

International Comparative Legal Guides



Private Client 2021

A practical cross-border insight into private client work

10th Edition

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Netherlands



Nathalie Idsinga



Wouter Verstijnen

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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/her death. 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 (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, which is determined on a case-by-case basis. The Dutch supreme court has ruled that an individual is a Dutch tax resident if he/she has a durable (*duurzame*) personal connection with the Netherlands. Relevant factors include if a person has a home available to him/her, where the family lives, where income is generated and where wealth is 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 relevant for deemed residency for Dutch inheritance and gift tax. Under the deemed residency rules, a Dutch citizen remains a tax resident for inheritance and gift tax purposes for a period of 10 years following his/her emigration from the Netherlands.

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

It 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 such as, among others, a Dutch enterprise, Dutch real estate, Dutch labour income and a $\geq 5\%$ shareholding in an entity with an effective place of management in the Netherlands.

1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?

The Netherlands has entered into bilateral agreements with Belgium and Germany on the taxation of cross-border workers. These agreements stipulate that the taxation rights on the salary of cross-border workers should not change in connection with working from home as a result of the coronavirus pandemic. In addition, the Dutch state secretary of finance has indicated to endorse the OECD analysis on the coronavirus pandemic. This indicates that the effective place of management of entities and the tax residence of natural persons should not change as a consequence of travel limitations related to the coronavirus pandemic.

2 General Taxation Regime

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

The 2020 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 pay |
|-------------------------------|---|--|---|
| €0 – €126,723 | 10% | 18% | 30% |
| €126,723 and more | 20% | 36% | 40% |

If the deceased was a Dutch tax resident, inheritance tax is due on the value of the deceased's assets at the day of death,

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

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

Limited exemptions for spouses and (grand)children apply. The spousal exemption for inheritance tax is €661,328 (2020) and €2,208 (2020) for gift tax. For (grand)children, the exemption for inheritance tax is €20,946 (2020). For gifts to children, an exemption of €5,515 (2020) applies, whereas grandchildren are eligible for an exemption of €2,208 (2020). The gift tax exemptions are annual. 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 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 Dutch tax residents 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% (2020) and 31.1% (2021); 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) and of 43% (2021).

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 26.25% (2020). This rate will be increased to 26.9% (2021).

Box 3: income from savings and investments. Annually, a progressive deemed income based on the net value of these assets (assets minus debts) is taken into account. An exemption of €30,846 (€61,692 for partners filing jointly) applies (2020). The progressive deemed income (2020) is calculated as follows (please note that this scheme is updated each year):

| Tax basis | Deemed income | Tax rate | Effective tax rate |
|----------------------|---------------|----------|--------------------|
| €0 – €30,846 | 0% | 30% | 0% |
| €30,846 – €72,797 | 1.80% | 30% | 0.54% |
| €72,797 – €1,005,572 | 4.22% | 30% | 1.27% |

| Tax basis | Deemed income | Tax rate | Effective tax rate |
|---------------------|---------------|----------|--------------------|
| €1,005,572 and more | 5.33% | 30% | 1.6% |

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

Increasing the standard rate of RETT to 8% in 2021 and to limiting the lower rate of 2% to acquisitions of residential properties that the acquirer will use as main residence has been proposed. It has also been proposed to introduce an exemption of RETT for starters on the housing market. This exemption will be applicable to (i) persons between 18 and 35 who, (ii) acquire a residential property that will be used as their main residence, and (iii) have not applied this exemption before.

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 5.33% (2020) of the value of the shareholding per 1 January, taxed at 26.25% (2020). If and insofar as 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 to keep control over the donated assets.

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

It is important to timely begin with 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 made by a non-resident in your jurisdiction?

Investments are generally taxable with personal income tax in box 3 (see question 2.2). For non-resident taxpayers, the basis for taxation is limited to the net value (assets minus debts) of (i) real estate situated in the Netherlands, (ii) rights that directly or indirectly relate to Dutch real estate, including rights that relate to the exploration or exploitation of Dutch natural resources, and (iii) participations in the profits of an enterprise which is effectively managed in the Netherlands insofar as the income is not subject to tax in Box 1 or Box 2. The actual income (including capital gains) from these investments is not taxed.

Income (including capital gains) received from a substantial shareholding in a company with its effective place of management in the Netherlands is taxed in box 2 at a rate of 26.25% (2020) and 26.9% (2021), see question 2.2).

Entities with effective place of management in the Netherlands are obliged to withhold 15% dividend withholding tax on profit distributions. This tax may be offset against Dutch

personal income tax that is due in respect of shareholdings that are effectively subject to Dutch personal income tax.

International tax treaties may limit the aforementioned Dutch taxation rights.

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 by non-residents?

The purchase of Dutch residential property is subject to 2% (2020) Dutch RETT (see question 2.4). As of 2021, Dutch RETT may be increased to 8% if the property is not used as the purchaser's main residence.

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.

Foreign corporations are also subject to Dutch corporate income tax if they own Dutch real estate and/or rights that directly or indirectly relate to Dutch real estate and rights that relate to the exploration or exploitation of Dutch natural resources. If a foreign corporation holds a substantial interest (see question 2.2) the income from that interest, including income from debt claims on this participation, may, subject to applicable tax treaties, also be subject to Dutch corporate income tax. Dutch corporate income tax is also due if a foreign corporation holds participations in the profits of an enterprise which is effectively managed in the Netherlands, is a director of a corporation with effective place of management in the Netherlands or is active on the Dutch continental shelf. International tax treaties may limit the aforementioned Dutch taxation rights.

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 25% corporate income tax in the Netherlands. Taxable profits up to €200,000 are taxed at a lower rate of 16.5% (2020). Reducing the lower rate to 15% in 2021 and lengthening the lowest rate bracket to €245,000 in 2021 and to €395,000 in 2022 has been proposed.

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 at the same rates mentioned under question 5.2.

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 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, it is, in principle, 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/she does not become an heir, but 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 to Trusts and on their recognition.

8.2 How are trusts/settlers/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 and income of the trust are attributed to his/her 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 such attribution rules, it is generally 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 – depending on several circumstances – can be ignored for succession and forced heirship purposes.

8.4 Are private foundations recognised/permitted in your jurisdiction?

The Netherlands recognises foundations.

8.5 How are foundations/funders/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. Gifts from a Dutch tax resident to a non-charitable foundation are subject to Dutch gift tax. Also, gifts made by Dutch non-charitable foundations are 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/her 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 rights 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 his/her 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 for a period of five years. 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 with income that is taxable in box 2 and box 3.

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 persons 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 and the sole shareholder are registered. 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. The UBO-Register was implemented on 27 September 2020. In addition to the UBO-Register, it is announced that a register for trusts and similar instruments will be implemented. In the Netherlands, funds for mutual account will be registered in the register for trusts and similar instruments.



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Wouter Verstijnen, tax adviser, is partner of Arcagna. Wouter assists wealthy individuals and family businesses, both nationally and internationally. He mostly advises on business succession, estate planning, asset structuring, charities and family foundations/trusts. In his advice and the (legal) implementation of his advice, Wouter always has an eye for the person behind the wealth. Since 2008, Wouter has been associated with Erasmus University Rotterdam as a lecturer in gift tax, inheritance tax, real estate transfer tax and estate planning.

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Arcagna is an Amsterdam- and Rotterdam-based tax boutique and notary office that is specialised in Dutch 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 and family law perspective. In international cases Arcagna employs its network of leading independent firms throughout the world.

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