter will be liable to road tax. The amount due depends on the weight of the car and the type of fuel it uses.

Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts

As of 1 January 2010, a tax regime applies to assets that have been excluded from other taxable assets. These secluded private assets are qualified in Dutch tax law as segregated private property (APV). An APV is a secluded asset that serves a more than incidental private interest. An APV is not limited to trusts. The Antillean private fund foundation, a (private) foundation, an Anstalt, a Stiftung and a Genossenschaft can also be qualified as an APV. If a Dutch taxpayer, their fiscal partner or their underaged children have a right to an APV, this must be stated in the personal income tax return. Because an APV is considered to be fiscally transparent, the right that an individual has to the assets in an APV can be qualified in various ways for tax purposes. Taxation can take place in box 1 as income or in box 3 as an asset, through inheritance tax or through gift tax.

The main rule of taxation of an APV is that as long as the settlor is alive, the assets will be considered to be attributed to them. If the settlor were to pass away the assets will be attributed to the beneficiaries. Until then, the beneficiaries will not be taxed over these assets.

Dutch holding companies

The profits of Netherlands-based holding companies are in principle subject to Dutch corporate income tax. The corporate income tax rates in the Netherlands are 19 per cent for taxable income up to €200,000 and 25.8 per cent for amounts exceeding €200,000. If certain conditions are met, capital gains realised on subsidiaries and dividends received from subsidiaries are 100 per cent tax-exempt.

Dividends distributed by Dutch (holding) companies to individuals who are residents of the Netherlands are in principle taxed at a rate of 15 per cent dividend withholding tax upon distribution by the company and are subsequently taxed at a rate of 26.9 per cent (2023) personal income tax in box 2 by the individual, provided this individual holds a minimum of 5 per cent in the shares of the company. The 15 per cent dividend withholding tax will be creditable in the personal income tax return of the Dutch tax resident shareholder or non-resident shareholder.

Dividend distributions made by a Dutch holding company can be exempt under the Dutch domestic dividend withholding tax exemption or can be lowered to zero under a tax treaty or under the parent-subsidiary directive. Certain conditions must be satisfied to achieve the reduced rate or exemption on dividend distributions. Dutch holding companies that are interposed in a corporate structure to obtain a more favourable Dutch dividend withholding tax position are typically not eligible for the dividend withholding tax exemption, unless such holding company operates a material business. Having a material business is typically reflected by having sufficient relevant substance at the level of the holding company.

The holding company must submit a corporate income tax return annually. Corporate income tax is due through the annual corporate income tax assessment.

Charities

How are charities taxed in your jurisdiction?

Foundations (and associations) are liable to tax for the levy of corporate income tax if and insofar as a business is conducted.

The Netherlands offers a special status for charities that support the public interest, called ANBI. For this purpose, the charity needs to meet certain strict conditions. The most important condition requires that at least 90 per cent of the actual activities of the charity support the public interest. Gifts and inheritances to ANBIs are exempt from gift and inheritance tax. Furthermore, the individual taxpayer, under certain conditions, is allowed a deduction of certain gifts for income tax purposes.

Anti-avoidance and anti-abuse provisions

What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

ATAD 1

The Netherlands has implemented the EU Anti-Tax Avoidance Directive 1 (ATAD 1) by introducing a CFC rule and an earnings stripping rule and slightly reforming its exit taxation rules for corporate income tax (CIT) purposes. The earnings stripping rule limits the deduction of the net interest costs (interest income -/- interest costs) to 20 per cent (previously: 30 per cent) of the taxpayer's EBITDA with a threshold of €1 million and a carry forward rule.

ATAD 2

As of 2020, the Netherlands has implemented legislation addressing hybrid mismatches between the Netherlands and third countries based on the EU Anti-Tax Avoidance Directive 2 (ATAD 2). A hybrid mismatch leads to either tax deduction with no inclusion of the income or double deduction in cases involving entities, (financial) instruments, permanent establishments or the location of an entity. It is mandatory under Dutch law to have documentation on the ATAD 2 position on file.

In addition, the Netherlands has enacted legislation introducing ATAD 2's reverse hybrid rule. Under the new rules, an entity that qualifies as a reverse hybrid has become liable for corporate income tax from 1 January 2022 onwards.

ATAD 3

The Netherlands generally supports the proposal for the EU Directive laying down rules to prevent the misuse of entities for tax purposes (the Unshell Directive, also known as ATAD 3). According to the Unshell Directive proposal, entities at risk must report that they meet certain indicators of minimum substance to the tax authorities. Failure to do so means that the entity shall be considered to be a shell, having certain adverse tax consequences. Although the proposal states that the rules shall apply from 1 January 2024, it is almost certain that this will not be the case, pending the negotiation of the Directive in the EU.

MLI

The Netherlands has signed the Multilateral Instrument (MLI), which implements treaty-related anti-tax avoidance measures alongside the existing treaties for the avoidance of double taxation. From 1 January 2020, the MLI entered into force for covered tax treaties until ratification of the MLI in the other jurisdiction is also completed. The entry into force of the MLI is likely to affect the entitlement to tax treaty benefits under covered tax treaties concluded by the Netherlands. The MLI, among others, introduces a principal purpose test.

DAC 6

The Netherlands has also implemented the Mandatory Disclosure Directive (DAC 6) in its national law since 1 January 2020. Under DAC 6, intermediaries (tax advisers, notaries, banks etc) must report arrangements that meet the hallmarks as listed in the DAC 6 Directive within one month of the transaction being ready for implementation.

UBO register

As of 27 September 2020, Dutch companies and other legal entities are obliged to register certain personal data about their ultimate beneficial owners (UBOs) with the UBO register, including citizen service number, name, date of birth, state of residence, address, nationality and the nature and extent of their economic interest as UBOs. Initially, some of these details were publicly available via the Dutch Chamber of Commerce.

In brief, a UBO is a natural person who has direct or indirect ownership or a controlling interest of more than 25 per cent in a Dutch legal entity. If it is not possible to appoint such a person, the senior management of the entity will be registered as a UBO: the pseudo or quasi-UBO. In the case of partnerships, these are the managing partners; in the case of other entities, they are the directors under the articles of the entity.

In November 2022, the European Court ruled that the public UBO register violates European privacy law. Since then, the Dutch UBO register has not been publicly accessible.

TRUSTS AND FOUNDATIONS

Trusts

Does your jurisdiction recognise trusts?

There are no trusts according to Dutch law. The Netherlands has ratified the Hague Trust Convention and recognises foreign trusts. The Hague Trust Convention does not provide a definite answer regarding the tax position of the trust.

Private foundations

Does your jurisdiction recognise private foundations?

In the Netherlands, a trust is a foreign legal entity. It is possible for the Dutch tax authorities to have a different view on the qualification of the entity itself, resulting in a different method of taxation. Other issues might entail the qualification of the ultimate beneficial owner or the beneficiary. These issues can be resolved simply by communicating with the tax authorities or, if that fails, litigation.

Disputes

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute

resolution (ADR) available and commonly used? What remedies are commonly awarded?)

In the Netherlands, a trust is a foreign legal entity. It is possible for the Dutch tax authorities to have a different view on the qualification of the entity itself, resulting in a different method of taxation. Other issues might entail the qualification of the ultimate beneficial owner or the beneficiary. These issues can be resolved simply by communicating with the tax authorities or, if that fails, litigation.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

Does your jurisdiction have any form of legally recognised same-sex relationship?

The Netherlands recognises same-sex marriages and official cohabitation. Same-sex relationships benefit from the same (preferential) regimes as heterosexual relationships with regard to income tax, gift tax and inheritance tax.

Heterosexual civil unions

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

As an alternative to marriage, a heterosexual couple could opt for a civil partnership or a notarial cohabitation agreement.

A civil partnership has the same benefit regimes and specific exemptions as for spouses with regard to income tax, gift tax and inheritance tax.

In the situation of a notarial cohabitation agreement, the couple must be registered at the same address in the Municipal Personal Records Database to benefit from the same regimes and specific exemptions as spouses with regard to income tax. To be considered as a partner for gift and inheritance tax, the following conditions must be met:

- both individuals are of age;
- they must be registered at the same address in the Municipal Personal Records Database;
- a mutual duty of care should be included in the core habitation contract;
- the individuals are not relatives in the direct ascending line; and
- the individuals have not met the conditions above with another person.

SUCCESSION

Estate constitution

What property constitutes an individual's estate for succession purposes?

From a Dutch inheritance tax perspective, an individual's estate consists of all the (worldwide) assets left after they have died. The estate includes legal and beneficial ownership as well as co-ownership. Gifts made within 180 days prior to the donor's decease, by those living in the Netherlands at the moment of decease, are added to the taxable basis of the legacy.

Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

In principle, individuals can gift everything they own during their lifetime. However, certain legal restrictions apply. Individuals married under the regime of community of property cannot give away common goods without the consent of their spouse.

Disposition

To what extent do individuals have freedom of disposition over their estate on death?

In a will, an individual can freely dispose of their estate. However, when Dutch law applies to the succession, the children can claim their legal portion.

Intestacy

If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If a Dutch resident dies without leaving a will, Dutch law will apply.

If the deceased leaves a surviving spouse and children, the surviving spouse and children are the inheritors each in equal shares. The spouse will receive the entire inheritance directly after the decease. The children are entitled to part of the inheritance – their legal inheritance – but do not yet receive their part of the inheritance. Their inheritance is converted into a claim against that partner that has not yet become due and payable until the surviving partner dies.

In the event that there is no surviving spouse, the children receive the estate in full property, each in equal shares.

In the event that the deceased leaves a surviving spouse but no children, the surviving spouse receives the deceased's share in the community property in full ownership.

If the deceased leaves no surviving spouse nor children, the estate is divided between the surviving blood relatives on the basis of the degree of kinship with the deceased.

Adopted and illegitimate children

In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted and illegitimate children are treated the same as natural legitimate children. Stepchildren inherit only when specifically included in the testator's will.

Distribution

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Since 17 August 2015, the European Union's Succession Regulation (EU) No. 650/2012 has determined the conflict of law rules. In the event that no choice of law has been made in a will, in principle, the law of the state in which the individual had their last habitual residence is applicable. However, if it is clear from all circumstances that, at the moment of death, the deceased had a manifestly closer connection with another state, the law of that state is applicable. The applicable law governs the distribution of both the movable estate and the immovable estate.

A choice of law can be made in the will for the law of the state of which the resident has nationality. This law governs the distribution of both the movable estate and the immovable estate.

On the basis of the European Union's Succession Regulation, the Netherlands will respect the application of non-Dutch law, even if the foreign law infringes Dutch forced heirship rules.

Formalities

What formalities are required for an individual to make a valid will in your jurisdiction?

According to Dutch law, an individual must make a notarial will. The will must be dated and signed by the testator.

Foreign wills

Are foreign wills recognised in your jurisdiction and how is this achieved?

If a Dutch resident who is not a Dutch national has drafted a will in accordance with the laws of their state of nationality, in principle, the Netherlands will recognise the will provided that it is valid according to the laws of the state of nationality.

Administration

Who has the right to administer an estate?

The executor appointed in the will has the right to administer the estate. However, such a testamentary executor has very limited rights. If no executor has been appointed, the heirs administer the estate.

Administration

How does title to a deceased's assets pass to the heirs and successors?
What are the rules for administration of the estate?

Reject inheritance

It is possible to reject an inheritance. The inheritor is not responsible for the estate and will not be involved in its settlement. They will receive nothing, but also will not be liable for debts.

Purely accept inheritance

Another option is to accept an inheritance in full: all the assets and debts of the deceased person. Accepting in full can simply be done by withdrawing assets from the inheritance, or by settling debts.

Accept inheritance beneficiary

The third option is to accept the inheritance beneficiary. The inheritor is not liable for debts. This means the assets from the inheritance are withheld until it is certain that all debts have been paid.

Title to a deceased's assets passes to the heirs and successors on the basis of a notarial certificate of succession. Provided that there is no executor, the notarial certificate of inheritance gives the heirs the authorisation to administer the estate. They must take all precautionary measures to preserve the assets until the estate is divided between the heirs.

Challenge

Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Disappointed heirs may start a procedure before the court of first instance.

CAPACITY AND POWER OF ATTORNEY

Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

When both parents are alive, they jointly hold and manage the property of a minor. Upon the death of a parent, the surviving parent holds and manages the property. After the death of both parents, a guardian who has been appointed in the parents' stead can take over the holding and management of the property of the minor. If there is no will, a guardian will be appointed by the court.

Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

In the Netherlands, a person can legally attain capacity to own property at the age of 18.

Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

In a specific will on personal matters, individuals can give the power of attorney to persons of their choice to manage their assets in case they lose legal capacity. If no such will has been made, any interested party can ask the court to declare that a person has lost the capacity to manage their affairs. The court will appoint an administrator. The administrator must report to the court.

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Residents of the European Union, the United Kingdom, Lithuania, Norway, Iceland and Switzerland can stay in the Netherlands without applying for a visa for a period of 90 days if they have a valid identification document. If an individual wants to stay in the Netherlands for longer than four months, the individual must be registered in the Municipal Personal Records Database. Residents of other countries do need a visa.

High net worth individuals

Is there a visa programme targeted specifically at high net worth individuals?

There is no specific visa programme for those individuals. The Netherlands does not offer a 'golden visa' for high net worth individuals.

UPDATE & TRENDS

Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

Changes to the box 3 regime are expected in the coming years.