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Private Client **2020**

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9th Edition

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ISBN 978-1-83918-021-7
ISSN 2048-6863

Published by

glg global legal group

59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
info@glgroup.co.uk
www.iclg.com

Group Publisher
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Printed by
Ashford Colour Press Ltd.

Cover image
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Paper from
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FSC® C011748

International **Comparative** Legal Guides

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Ninth Edition

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Netherlands

Arcagna B.V.



Nathalie Idsinga



Arnold van der Smeede

1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Residence is the main connecting factor, see question 1.3. Domicile is not a concept in Dutch tax law.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

See question 1.4.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Residence determines liability to personal income tax and inheritance and gift tax in the Netherlands.

Individuals who qualify as a tax resident are subject to personal income tax in the Netherlands on their worldwide income. Non-residents are only subject to Dutch personal income tax on Dutch-source income.

Dutch inheritance tax is due on the worldwide assets of a deceased that qualified as a Dutch tax resident on the moment of his death, and gifts made by Dutch tax residents are subject to gift tax in the Netherlands. Non-residents are not subject to Dutch inheritance and gift tax, unless they are deemed to be Dutch resident for inheritance and/or gift tax purposes (see questions 1.5 and 2.1).

For completeness sake we note that the residence of the heir, legatee, donee or beneficiary in any other capacity is not relevant for Dutch inheritance and gift tax.

1.4 If residence is relevant, how is it defined for taxation purposes?

Under Dutch tax law, all relevant facts and circumstances should be taken into account to determine where a person is a tax resident. This is an open norm, that is determined on a case-by-case basis. The Dutch supreme court has ruled that an individual is a Dutch tax resident if he has a durable (*‘duurzame’*) personal connection with the Netherlands. Relevant factors include if a person has a home available to him, where his family lives, and where his income and wealth are situated.

Under Dutch domestic law it is possible that an individual is a tax resident in more than one country.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is only relevant for fictitious residency for Dutch inheritance and gift tax. Under the fictitious residency rules, a Dutch citizen remains a tax resident for inheritance and gift tax purposes for a period of 10 years following his emigration from the Netherlands.

1.6 If nationality is relevant, how is it defined for taxation purposes?

Nationality is defined by citizenship.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Non-resident individuals are subject to Dutch personal income tax on Dutch-source income.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

The 2019 rates for Dutch inheritance and gift tax are as follows:

Value of the gift/ inheritance	Percentage of the value that a partner and (foster- or step) children pay	Percentage of the value that grandchildren and other descendants pay	Percentage of the value that other people
€0 – €124,727	10%	18%	30%
€124,727 and more	20%	36%	40%

Inheritance tax is due on the value of the deceased's assets at the moment of his death, if the deceased was a Dutch tax resident.

Gift tax is due on the value of gifts made by Dutch tax residents.

Fictitious residence rules may apply, see question 1.5. In addition, anyone who has previously lived in the Netherlands regardless of his nationality is deemed to be a resident for Dutch gift tax purposes for a period of one year following his emigration.

Limited exemptions for spouses and (grand)children apply. The spousal exemption for inheritance tax is €650,913 (2019) and for gift tax €2,173 (2019). For (grand)children, the exemption for inheritance tax is €20,616 (2019) and for gifts to children an exemption of €5,428 (2019) applies. The gift tax exemptions are annual exemptions. Transfers to recognised charities are fully exempt from inheritance and gift tax.

The Netherlands does not have a separate wealth tax. However, for personal income tax purposes a deemed income is taken into account on the net value of a person's savings and investments per 1 January of each year (box 3, see question 2.2).

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Individuals who become established as a Dutch tax resident are liable to personal income tax on their worldwide income. The Dutch personal income tax has three “boxes”:

Box 1: income from a trade or business, employment, periodic payments and home ownership. Box 1 income up to €68,507 is taxed at a rate of 37.35%, the remainder is taxed at a rate of 49.5% (2020). Deductions, such as mortgage interest deduction or certain charitable donations, are deductible at a rate of 46% (2020).

Box 2: income and capital gains from a substantial shareholding. An interest of at least 5% in a company with a capital divided into shares (such as a limited liability company) qualifies as a substantial shareholding. The box 2 rate is 25% (2019). This rate will be increased to 26.25% (2020) and 26.9% (2021).

Box 3: income from savings and investments. Annually, a progressive deemed income based on the net value of these assets is taken into account. An exemption of €30,360 (€60,720 for spouses filing jointly) applies. The progressive deemed income is calculated as follows:

Tax basis	Deemed income	Tax rate	Effective tax rate
€0 – €71,650	1.8%	30%	0.54%
€71,650 – €989,736	4.22%	30%	1.266%
€989,736 and more	5.33%	30%	1.599%

The actual income that is realised with the savings and investments is not taxed.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Local taxes apply to the use and ownership of real property.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

VAT

The European VAT directive is implemented in the Netherlands.

Generally, all goods and services provided by a Dutch entrepreneur are subject to VAT. Exemptions may apply.

The general VAT rate is 21% (2020). A lower rate of 9% (2020) applies to certain specific goods, such as food and books.

Real Estate Transfer Tax (RETT)

Acquisitions of Dutch real property are subject to 6% RETT (2020), payable by the buyer. A lower rate of 2% (2020) applies to residential properties. The acquisition of a substantial shareholding ($\geq 1/3$ interest) in companies that primarily ($\geq 50\%$ of assets) hold Dutch real estate may also be subject to RETT in the Netherlands.

Other taxes

As an EU Member State, EU customs regulations are applicable.

Excise duties are applicable on certain specific goods, such as tobacco and alcohol.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Since 2010, an anti-avoidance regime for trusts and similar instruments applies. Based on this regime, the assets in an irrevocable discretionary trust (or similar instrument) are attributed to the settlor for Dutch personal income tax and inheritance and gift tax purposes (see question 8.2).

An anti-deferral regime applies to substantial shareholders of low taxed passive foreign investment companies. For Dutch personal income tax purposes, the shareholders of these companies are deemed to receive an annual income from these companies of 5.6% (2019) of the value of the shareholding per 1 January, taxed at 26.25% (2020). If and insofar no actual income is received, the deemed income is added to the tax basis in the shares of the shareholder. The same regime applies to shareholders of certain exempt Dutch investment companies.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Based on Dutch case law, there is a general anti-avoidance rule called *fraus legis*.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

The EU mandatory disclosure directive is applicable in the Netherlands.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Pre-entry planning includes making donations before moving to the Netherlands – with the possibility of keeping control of the donated assets.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

It is important to begin with timely pre-entry planning, we

recommend at least six months prior to the year in which a person becomes a Dutch tax resident. The reason for this is that for certain types of income (e.g. box 3) 1 January is a decisive date, even if a person becomes a resident afterwards.

The Netherlands will provide a step-up in tax basis for shares in non-Dutch companies that are taxed in box 2. For Dutch companies (held directly or indirectly) pre-entry planning is required to obtain a step-up in tax basis.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

No, it cannot.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

Investments are generally taxable in box 3 (see question 2.2). The actual income (including capital gains) from these investments is not taxed.

Income (including capital gains) received from a substantial shareholding are taxed in box 2 at a rate of 26.25% (2020, see question 2.2).

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Generally, the import of private assets that were used prior to moving to the Netherlands is exempt from import tax. Exceptions may apply.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

The purchase of Dutch residential property is subject to 2% (2020) Dutch Real Estate Transfer Tax (see question 2.4).

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Corporations that qualify as a Dutch tax resident are subject to Dutch corporate income tax. A corporation is considered to be a tax resident if its effective management and control are in the Netherlands. In addition, corporations that are incorporated under Dutch law are always considered to be a Dutch tax resident for corporate income tax purposes under a fiction in the Dutch Corporate Income Tax Act.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Dutch resident corporations are subject to corporate income tax in the Netherlands. Taxable profits up to €200,000 are taxed at a rate of 16.5% (2020). Insofar the taxable profit exceeds this amount, a rate of 25% applies.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

If a branch qualifies as a permanent establishment, the income attributable to the permanent establishment is subject to Dutch corporate income tax.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

The Netherlands has an extensive network of around 127 bilateral income tax and capital gains tax treaties. The aim of these tax treaties is to avoid double taxation.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Generally, the Dutch tax treaties are in accordance with the OECD 1 model treaty. The OECD multilateral instrument (MLI) entered into effect in the Netherlands on 1 July 2019.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

The Netherlands has concluded seven estate tax treaties, with Finland, Sweden, Switzerland, the US, Israel, the UK and Austria.

The treaties with Austria and the UK also cover gift tax.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The estate and gift tax treaties generally do not follow the OECD model.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The European inheritance law regulation is applicable to all estates devolved after 17 August 2015. Pursuant to this regulation, cross-border inheritances are treated under the single law of one country. If no valid choice of law is made in the last will of the deceased, the law of the deceased's last country of residence is applicable to the inheritance. A choice of law is valid when the chosen law is the law of the country of nationality.

In addition, since 29 January 2019, the European marital property regime regulation is applicable to all marriages concluded after this date. Under this regulation, the marital regime of the country of the spouses' first residence is applicable, unless they make a valid choice for the law of a different country in their nuptial agreement.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

There are no particular rules for Dutch real estate.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

A last will can be made by individuals who have the legal capacity to perform judicial acts as well as minors who have reached the age of 16, and under certain conditions persons who are placed under adult guardianship.

Under Dutch law, in principle it is possible to completely disinherit your descendants. However, under forced heirship rules, descendants have a right to at least half of the intestate share. If a descendant invokes the forced heirship rules, he does not become an heir, but he receives a monetary claim on the estate.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

The Netherlands has ratified the Hague Convention on the Law applicable on Trusts and their recognition.

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

The tax treatment of trusts depends on the characteristics of the trust.

The assets in and income of an irrevocable discretionary trust are attributed to the settlor for Dutch personal income tax and inheritance and gift tax. After the settlor dies, the assets in the trust are attributed to his heirs. If the settlor is a (fictitious) Dutch tax resident, the heirs are deemed to inherit the trust assets and, as such, subject to Dutch inheritance tax. For these attribution rules, it is not relevant who the beneficiaries of the trust are.

Distributions of the trust are treated as a taxable gift from the settlor to the beneficiaries. If the settlor is a (fictitious) Dutch tax resident, the distributions are subject to Dutch gift tax. The same applies for the heirs after the death of the settlor.

If beneficiaries have a fixed interest in a trust, this interest needs to be qualified for Dutch tax purposes. In most cases, a fixed interest right is part of the box 3 assets of the beneficiary.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Under certain conditions, a trust can be ignored for succession and forced heirship purposes (this depends on several circumstances).

8.4 Are private foundations recognised/permitted in your jurisdiction?

The Netherlands recognises foundations.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Foundations are generally exempt from Dutch corporate income

tax as long and insofar as they do not conduct an active business. Even if a foundation is not subject to Dutch corporate income tax, it is generally treated as a separate entity and, e.g. gifts from a Dutch tax resident to a non-charitable foundation, is subject to Dutch gift tax.

In the Netherlands, foundations may be used to separate the economic and legal ownership of assets. These types of foundations are, if certain conditions are met, ignored for tax purposes, and the underlying assets are attributed to the economic owners of the assets. In addition, if the founder of the foundation or another person has the capacity to govern the assets of the foundation as if they were his own private assets, the foundation may also be ignored for tax purposes. In that case the assets are attributed to the person who has control over the assets.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Under certain conditions a foundation is ignored for succession and forced heirship rules.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Yes, both are permitted and recognised under Dutch law.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Generally, as from 1 January 2018, a limited community of property regime applies. Under this regime all assets (and associated debts) acquired during the marriage are part of a community of property. Also jointly-owned assets that were acquired prior to the marriage become part of the community of property. Assets that are acquired under the law of succession or as a gift and pension right are not part of the community of property, even if they are acquired during the marriage.

It is possible to apply a different property regime under a nuptial agreement. Spouses have great freedom to create and apply alternatives regimes, such as excluding any community of property, creating a full community of property with different shares (i.e., a 30–70 community of property) or determining that at the end of the marriage (by death only or also in case of a divorce) a settlement will be due. Such a settlement results in a monetary claim (and not a community of property).

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Yes. Under Dutch law, pre-/post-marital agreements must be in the form of a notarial deed in order to be valid.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

A distinction is made between (ex-)spouse and child support obligations.

Whether spousal alimony is due, depends on the facts and circumstances and needs to be determined on a case-by-case

basis. For divorces that have been petitioned in or after 2020, spousal alimony is paid for a period of half the time that the marriage lasted, with a maximum of five years. If one of the spouses does not work and/or if the spouses have young children together, the spousal support may be for a longer period.

Nuptial agreement clauses that determine that no spousal support will be due are not valid under Dutch law. It is possible to renounce alimony rights upon divorce.

Child support is generally due as long as the children are underage.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Non-EU/EER individuals that need a visa to enter the Netherlands need a residence permit if they want to stay for a period longer than 90 days. It depends on the country of citizenship if a person needs a visa to travel to the Netherlands.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

The Netherlands does have different categories of visa, it may be possible to obtain an investor visa if certain conditions are met.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Individuals that are of age and that have legally lived in the Netherlands for at least five years may be able to obtain Dutch nationality, as long as they meet certain requirements. These requirements may include the ability to speak Dutch. Generally, in order to obtain the Dutch nationality, a person must relinquish their previous nationality.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

See question 1.5.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Employees with specific know-how may apply for a so-called 30%-ruling. Under this ruling, 30% of an employee's wage is exempt from tax. Also, persons with a 30%-ruling may be treated as non-resident taxpayers for box 2 and box 3 income.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Most income tax treaties (see question 6.1) include a provision for the exchange of information. In addition, the EU Directive on Administrative Cooperation in the Field of Administration, the EU Directive on Taxation of Savings Income in the Form of Interest Payments, the OECD Common Reporting Standard and the US-NL FATCA Agreement apply.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

All person involved with a trust or similar instrument must notify the Dutch tax administration. The notification is made in the personal income tax return.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Dutch resident entities are registered in the commercial register of the chamber of commerce (*Handelsregister*). In this register the board members of legal entities are registered, as well as the sole shareholder. If there are multiple shareholders, none of the shareholders are registered.

Under the amended fourth EU Anti-Money Laundering Directive, the Netherlands will implement a register for ultimate beneficial owners of companies and other entities incorporated under Dutch law (UBO-Register). This register will include the details of the ultimate beneficial owners of companies. It is announced that the UBO-Register will be implemented by 10 January 2020. In addition to the UBO-Register, it is announced that a register for trusts and similar instruments will be implemented in March 2020.



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Arcagna is an Amsterdam- and Rotterdam-based tax boutique and notary office that is specialised in local and international tax advice to high-net-worth individuals and family businesses. Arcagna uses its thorough and broad tax knowledge as a starting point for creative but always practical solutions. These solutions are implemented from A to Z, both from a tax and a corporate law perspective. In international cases Arcagna employs its network of leading independent firms throughout the world.

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