

Guidance on Transaction Costs in the Netherlands Raises Questions

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In this article, van Gelder, Boon, and Smits van Waesberghe explain the tax treatment of transaction costs arising from the acquisition or divestment of a qualifying participation.

Introduction

The Dutch Tax Authority has a central knowledge center that determines the agency's position in specific (complex) cases. It is divided into several topic-based knowledge groups. Local tax inspectors are required to request input, which will be binding, from the knowledge center.

A specific knowledge group handles questions addressing the Dutch participation

exemption (Participation Exemption Knowledge Group — *Kennisgroep Deelnemingsvrijstelling*). The participation exemption, in brief, exempts income (capital gains and (deemed) dividend distributions) derived from shareholdings of 5 percent or more in the nominal paid-up share capital of an operational subsidiary. The participation exemption also exempts transaction costs.

On February 1 the Participation Exemption Knowledge Group published an updated knowledge document (*kennisdocument*) on transaction costs.¹ The document is a result of a December 22, 2023, supreme court judgment,² and is based on the state of jurisprudence as of February 1.

The knowledge document addresses the tax treatment of cost allocation regarding the acquisition or divestment of a qualifying participation. The document also delves into previous supreme court case law on the tax treatment of transaction costs. Specific transaction cost examples are provided.

In the knowledge document, the Dutch Tax Authority shares a number of views that we analyze in this article. We first provide a background description of the tax treatment of transaction costs, then delve into several specific document points.

Background on Tax Treatment of Transaction Costs

Under the participation exemption, income derived from a qualifying participation (a

¹ Knowledge Group Participation Exemption, "Knowledge Document on Transaction Costs" (Feb. 1, 2024) (in Dutch).

² Dutch Supreme Court, No. 22/02219 (Dec. 22, 2023).