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Netherlands: Law & Practice

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Loyens & Loeff

NETHERLANDS

Law and Practice

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1. Tax

1.1 Tax Regimes

Domicile and Residency

In the Netherlands, resident individuals are taxed on their worldwide income and wealth. Non-residents are only taxed on certain types of income and wealth with a nexus to the Netherlands (see Non-residents below). Domicile is, in principle, not relevant for Dutch tax purposes.

According to Dutch case law, a person is considered a resident for tax purposes if, based on all the relevant facts and circumstances, a "durable bond of a personal nature" exists with the Netherlands. This is determined based on, inter alia:

- the availability of a (primary) residence;
- where the person has a place of habitual abode;
- where the family is located; and
- economic interests.

Intentions or the number of days spent in or outside the Netherlands are of lesser relevance.

A person may have durable bonds with different countries, in which case the strongest durable bond is not necessarily decisive for tax residency. In such a case, a tax treaty may provide for a tiebreaker to determine a person's tax residence (although the Netherlands has concluded only a very limited number of treaties regarding gift and/or inheritance tax).

Personal Income Tax in the Netherlands

In the Netherlands, personal income tax is levied pursuant to the Personal Income Tax Act 2001. The taxable income (either worldwide income and wealth for resident taxpayers or specific income and wealth with a Dutch nexus for non-resident taxpayers) is allocated to three different "boxes", according to source.

- Box 1: income from labour, business and principal residence – rates vary from 36.97% to 49.50% (in 2024).
- Box 2: income from substantial interest – rates vary from 24.50% (for the first EUR67,000) to 33% for the excess (in 2024).
- Box 3: deemed income from savings and investments – flat rate of 36% on deemed income (please note that the Dutch Supreme Court has ruled this system to be in violation of the European Convention on Human Rights (ECHR). As a result, a new Box 3 income tax system will be introduced – see Box 3 below).

In general, income and deductible amounts derived from and relating to a certain source can only be offset in the same box. However, certain personal allowances (eg, alimony, childcare expenses and medical expenses) are deductible in Box 1, Box 3 and Box 2 (in this order) if the income from the preceding box is not sufficient for a deduction in full.

Partners are, in principle, taxed individually. Certain categories of income, deductible expenses and wealth can be apportioned freely between partners. For Dutch personal income tax purposes, "partners" are:

- spouses and people that have entered into a registered partnership recorded with the municipality; and
- people living together without being married (subject to certain conditions).

Next to personal income tax, a person resident in the Netherlands will generally also be subject to the Dutch compulsory social security system

(consisting of various insurance schemes). Contributions to these insurance schemes are based on earnings and are collected via the annual Dutch personal income tax assessment or wage tax withholdings, if wage tax is withheld on salary payments. Social security contributions are effectively capped annually at EUR10,534 (in 2024).

The Netherlands grants levy rebates (*heffingskortingen*), the most important of which are:

- the general levy rebate of maximum EUR3,362 (as of 2024) per year; and
- the employment levy rebate of maximum EUR5,532 (as of 2024) per year.

The taxable period is 1 January to 31 December; tax returns must be filed before 1 May the following year. Extension for filing is possible upon request.

Box 1

Income from past and present employment, business activities, certain "other activities" (eg, freelance work), certain annuity payments and deemed income from the principal residence is taxed at a progressive rate in Box 1 (see above).

Income from employment is generally (also) subject to wage tax. This "pre-levy" that is withheld on the gross salary by the employer, can be offset against personal income tax. Income from business activities also includes capital gains (or losses) from business assets. Gains resulting from portfolio investments are usually not taxed in Box 1.

The principal residence is taxed in Box 1. Personal income tax is levied on a notional rental income (the *eigenwoningforfait*, a certain percentage of the residence's value for tax purposes); capital gains are tax-exempt. If certain requirements are met, interest paid on a loan for the acquisition, improvement and maintenance of a principal residence can be deducted for a maximum period of 30 years ("mortgage interest relief" or *hypotheekrenteaftrek*). The rate against which the deduction of mortgage interest in the highest income tax bracket takes place is limited to 36.97% (in 2024).

Box 2

In Box 2, income and gains in connection with a substantial shareholding are taxed. A substantial interest inter alia exists in the case of a shareholding of 5% or more in a company (including, depending on circumstances, options on shares, profit rights and economic ownership). Income from a substantial interest includes both dividends and capital gains. The applicable rate is 24.5% for the first EUR67,000 of income/gains and 33% on the excess (in 2024).

For non-residents, Box 2 applies mutatis mutandis, provided that the company in which the non-resident holds a substantial interest has its (deemed) place of effective management in the Netherlands. Tax treaties may prevent the Netherlands from levying its full domestic rate.

Dividends

Dividends paid by a company with its (deemed) place of effective management in the Netherlands are subject to 15% dividend withholding tax, which can be offset against the Dutch personal income tax due. For Dutch personal income tax (and dividend withholding tax) purposes, dividends and capital gains also include certain deemed dividends and deemed capital gains.

For example, a shareholder with a substantial interest in a non-resident low-taxed (less than 10% taxation) or exempt portfolio investment

company is subject to personal income tax in Box 2 on a deemed annual "dividend" (2024: 6.04% of the substantial interest's fair market value). The deemed dividend is reduced by actual dividends received during the year.

In addition, a deemed benefit from a substantial interest is taken into account if and in so far as (current account) shareholder loans were taken up in excess of EUR500,000 from a company in which a substantial interest is held (in 2024). For the EUR500,000 threshold loans taken up by the shareholder, a spouse and certain close relatives are aggregated. Under certain conditions, loans taken up by the shareholder for the acquisition, improvement and maintenance of a principal residence are excluded.

Capital gains

Examples of deemed capital gains are the repurchase of shares by a company, the liquidation of the company and the inheritance or donation of a substantial interest.

A deemed capital gain also arises when the substantial shareholder emigrates from the Netherlands. Upon emigration, the Dutch tax authorities will issue a protective assessment (*conserverende aanslag*) for 24.50% and up to 33% (in 2024) personal income tax due on the capital gain deemed as realised. An interest-free extension for tax payment for an unlimited period is granted automatically (for emigration within the EU/EEA) or upon request (for emigration outside the EU/EEA; security must be provided).

The extension for tax payment is withdrawn, and a protective assessment is (partially) collected, if (among others) the emigrated substantial shareholder receives a dividend or realises a (deemed) capital gain. The extension for tax payment is also withdrawn on the emigrated taxpayer's death. Heirs can only request a further extension to the extent that the substantial shareholding represents active business assets.

Box 3

In Box 3, the net deemed return on, inter alia, privately held savings and portfolio investments are taxed at a flat rate of 36% (in 2024). The flat rate is currently applied to deemed yields on the fair market value of the assets and liabilities on 1 January of each year (net wealth). The actual income, gains and cash flow arising from the assets are in principle irrelevant for Box 3.

Considering the Dutch taxation in Box 3 is based on deemed results, the current system could in effect be considered a net wealth tax.

For resident taxpayers, the taxable base includes all tangible and intangible assets and second houses (the principal residence is taxed in Box 1 – see above). Movable property for personal use (eg, cars, yachts and art collections) is excluded from the taxable base, provided such property is not mainly held as an investment. For non-resident taxpayers, Box 3 taxation is effectively limited to Dutch real estate and direct or indirect rights therein. Debts connected to Dutch real estate may be taken into account.

For both resident and non-resident taxpayers, certain approved investments and savings below a threshold may be excluded from the taxable base. A tax exemption of EUR57,000 (in 2024) per year applies to every taxpayer individually; for tax purposes, partners (eg, spouses – see above) are eligible for avoidance of double taxation. The Box 3 income tax system has been widely criticised and the subject of multiple court cases over past years, because of the use of a (relatively high) deemed yield in a period where the (risk-free) market yields are historically low.

As a result, certain taxpayers were confronted with an income tax burden in Box 3 of more than 100% of the actual yield.

On 24 December 2021, the Dutch Supreme Court ruled that the former Box 3 income tax system was in violation of the ECHR. The Supreme Court concluded that affected taxpayers must be given (effective) legal protection through a compensation aimed at restoration of rights.

As a result of this ruling, legislation was introduced trying to ensure that deemed income in Box 3 is more in line with actual returns. Consequently, the Box 3 income is presently based on deemed returns on three different asset classes:

- savings (including cash);
- investments/other assets (eg, investment portfolios, Dutch real estate, etc); and
- debts.

The deemed return is linked to each asset class and the total taxable Box 3 income is – in short – calculated by adding up the deemed return on the asset classes in the first and second bullet points, and subtracting the deemed return on the asset class in the third. These deemed returns are calculated on 1 January of the following year. The provisional rates of deemed return for 2024 are:

- 0.01% for savings;
- 6.04% for investments; and
- 2.46% for debts.

On 6 June 2024 however, the Dutch Supreme Court issued an important ruling in five cases on the net wealth income tax in Box 3 of the Dutch personal income tax. The Supreme Court rules that the current Box 3 methodology still results in a violation of the right to property and the prohibition of discrimination in cases where the deemed (flat-rate) return is higher than the actual return. This entails that many taxpayers will have to be compensated, provided they demonstrate that the actual return on the entire box 3 wealth in a year has been lower than the flat-rate return for which they have been taxed. As unrealised changes in the value of assets are also included in the actual return from year to year, this will not be so easy (in terms of proof) for a (large) number of taxpayers.

The government has announced its intention to introduce a new Box 3 income tax system by 2027. It is expected that this new tax system will adopt the form of a combination of a capital increase tax (*vermogensaanwasbelasting*) and a capital gains tax (*vermogenswinstbelasting*).

Taxation of the Assets of a Trust or Foundation

The Netherlands does not have trust law but does adhere to the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985 (Hague Trust Convention). The Personal Income Tax Act 2001 and Inheritance Tax Act 1956 regulate the tax treatment of (foreign) trusts and trust-like entities (eg, foundations), which mainly serve the personal interest of the settlor.

If an individual taxpayer (the settlor) transfers assets and liabilities into such a trust (or trust-like entity) without receiving economic entitlement rights (such as ownership of shares or profit sharing) in return, the transferred wealth will be regarded as a “separate private estate” (SPE, or *afgezonderd particulier vermogen* (APV)) to which the “SPE regime” applies.

Under this regime, the transfer of assets and liabilities to such SPE for tax purposes is ignored.

The SPE's assets and liabilities remain allocable to the settlor. The transfer of assets to a trust (or trust-like entity) can therefore be tax-free, since such transfer is deemed not to have taken place.

Personal income tax is levied on the settlor (or their heirs) as if the settlor (or the heirs) are (still) the owner of the assets and liabilities that are held in trust. Exceptions may apply if, for example, a beneficiary receives a fixed interest (being a fixed economic entitlement). In this case, the beneficiary is subject to personal income tax on the fixed interest. The value of this interest is generally taxed in Box 3 (depending on the nature of the assets and liabilities); the SPE regime does not apply to such a fixed interest.

On payments made from the SPE to beneficiaries other than the settlor, gift tax is assessed when the settlor is (deemed) resident in the Netherlands. The beneficiaries must also pay inheritance tax on trust assets upon the demise of the settlor if the settlor was a (deemed) Dutch resident.

Expatriates

For expatriates immigrating to the Netherlands (incoming employees), it is possible to apply for a so-called 30% ruling. Subject to certain terms and conditions, a 30% ruling allows for a deduction of 30% of the incoming employee's income for deemed extraterritorial expenses.

More importantly, the incoming employee can opt to be treated as a non-resident taxpayer for Box 2 and Box 3. As a result, the incoming employee will, in principle, not be taxed in the Netherlands on:

- a substantial interest in a company incorporated and effectively managed outside the Netherlands; and
- private wealth, except for (rights related to) Dutch real estate.

A 30% ruling is valid for five years. This five-year period is reduced by the period (in months) spent in the Netherlands ending in the 25-year period prior to immigration. A 30% ruling granted before 2019 is valid for eight years.

Since 2024 the basis of the 30% ruling is limited to a maximum of EUR233,000 of (annual) income.

Additionally, as of 1 January 2024, the 30% ruling for new applications will phase out from a 30% deduction to a 10% deduction. However, due to political pressure, a review will take place in 2024 to see whether this tightening will be reversed in order to improve the Dutch business climate. As of 1 January 2025, an employee using the 30% ruling can no longer opt to be treated as a non-resident taxpayer for Box 2 and Box 3. Based on a transitional rule, employees who make use of the partial foreign taxpayer status in 2023 will still be able to make use of this tax scheme until 31 December 2026 at the latest.

Non-residents

Non-resident individuals pay tax on income and wealth with a nexus to the Netherlands. Generally speaking, this income consists of income from substantial interests held in Dutch resident companies (Box 2), Dutch real estate and direct or indirect rights therein (Box 3), and rights to shares in the profit of an enterprise with its place of effective management in the Netherlands (Box 1). The actual Dutch tax liability is subject to the application of a treaty for the avoidance of double taxation.

Tax Treaties

The Netherlands has concluded a significant number of tax treaties, which, under Dutch law, override national (tax) legislation. As part of the OECD BEPS project, the Netherlands has endorsed the Multilateral Instrument (MLI).

The MLI applies to a large number of tax treaties concluded by the Netherlands and forms the basis of (future) tax treaty negotiations. As a result of the MLI, certain treaty benefits can no longer be invoked if for example, a structure or transaction lacks economic reality and substance.

Gift, Estate and Inheritance Taxes

In the Netherlands, gift and inheritance tax is levied pursuant to the Inheritance Tax Act 1956. An inheritance tax return must be filed within eight months of the death of the deceased. Postponement is granted upon request. The tax must be paid within six weeks of a notice of assessment.

If an heir living abroad receives property from a Dutch resident's estate, the heirs living in the Netherlands are also liable for the payment of the non-resident heir's taxes.

Gift tax returns must be filed within two months of the end of the calendar year in which the gift was made.

Gift and Inheritance Tax

Gift tax is payable on gifts made by a (deemed) resident of the Netherlands. Regardless of their nationality, and for gift tax purposes only, all persons who emigrate from the Netherlands are deemed resident for a period of one year after emigration. Dutch citizens (at the time of emigration and the gift) are deemed resident for a period of ten years after emigration.

Inheritance tax is payable on the worldwide property of a (deemed) resident of the Netherlands at the time of their death. The inheritance tax is payable by the recipient. Dutch citizens (at the time of emigration and death) are deemed resident for a period of ten years after emigration. The estate of a non-resident deceased person (either non-Dutch or Dutch but who emigrated more than ten years ago) is not subject to Dutch inheritance tax.

Tax calculation

For the calculation of gift and inheritance tax, assets are valued at fair market value. The (progressive) rates for both gift and inheritance tax are the same (in 2024):

- up to EUR152,368 – 10% (spouses/children), 18% (other descendants) and 30% (others); and
- EUR152,368 and more – 20% (spouses/children), 36% (other descendants) and 40% (others).

There are individual tax exemptions for both inheritance and gift tax, which depend on the relationship between the deceased or donor and the beneficiary (see **1.2 Exemptions**).

Taxation of the Assets of a Trust or Foundation

The Netherlands does not have trust law. The tax treatment of (foreign) trusts and trust-like entities is regulated by the Personal Income Tax Act 2001 and the Inheritance Tax Act 1956 (see above, under Personal Income Tax in the Netherlands).

Real Estate Transfer Tax

The acquisition of Dutch real estate is subject to real estate transfer tax (*overdrachtsbelasting* or RETT) at a flat rate of 10.4% (commercial real

estate) or 2% (residential real estate acquired by an individual who uses the real estate asset as its primary residence). A one-time RETT exemption applies to people between the ages of 18 and 35 who acquire residential property that acts as their principal dwelling, whereby the value of such property may not exceed EUR510,000. RETT on the acquisition by resident beneficiaries of gifted real estate may be (partly) offset against gift tax; real estate acquired by inheritance is RETT-exempt.

To prevent tax avoidance, under certain conditions shareholdings in real estate companies are deemed real estate for RETT purposes. This may also include shareholdings in non-resident (holding) companies if these shareholdings directly/indirectly derive their value from real estate located in the Netherlands.

Capital Gains Tax

The Netherlands does not levy a separate capital gains tax, but certain capital gains may be subject to Dutch personal income tax. These include capital gains derived from a substantial interest (personal income tax in Box 2 – see above) and capital gains realised as an entrepreneur (personal income tax in Box 1 – see above).

Dutch VAT

Dutch VAT is charged on supplies of goods and services in the Netherlands. The basic rate is 21% (in 2024). Certain supplies (eg, educational services, medical services and financial services) are VAT-exempt. A reduced rate of 9% (in 2024) applies to other supplies (eg, food, non-alcoholic drinks, medicines and books) and services (eg, passenger transport, hairdressing and renting out holiday homes).

Imported works of art may also be eligible for the reduced rate.

1.2 Exemptions

There are individual tax exemptions for both inheritance and gift tax, which depend on the relationship between the deceased or donor and the beneficiary.

For inheritance tax, these exemptions are as follows (in 2024):

- for partners – EUR795,156 (half of the cash value of pension rights derived by the partner from the death of the deceased is deducted from this amount, and the minimum exemption is EUR205,420);
- for children whose cost of living was, for the greatest part, paid by the deceased and who cannot be expected, within the coming three years, to earn half of the income a physically and mentally healthy person would earn – EUR75,546;
- for other children and grandchildren – EUR 25,187;
- for parents – EUR59,643; and
- for others – EUR2,658.

For gift tax, the annual tax exemptions are as follows (in 2024):

- for children – EUR6,633; and
- for others – EUR2,658.

Certain one-time increases may apply (see **2.6 Transfer of Assets: Vehicle and Planning Mechanisms**).

The Inheritance Tax Act 1956 provides for a separate tax facility for business assets and substantial shareholdings that represent business assets: the business succession facilities (*bedrijfsopvolgingsfaciliteit* or BOR – see **4.2 Succession Planning**).

1.3 Income Tax Planning

Upon immigration of a taxpayer who holds a substantial interest, under certain conditions, a step-up can be granted to the fair market value of the shares at the time of immigration. A step-up may not be (fully) granted if the taxpayer has previously resided in the Netherlands, or if the taxpayer has previously qualified as a non-resident taxpayer with regard to the substantial interest.

1.4 Taxation of Real Estate Owned by Non-residents

Non-resident individuals pay tax on income and wealth with a nexus to the Netherlands, such as income from substantial interests held in Dutch resident companies and Dutch real estate and direct or indirect rights therein. The actual Dutch tax liability is subject to the application of a treaty for the avoidance of double taxation.

1.5 Stability of Tax Laws

The gift and inheritance tax legislation in the Netherlands is very stable. Amendments can only be made after a thorough legislative process.

At the start of its governing period, each government presents a coalition agreement in which its long-term (tax) objectives and policies are announced. In addition, the Dutch government announces its Tax Plan each year on Budget Day in September. The Tax Plan provides an overview of all tax measures proposed by the government for the coming year and must be adopted by the House of Representatives and the Senate.

Neither the present coalition agreement nor the Tax Plan 2024 include significant changes to Dutch gift and inheritance tax. However, the Dutch government has indicated that it will tighten the Dutch business succession facilities with effect from 2025 (see **4.2 Succession Planning**).

1.6 Transparency and Increased Global Reporting

The Netherlands is involved in the US Foreign Account Tax Compliance Act (FATCA), the Common Reporting Standard (CRS) and various other multinational transparency initiatives.

FATCA and CRS

Based on FATCA legislation, Dutch financial institutions need to register with the US Internal Revenue Service (IRS) and report information to the Dutch tax authorities about US reportable accounts and accounts held by non-compliant foreign financial institutions. The reportable information includes name, address, US Tax Identification Number (TIN) account numbers and account balances of reportable accounts. A non-US entity not qualifying as a financial institution needs to disclose its substantial US owners or certify that it has none.

The Netherlands has also committed itself to the CRS, under which financial institutions need to identify their account holders. If it is established that an account holder is a tax resident in another country and that country participates in the CRS, the financial institution has to submit information annually about the account holder and the account (such as investment income, interest, account balances and capital gains).

The Dutch tax authorities will subsequently exchange this information with the tax authorities of the account holder's country of residence.

Automatic Exchange of Information Between Countries

BEPS Action 5 contains an OECD framework for the compulsory exchange of information as to

certain categories of rulings. The Netherlands has committed itself to this OECD framework. The Dutch tax authorities collect basic information, such as:

- the identity of the taxpayer;
- the date of issuance of the ruling;
- the start date;
- the identification of any entity likely to be affected; and
- a short summary of the content.

This information will then be bilaterally exchanged with:

- the countries of residence of all related parties; and
- the residence country of the ultimate parent company and the immediate parent company.

In the Directive on Administrative Co-operation, the EU also includes automatic exchanges of information on "advance cross-border rulings" and "advance pricing arrangements" between EU member states. Contrary to BEPS Action 5, the scope of the EU Directive is not limited to certain categories of rulings; only rulings and pricing arrangements concerning purely domestic situations are out of scope, and rulings and pricing arrangements exclusively concerning the tax affairs of one or more natural persons. The information to be exchanged under the EU Directive is comparable to BEPS Action 5 and must be submitted to a central database to which all EU member states have access.

The information will not be available to the public; upon request and when needed for tax purposes, additional information may be provided to another EU member state.

UBO Register

Following up on the EU Anti-Money Laundering Directive, a law has been adopted in the Netherlands ("UBO Register Act") that implements a register in which the ultimate beneficial owners ("UBOs") of certain corporate entities and other legal entities must be registered (the "UBO Register"). These entities are required to obtain, hold and register certain personal information on their ultimate beneficial owners.

Private limited companies and public limited companies, foundations, associations, mutual insurance associations, co-operatives, limited partnerships and churches or spiritual organisations that are incorporated or established under Dutch law are all subject to registration. Although the definition of a UBO differs for each type of legal entity, in general an individual must be registered if they hold an economic and/or controlling interest of more than 25% in the entity. If there is no such individual, all members of the senior management of the legal entity have to be registered (so-called "pseudo-UBOs").

The UBO Register includes the personal information of an UBO, such as surname, month and year of birth, nationality, country of residence and the nature and extent of the beneficial interest. Previously, this information was publicly accessible in the Dutch Trade Register. However, on 22 November 2022, the European Court of Justice ruled that the public accessibility of UBO information violates the fundamental right to protection of private life and the right to protection of personal data and is therefore invalid. Consequently, the Dutch government restricted access to the register.

In the meantime, the competent authorities have regained access to the register.

Furthermore, institutions along the lines of the Money Laundering and Terrorist Financing (Prevention) Act are regaining access, one by one. After regaining access, their feedback obligation will retake effect.

The Dutch government is also considering limiting access to individuals and organisations that can demonstrate a legitimate interest. A legislative proposal defining which individuals and groups would have such a legitimate interest has been put up for consultation.

Additional information such as the UBO's Citizen Service Number (*Burgerservicenummer* or BSN), a copy of their identity document and the date and place of their birth will be accessible only to certain competent (EU) authorities.

Upon request, access to UBO information can be restricted to persons with a legitimate interest if the UBO is a minor or is otherwise legally incapable, or if the UBO is under the protection of the Public Prosecutor or the National Co-ordinator for Counterterrorism and Security.

As a final recent development, on 30 May 2024 new European legislation with the aim of preventing money laundering and terrorist financing was adopted (the EU AML package). The AML package, which' rules will come into effect as of 2027, includes amendments to the UBO registers and Trust registers across the EU. Changes include an extension of the UBO definitions, stricter application of registration exemptions and a definition of persons and organisations that are deemed to have a legitimate interest in accessing UBO information.

Trust register

The Netherlands also has a UBO Register for trusts and similar legal arrangements (the "Trust Register"). Similar legal arrangements include the commonly used Dutch mutual fund (*fonds voor gemene rekening*). The registration requirements are applicable to a trustee that resides or is established in the Netherlands, or resides or is established outside the EU, and acquires Dutch real estate on behalf of the trust or enters into a business relationship in the Netherlands on behalf of the trust – for example, with:

- a financial institution;
- an accountant;
- a lawyer;
- a civil law notary; or
- a tax advisor.

The UBOs of a trust are the settlor(s), trustee(s), protector(s), beneficiaries or classes of beneficiaries and any other natural person ultimately exercising control over the trust. Access to the Trust Register, like the UBO Register, is currently limited due to the European Court of Justice ruling of 22 November 2022 (see above). The Dutch government will in principle apply the same considerations regarding the access to the Trust Register that apply to the UBO Register. Information to be submitted is comparable to that of the UBO Register.

The AML Package (see above) also introduces changes to the Trust register as of 2027.

Mandatory Disclosure

Based on the Mandatory Disclosure Directive, the Netherlands implemented rules obliging EU-linked intermediaries (such as lawyers, tax advisors and bankers) and, under certain circumstances (eg, if the intermediary involved is entitled to legal professional privilege), the taxpayers themselves to report certain arrangements to the Dutch tax authorities. These arrangements are potentially aggressive tax

planning arrangements with a cross-border dimension and arrangements that are designed to circumvent reporting requirements such as CRS and UBO reporting.

Information needing to be reported includes:

- the taxpayer's (and intermediary's) identity;
- a summary of the content of the reportable cross-border arrangement; and
- details of the tax provisions on which the arrangement is based.

The tax authorities will automatically exchange the information within the EU through a centralised database.

2. Succession

2.1 Cultural Considerations in Succession Planning

This is not applicable in the Netherlands.

2.2 International Planning

The Netherlands has entered into various tax treaties in relation to personal and corporate income tax (see **1.1 Tax Regimes**). These tax treaties may be affected by the MLI as of 1 January 2020.

The MLI is a multilateral tax treaty, pursuant to which new provisions and amendments resulting from the BEPS Project – aimed at preventing tax treaty abuses and (more generally) tackling international tax avoidance – can be incorporated into existing bilateral tax treaties. Among others, these provisions and amendments include anti-abuse measures, in short denying tax treaty benefits to cross-border structures that lack sufficient economic reality. These measures may affect international family-owned businesses' eligibility for tax treaty benefits. High net worth individuals making investments through (deemed) passive holding companies may also be affected.

The MLI does not affect Dutch gift and inheritance tax treaties (see again **1.1 Tax Regimes**).

2.3 Forced Heirship Laws

Children of the deceased have forced heirship rights (*legitieme portie*). They can be disinherited but may always make a monetary claim of 50% of the value of the share they would have received on intestacy. This claim needs to be made within five years of the deceased's death; the forced heirship claim lapses after this five-year period, or earlier if an interested party has set a reasonable term during which the claim must be made.

The children's forced heirship rights only apply with respect to the estate of their deceased parent. Therefore, for example, if the deceased was married and the full community of property regime applied, the children are in equal shares entitled to a quarter of the total property of the deceased and the deceased's spouse, since their deceased parent's estate comprised only half of the total property.

A child who claims their forced heirship rights does not become an heir but has a monetary claim against the deceased parent's estate. This claim can be recovered from estate assets. If the estate is insufficient to recover the entire claim, the children can recover their claims from certain gifts that were made by the deceased, such as:

- gifts made within five years preceding the death of the deceased;
- gifts made to descendants; and/or

- gifts made with the intention of infringing upon forced heirship rights.

The children may recover their claim from trust assets if the trust settlement is considered a donation by the deceased. Children can collect their forced heirship rights six months after their parent's death. However, the parent's will may contain a provision that the children can only collect their forced heirship rights after the death of their deceased parent's spouse, registered partner or life partner with whom the parent entered into a notarial co-habitation agreement.

This provision can also apply if the deceased's spouse, registered partner or life partner is not a parent of the children.

A disinherited spouse or registered partner also has some statutory rights:

- a claim of the usufruct of the family home and household effects; and
- a claim of the usufruct of other estate assets if the spouse or registered partner needs this for their maintenance (considering all circumstances).

In December 2020, a report was published by the Centre for Notarial Law of the Radboud University and *Netwerk Notarissen* about the forced heirship rights and the possible abolition of the forced heirship rights. The Dutch government responded mid-2022 stating that there is no urgent and widespread need or practical problem that requires proceeding in the short-term towards an abolition or modification of the forced heirship rights.

In April 2023, the Minister for Legal Protection responded (in a letter to the Dutch Parliament) to two reports published by the Scientific Research and Documentation Centre (*Wetenschappelijk Onderzoek – en Documentatiecentrum*) about child support and supervision of the administration of assets of minors. The Minister announced the preparation of a legislative proposal regarding, inter alia, a deferred start of the five-year period to claim the forced heirship until a descendant has reached the age of 18. It is unclear when the proposal will be put up for consultation.

2.4 Marital Property

Before 1 January 2018, the default marital property regime in the Netherlands was full community of property. This community included all property acquired before or during the marriage, even if acquired by inheritance, legacy or gift, unless the testator or donor had stipulated that the property was private property.

For marriages entered into on or after 1 January 2018, the default community of property is limited to the assets acquired during the marriage and excludes all property individually acquired prior to the marriage, as well as all property acquired by inheritance, legacy or gift.

On 16 February 2024, the Dutch Supreme Court ruled that a community of property to which the spouses have an unequal share, in principle does not lead to gift tax becoming due. The foregoing does not alter the fact that entering into such marriage agreement may, in exceptional cases, qualify as evasion of the law.

Certain assets that are very closely connected to a spouse (eg, compensation for disability) are excluded from the community of property regime (in both the old and new regimes).

End of a Marriage

If the marriage ends by the death of a spouse or by divorce, the community of property is automatically dissolved. All assets must be divided equally between the surviving spouse and the heirs of the deceased spouse in the case of death, or between the ex-spouses in the case of divorce. Entering into a community of property, either by marriage or by amending marriage conditions (see below) during the marriage, is not regarded as a gift that must be taken into account when determining the children's forced heirship rights.

Prenuptial and Postnuptial Agreements

The spouses can agree that the default regime does not apply (prenuptial or postnuptial agreement, or *huwelijksvoorwaarden*). A prenuptial or postnuptial agreement must be incorporated in a deed and executed before a Dutch civil law notary, and may be amended during the marriage.

The spouses can freely negotiate a prenuptial or postnuptial agreement and can, among other things:

- exclude or include any or all of the property from the default community of property regime;
- include a periodical settlement clause regarding saved income after the household expenses have been paid; and/or
- agree on a final settlement clause, according to which, at the end of the marriage by divorce and/or death, the value of property is settled as if the spouses were subject to a community of property.

2.5 Transfer of Property

In principle, the transfer of assets in Box 1 or Box 2 is a taxable event for Dutch personal income tax purposes (see **1.1 Tax Regimes**). The transferor will be taxed on a (deemed) capital gain – ie, the difference between the cost price for tax purposes of the transferred asset and the consideration (or at least the fair market value) received.

For the transferee, the cost price for tax purposes of the acquired asset will be equal to the consideration (or at least the fair market value). Hence, the transferee will only be taxed on future (deemed) capital gains.

The Dutch Personal Income Tax Act 2001 provides for several exemptions to this method of taxation. For example, subject to strict terms and conditions, the levy of personal income tax may, upon request, be deferred in the case of a business reorganisation (Box 1 or Box 2), a transfer of business assets or a substantial shareholding that represents business assets (see **4.2 Succession Planning**). If such deferral is granted, the transferor's cost price for tax purposes is passed on to the transferee. A future (deemed) capital gain will then also include the gain for which deferral was granted.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

In addition to the general inheritance and gift tax allowances mentioned in **1.2 Exemptions**, a few specific exemptions exist to make the transfer of assets to younger generations more feasible.

For Dutch gift tax purposes, a child of the donor gets a one-time increase of their annual exemption to EUR31,813 (in 2024) if they are aged between 18 and 40 at the time of the gift. Alternatively, a child of the donor may also receive a one-time increase to EUR66,268 if the gift relates to expensive study. Opting for one of the

above one-time increases rules out the possibility of opting for the other later.

The Personal Income Tax Act 2001 and the Inheritance Tax Act 1956 provide for the transfer of business assets and substantial shareholdings that represent business assets by the business succession facilities (*bedrijfsopvolgingsfaciliteit* or BOR). These facilities are discussed further in **4.2 Succession Planning**.

Dutch tax legislation also provides for tax allowances for qualifying country estates. The transfer and possession of (shareholdings in) such estates is – in whole or in part – exempt from Dutch personal income tax, gift and inheritance tax, and real estate transfer tax. Country estate holding companies are also exempt from corporate income tax. The application of this exemption is subject to strict terms and conditions.

2.7 Transfer of Assets: Digital Assets

Dutch law does not provide specific rules regarding the succession of digital assets. Cryptocurrency is considered to be an asset that can be transferred from one person to another and can be left to a beneficiary in a will. Dutch law does not provide a solution regarding the practical issues that the transfer of digital assets may have, such as unknown passwords.

According to the Dutch tax authorities, for Dutch personal income tax purposes, income from cryptocurrency may be taxed in Box 1 if the generated income is regarded as income from business activities or other activities that are taxed in Box 1. If the income is not taxed in Box 1, a deemed return over the fair market value of the cryptocurrency will be taxed in Box 3.

If cryptocurrency is transferred by way of inheritance or donation, inheritance tax or gift tax will be levied if the holder of the cryptocurrency was (deemed) resident in the Netherlands either at the time of their death or at the time of the donation. The tax will be levied over the value of the cryptocurrency at that moment and is payable by the beneficiary. See **1.1 Tax Regimes**.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

In the Netherlands, a foundation is often used for tax and estate planning purposes. A foundation under Dutch law is a legal entity, meaning that the liability of persons involved with it (eg, board members) is limited.

A foundation is incorporated through the execution of a notarial deed before a Dutch civil-law notary, containing the foundation's articles of association.

The main characteristics of a Dutch foundation are that:

- it does not have members or shareholders;
- the aim is to realise the objectives (which cannot contravene the law) as described in the articles of association for which the foundation uses its capital; and
- it only has one mandatory corporate body, its board, but can have other bodies such as a supervisory and/or advisory board.

Dutch Foundations as Fiduciaries

Dutch foundations are often used as fiduciary foundations (STAK). When used as such, assets (eg, shares in a company, an art collection or

investments) are transferred to the foundation to be held in administration, against the issuance of depository receipts (*certificaten*) by the foundation. This creates a separation between the legal title to (*juridische gerechtigdheid*) and the beneficial ownership of (*economische gerechtigdheid*) the assets.

The relationship between the STAK and the depository receipt holders is governed by the trust conditions (*administratievoorwaarden*), which are often established by the board of the foundation and imposed on anyone acquiring depositary receipts.

Trust foundations and charitable foundations are often used in wealth and charitable planning.

3.2 Recognition of Trusts

The Netherlands does not have trust law. However, as the Netherlands adheres to the Hague Trust Convention, it does recognise foreign trusts if they are created according to the rules thereof.

In principle, trust assets are not affected by succession law (including forced heirship rules). However, it cannot be ruled out that the settlement of assets into a trust could be regarded as a gift that harms forced heirship claims. This could result in a claim by a forced heir vis-à-vis the trustee.

Under the Hague Trust Convention, a trust may not need to be recognised if it harms forced heirship entitlements.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

Trust Foundation

For Dutch personal income tax and gift and inheritance tax purposes, a Dutch trust foundation (or other trust/trust-like entity) is generally qualified as an SPE, to which the SPE regime applies (see **1.1 Tax Regimes**). Under this regime, the transfer of assets and liabilities for personal income tax purposes is ignored, and the assets and liabilities remain allocable to the donor. As a result, the foundation (the trustee) is not taxed separately.

The SPE regime does not extend to Dutch corporate income tax: for the purpose of this tax, the assets and liabilities of a trust foundation are not allocated to the donor. It should therefore be verified whether the trust foundation is subject to corporate income tax. This would only be the case in so far as a trust foundation carries on a business enterprise or owns Dutch real estate.

If the trust foundation's assets and liabilities consist of portfolio investments or mere shareholdings, it would generally not be subject to corporate income tax.

Fiduciary Foundation

A Dutch fiduciary foundation or STAK (see **3.1 Types of Trusts, Foundations or Similar Entities**) is considered to be the legal owner of the assets and liabilities transferred to it. Beneficial ownership lies with the depositary receipt holders. Therefore, a STAK has a liability to its depositary receipt holders equal to the value of the assets and liabilities it holds in administration and has no equity or taxable income of its own. As such, a STAK is not taxed separately.

If structured properly (through articles of association and trust conditions), a STAK is considered fully transparent for tax purposes. Its depositary receipts are then fully assimilated to the underlying assets. However, if under the trust conditions it is no longer possible to identify the underlying assets with the depositary receipts,

a deemed transfer of assets may be recognised for Dutch tax purposes.

Because of its characteristics – ie, not being taxed separately, flexible articles of association (see **4.1 Asset Protection**) and the assimilation of its assets and liabilities to the depositary receipts – a STAK is often used in wealth/holding structures for family governance purposes.

3.4 Exercising Control Over Irrevocable Planning Vehicles

A Dutch foundation can be used as a civil law trust. This means that an individual donates assets to the foundation and imposes an obligation on the foundation to distribute the assets and the income arising therefrom to certain beneficiaries. The foundation becomes the legal owner of the assets, although it only holds them temporarily.

The foundation can be given discretionary powers to decide when and how it makes distributions to its beneficiaries. The individual can retain some control by being a board member of the foundation or by having the power to remove and appoint board members. The donation to the foundation can also be revocable.

4. Family Business Planning

4.1 Asset Protection

In the Netherlands, a STAK (see **3.1 Types of Trusts, Foundations or Similar Entities**) is often used in estate planning – eg, as a method to safeguard continuity within a company. By transferring the shares in the family business (the top holding company) to a STAK against the issuance of depositary receipts, beneficial ownership is effectively separated from legal ownership. This allows for a transfer to the next generation (eg, by donating the depositary receipts) while remaining in control of the family business through the board of the STAK.

Dividends and future capital gains derived from the shares will accrue to the depositary receipts holders without any inheritance or gift tax being due.

The shareholder can strengthen the continuity of the family business by making specific arrangements regarding the constitution of the board of the STAK once the shareholder has resigned as board member. Because Dutch law contains very few requirements in this respect, the contents of the articles of association of a STAK can be tailored to a great extent (especially regarding the organisation and voting powers).

4.2 Succession Planning

Business Succession

The Inheritance Tax Act 1956 and the Personal Income Tax Act 2001 provide for a tax facility for the transfer of business assets and substantial shareholdings that represent business assets as part of a business succession: the business succession facilities (*bedrijfsopvolgingsfaciliteit* or BOR). Subject to strict terms and conditions, the following inheritance tax and gift tax characteristics apply to the transfer of such assets and shareholdings.

- Assets and shareholdings are valued as a going concern. If the liquidation value of a business exceeds the going concern value, the difference can be conditionally tax-exempt.
- EUR1,325,253 (in 2024) of the going concern value and 83% in excess of EUR1,205,871 of the going concern value can be conditionally tax-exempt.

- For the tax on the remaining 17% of the going concern value in excess of EUR1,325,253, a conditional extension for payment for a period of ten years can be obtained.

One of the conditions is that the business must be continued for a period of five years after the gift or the death of the deceased.

In addition, the levy of Dutch personal income tax may be (partly) deferred if certain requirements are met. Deferral is only possible for the transfer of business assets (Box 1) and substantial shareholdings that represent business assets (Box 2). For both boxes, the main requirement is that the successor has been working with the enterprise for at least 36 months prior to the transfer. For business assets and substantial shareholdings that represent business assets acquired from an estate at death, the "36-month requirement" does not apply.

There is often discussion on whether business succession facilities can be applied to real estate portfolios (including substantial shareholdings in real estate companies). In most cases, the Dutch tax authorities take the position that real estate portfolios are to be considered passive investment assets (instead of business assets) to which business succession facilities cannot be applied. Recent case law indicates that, under certain circumstances, this point of view may be too strict; if certain requirements are met, real estate portfolios could qualify as business assets. Those qualifying assets should therefore be eligible for business succession facilities. Nevertheless, the Dutch government introduced a law as of 1 January 2024 under which real estate portfolios qualify as passive investment assets to which the business facilities cannot be applied.

The Dutch government has also announced a further revision of the business succession facilities as of 1 January 2025, making them less attractive. Among other significant measures, it is proposed to reduce the conditional tax exemption from 83% to 70% to the extent that the going concern value exceeds EUR1.5 million.

On 19 April 2024, a legislative proposal regarding the business succession facilities has been put up for consultation. The draft proposal limits access to the business succession facilities to ordinary shares with a minimum interest of 5% of the issued capital. Consequently, the facility is no longer open to substantial shareholders holding other classes of shares, such as trading stock. Furthermore, it is proposed to loosen some of the strict terms and conditions of the business succession facilities and a measure to prevent misuse. The envisaged effective date is 1 January 2026.

4.3 Transfer of Partial Interest

For Dutch income tax and gift and inheritance tax purposes, a partial interest in an entity is taken into account for at least its fair market value at the time of transfer.

The fair market value of listed securities is based on the closing price as shown in the Official List of a certain exchange on the day prior to the transfer. For other (partial) interests, the fair market value has to be determined on a case-by-case basis. A taxpayer may take into account a discount for lack of marketability and control, for example, if the shareholding represents a minority interest or is subject to a right of first refusal (*aanbiedingsregeling*). A blocking clause (*blokkeringsregeling*) contained in the articles of incorporation is generally not considered to be of relevance.

It should be emphasised that case law on this point is highly casuistic. Whether a discount may be taken into account therefore strongly depends on the facts and circumstances of each case and is likely to be a topic of discussion with the Dutch tax authorities.

5. Wealth Disputes

5.1 Trends Driving Disputes

In general, the number of disputes concerning Dutch inheritance law is limited, although growing. This is mainly because the inheritance law is relatively modern (the current legislation was introduced in 2003) and a deceased has to dispose of their estate by notarial deed. To execute such a deed, a Dutch civil law notary, among others, has to verify a person's capacity and whether that person's wishes are correctly incorporated in their will.

A growing number of disputes relate to the use (or abuse) of a durable power of attorney (see **8.1 Special Planning Mechanisms**).

Regarding Dutch tax law, wealth disputes, among others, concern the Dutch personal income tax on a deemed annual yield in Box 3 (see **1.1 Tax Regimes**). Box 3 taxation has been subject to much (social) debate. For 2017 and 2018, the Supreme Court ruled that the Box 3 income tax system is in violation of the ECHR. On 6 June 2024, the Supreme Court ruled that the flat-rate savings option still result in a violation of the right to property and the prohibition of discrimination in cases where the deemed (flat-rate) return is higher than the actual return.

There are also tax disputes regarding the applicability of the Dutch business succession facilities, mainly in relation to real estate. Reference is made to this in **4.2 Succession Planning**.

5.2 Mechanism for Compensation

This is not applicable in the Netherlands.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

This is not applicable in the Netherlands.

6.2 Fiduciary Liabilities

This is not applicable in the Netherlands.

6.3 Fiduciary Regulation

This is not applicable in the Netherlands.

6.4 Fiduciary Investment

This is not applicable in the Netherlands.

7. Citizenship and Residency

7.1 Requirements for Domicile, Residency and Citizenship

Foreign nationals who wish to reside in the Netherlands for more than three months need a residence permit. An application must be filed with the Immigration and Naturalisation Service (IND). Most foreign nationals need to apply for a regular provisional residence permit (MVV) before entering the Netherlands.

For a stay of less than three months, no residence permit or MVV is required; a visa will suffice. Specific rules apply for EU (except for Romanian and Bulgarian) nationals, European Entrepreneurial Region (EER) nationals and Swiss nationals, who do not require a permit.

Employers are required to obtain a work permit before hiring a non-EU employee. In most cases, this work permit will only be granted if it is established that the employer was unable to find suitable personnel in the Netherlands or elsewhere in the EU. An exemption applies to highly skilled migrants (eg, a migrant who has completed a master's or post-doctoral programme or obtained a PhD at a designated educational institution abroad), and certain scientific researchers. Certain professions may only be practised in the Netherlands if the employee has the correct certificate.

If a foreign national stays in the Netherlands for a period of more than four months, they are obliged to register with the Dutch Municipal Personal Records Database (*Basisregistratie, Personen* or BRP). In order to obtain (or regain) Dutch citizenship, an individual who has reached majority has, in general, two alternative routes to follow: the "option procedure" or "naturalisation".

The option procedure is only available to certain foreign nationals but is the fastest and easiest way to become a Dutch citizen, taking approximately three months to complete. For an example, an individual may qualify for this procedure after living in the Netherlands for a certain period of time or if they are a former Dutch citizen.

The process of naturalisation may take up to one year. Official documents – such as a passport or residence permit, marriage certificate and a child's birth certificate – need to be submitted, along with a civic integration certificate.

7.2 Expeditious Citizenship

There are no expeditious means for an individual to obtain Dutch citizenship.

8. Planning for Minors, Adults with Disabilities and Elders

8.1 Special Planning Mechanisms

Anyone under the age of 18 in the Netherlands is considered a minor. A minor can own assets, which are managed by their parents or guardian. A testator or donor can also appoint someone other than the minor's parents/guardian as administrator of the assets.

The legislative proposal as discussed in **2.3 Forced Heirship Laws** will also contain the replacement of the parental right of enjoyment with a determination by the sub-district court to what extent a parent may use (income from) assets of the child.

In the case of loss of capacity, a person can be put under legal restraint by a sub-district court. In this case, a legal guardian is appointed to represent the incapacitated person. A sub-district court can also impose a fiduciary administrator if an adult cannot administer their own property.

To plan for loss of capacity, a "living will" can be made. A living will usually provides for certain powers of attorney and may also provide for certain medical provisions (such as a "do not resuscitate order").

A durable power of attorney, granted before the loss of capacity, remains valid. Foreign powers of attorney are also generally recognised. For certain legal acts, such as mortgaging immovable property in the Netherlands, a notarial power of attorney is required.

8.2 Appointment of a Guardian

In the case of loss of capacity, a person can be put under legal restraint by a sub-district court.

A sub-district court order is also required if an adult is to be put under fiduciary administration.

The parents or guardian of a minor (a child under 18) need a sub-district court's authorisation for certain legal acts that significantly affect the minor's property, such as donations on behalf of the minor or the disposition of assets other than money.

8.3 Elder Law

In the case of loss of capacity, a person can be put under legal restraint. A legal guardian is appointed to represent the incapacitated person. To plan for loss of capacity, a person can also make a living will.

If an adult cannot administer their own property, a fiduciary administrator can be imposed to administer that adult's property.

A durable power of attorney, given before the loss of capacity, remains valid. Although foreign powers of attorney are generally recognised, a notarial power of attorney is required for certain legal acts, such as mortgaging immovable property in the Netherlands. See **8.1 Special Planning Mechanisms** and **8.2 Appointment of a Guardian**.

9. Planning for Non-traditional Families

9.1 Children

The laws in the Netherlands stipulate that the determining factor for a child's legal position is whether "legal family ties" exist between the child and the deceased.

Legal family ties between the child and their mother arise through birth or adoption. Legal family ties between the child and their father arise through:

- birth within wedlock (or during a registered civil partnership);
- formal recognition of the child by the father;
- judicial establishment of paternity; or
- adoption.

If a child has legal family ties with a parent, regardless of how they arose, the child is an intestate heir and is entitled to a statutory share (see **2.3 Forced Heirship Laws**).

Biological children who have no legal family ties and stepchildren are not intestate heirs and are not entitled to a statutory share. They can, however, be appointed as beneficiaries in a will and under circumstances where the gift or inheritance tax rate applicable to children may apply.

Modernising Dutch Law

In 2016, the Government Committee Rethinking Parenthood published its recommendations for modernising Dutch law with respect to (among others) multi-parenthood and surrogate motherhood. The Committee recommended providing legislation:

- allowing a child to have more than two legal parents (ie, "multi-parenthood"); and
- specifically aimed at surrogate motherhood.

In 2019, the Dutch government published its appraisal of these recommendations. The government decided it will not pursue multi-parenthood (instead, it proposes shared custody for those involved), but will follow through on legislation for surrogate motherhood. The first legislative proposal has already been made.

A new law regarding the possibility of a double surname entered into force on 1 January 2024. A first-born child can bear both parents' names in an order to be determined freely. Children born afterwards will have to be called the same. Transitional law for children born on or after 1 January 2016 applies.

9.2 Same-Sex Marriage

In the Netherlands, same-sex couples can marry or enter into a registered civil partnership. They are treated equally to heterosexual couples in relation to property, gifts and inheritances, and tax law.

10. Charitable Planning

10.1 Charitable Giving

Gifts and inheritances made by a Dutch resident to a designated charitable organisation (*algemeen nut beogende instelling* or ANBI) are exempt from gift and inheritance tax. A charity (usually a foundation or *stichting*) may qualify as an ANBI if it meets certain strict requirements, the most important being that at least 90% of the actual activities support the public interest.

In addition, gifts and certain "periodical gifts" to ANBIs are also deductible for personal income tax purposes. A deduction for personal income tax purposes is only allowed in so far as the gift exceeds 1% but does not exceed 10% of the donor's total income. For gifts to cultural ANBIs, a multiplier of 25% (with a maximum increase of EUR1,250) applies. As of 1 January 2023, the deductibility of periodical gifts to ANBIs is limited to EUR250,000 per calendar year. To qualify as a periodical gift, the gift should consist of at least five fixed (regarding the amount) and regular (regarding instalments, which should be payable in – at least – five calendar years) donations, and can be made by notarial deed or private instrument.

For resident companies, gifts to ANBIs are deductible for corporate income tax purposes. Gifts – including gifts made in connection with the charitable wishes of the shareholder – are deductible, up to a maximum of 50% of a company's profit, as long as this is not more than EUR100,000. In addition, in 2024, gifts made by a resident company to an ANBI are not treated as (deemed) distributions to the shareholder(s) of the company and are thus not subject to dividend withholding tax or Box 2 income tax.

A gift received from an ANBI is exempt from gift tax, provided the gift is made according to the charitable purpose of the ANBI. ANBIs do not qualify as SPEs for Dutch personal income tax purposes (see **1.1 Tax Regimes**) and are generally not subject to Dutch corporate income tax.

ANBIs do need to comply with certain public disclosure requirements. Among other information, ANBIs need to make available to the public the composition of the board, a current report of past and contemplated activities, and a financial report. ANBIs are also subject to CRS obligations and must be registered in the UBO Register (see **1.6 Transparency and Increased Global Reporting**).

10.2 Common Charitable Structures

In the Netherlands, the most commonly used charitable organisation is an ANBI (see **10.1 Charitable Giving**). It should be noted, however, that one of the requirements for charitable organisations to qualify as an ANBI is that assets are actually spent according to the charitable objective. Where a charitable organisation also has (long-term) investments, the Dutch tax

authorities may take the position that the charitable organisation does not comply with this "spending requirement".

In this context, a committee (set up by the previous administration) concluded that new legislation should be implemented that requires ANBIs to carry out a certain minimum number of activities or spend a minimum amount of money on the public interest.

Recently, more guidance on investments made by ANBIs has been provided by means of an order from 15 March 2024 by the State Secretary for Finance (*Besluit algemeen nut investeringen*).

The conditions an expense must meet to qualify as being in the public interest are – in short – as follows:

- the primary purpose of the investment is to directly achieve or promote one or more of the ANBI's public benefit purposes as set out in its articles of association;
- the investment is not a business activity with the primary purpose of deriving benefits thereof;
- the whole amount of the investment must be used by the receiver for the purpose of one or more activities associated with the purpose of the ANBI;
- a (person associated with a) director of the ANBI is in no way involved as founder, director, shareholder, other capital provider or employee with the organisation that receives the investment; and
- the ANBI recognisably includes the investment in its financial records as public interest investment, and also includes it in its policy plan.

An ANBI that does not meet aforementioned conditions, must report the inspector within six months after publication of the order, thus ultimately 2 October 2024.

For investments made by an ANBI that do not meet the aforementioned conditions and therefore do not qualify as an expense in the public interest, the "spending requirement" requires an assessment whether the investments are otherwise reasonably necessary for the continuity of the planned activities in accordance with the purpose of the ANBI.

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