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NETHERLANDS: An Introduction to Private Wealth Law

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Overview of the HNW tax landscape in the Netherlands

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The Netherlands is not publicly known for its favourable tax system for high net worth (HNW) individuals. Although on the face of it the Dutch tax rates are not competitive, through special regimes and decent tax planning the Netherlands can be a nice location for HNW individuals to live and work. Below we will briefly describe the current Dutch HNW landscape from a tax and privacy perspective. We will also shed some light on the expected future changes to the Dutch tax system.

Current Dutch tax environment

The Dutch income tax system is divided into so-called boxes, in which different income categories are taxed at different rates:

• In Box 1, income and gains from labour and the private home are taxed at progressive rates up to 49.5%.

• In Box 2, income and gains from substantial interest shares (generally 5% or more) are taxed at a flat rate of 26.9%.

• In Box 3, income from savings and investments have a deemed return of 5.69% taxed at 30%. This is effectively an annual net wealth tax of maximum 1.7%, and actual income and gains are not further taxed.

The Netherlands can be a favourable country for high net worth (HNW) individuals to live and work. Through application of the so-called 30% ruling, temporary residents are able to be treated as non-residents for a period of five years for Box 2. This means that income and gains from non-Dutch substantial interest shares are exempt from the 26.9% Box 2 tax. Also net worth (Box 3) is not taxed during the first five years of Dutch residency. As a general rule, Dutch resident individuals with a 30% ruling are still eligible for the extensive Dutch tax treaty network.

Through this 30% ruling regime, the Netherlands is often more attractive than the tax systems of jurisdictions that are better known for their HNW tax systems, like for instance the UK or Switzerland.

If the five year period of the 30% ruling has lapsed, it is possible to obtain a step up in basis for the Box 2 shares. No Box 2 exit tax applies to non-Dutch shares if a foreign national leaves the Netherlands again within eight years.

The Dutch inheritance and gift tax rates are reasonable with a 20% top rate for direct descendants.

Within the Dutch tax authority a special HNW team is able to act in a service minded and knowledgeable way to questions that are typical for HNW individuals. Advance tax rulings are possible to obtain.

Transparency vs. privacy

Like all other EU jurisdictions, the Netherlands has recently implemented a public UBO register for individuals holding a more than 25% ownership or voting stake in Dutch entities. A public UBO register for trusts and the like will be implemented in late 2021/early 2022. Through these EU measures, transparency has somewhat eroded the right to privacy. Nevertheless it is still possible to create holding entities that have no legal obligation to publish annual accounts at the Dutch trade register.

Future changes to existing Dutch tax system

Following the COVID health crisis it may be expected that the current Dutch tax rates will not be lowered in the coming years.

There is a debate on how net wealth should be taxed in future, so it is likely that the Box 3 system of taxation will change. Since the Box 3 deemed income of maximum 5.69% is not easily made on more conservative investments, it is being considered to change the system to a taxation based on actual returns. Such a system will be less favourable in cases where returns are higher than the deemed return, since in the current Box 3 system these actual high returns are not further taxed.

It is quite common for Dutch HNW individuals to lend funds from their company structure to fund private investments. Through this leverage the Box 3 tax base is lowered and the taxation on the actual return limited. In order to avoid this planning opportunity, in 2023 lending from Box 2 entities will be maximized at EUR500,000. Loans to finance the private dwelling are excluded from this limitation. Following the 2023 law, HNW individuals will have to refinance their internal loans with external (bank) loans or declare a dividend to pay off the internal loan. Such dividend is taxed at the 26.9% Box 2 tax rate.

There is pressure from family owned businesses to simplify the current tax system of the transfer of a business enterprise to the next generation. Although the basic facilities are favourable, being a roll-over of the Box 2 x base and an 83% exemption for gift or inheritance tax, the conditions that apply to the business transfer facilities are considered too strict.

Final remark

Taxation should never be a decisive factor in determining the residency of a high net worth individual. Nevertheless, if residency in the Netherlands is considered, the Dutch tax system can compete with jurisdictions that are more known for their favourable tax regimes.

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Arcagna is a boutique private client law firm based in Amsterdam and Rotterdam. It exclusively focuses on providing high net-wo ...

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