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Corporate and Tax Law in the Netherlands: A Review of a Modern Common Market Law System: Part II

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1. General Aspects of Taxation

1.1 The principal sources of Dutch law regarding income taxes and the taxation of corporate profits are the Corporate Income Tax Act of 1969 (CITA 1969) and the Income Tax Act of 1964 (ITA 1964).[152] Taxing powers in the Netherlands are almost exclusively vested in the central government, although other governmental instrumentalities do collect some environmental protection levies and levy property taxes, usually with respect to real estate holdings.[153]

1.2 The tax statutes apply to the European part of the Kingdom of the Netherlands and thus do not affect any legislation of the Netherlands Antilles, although to a large extent a unity in case law does exist. The Netherlands Government claims authority to participate in profits realized through exploitation of natural resources, including those situated on the continental shelf in the North Sea.[154]

1.3 The principal entities for business operations, as noted before,[155] include N.V.s, B.V.s, partnerships and sole proprietorships. The Netherlands, basically, does not discriminate between resident and nonresident companies (or individuals), and nonresident companies (or individuals) can operate freely, either directly or indirectly, within the Netherlands and can be mem-

*Part I of this article, which appeared in the Fall 1980 issue of *The International Lawyer,* dealt with the corporate aspects of doing business in the Netherlands or of doing business through a Netherlands company. The following text, the second and final part of the article, deals with taxation and, unless otherwise indicated, refers to corporate aspects of tax law.

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[152]For a translation, *see* Commerce Clearing House, Inc., Number 149, December 8, 1970. The ITA affects individuals, while some of its provisions concern companies as well. The CITA imposes corporate income taxes on companies and some other business entities.

[153]*See* text at 8.3, *infra.*

[154]Continental Shelf Mining Act, 1965 and Regulations.

[155]*See* text at 1, Part I, 14 INT'L LAW. 694–96 (1980).

clude N.V.s, B.V.s, partnerships and sole proprietorships. The Netherlands, basically, does not discriminate between resident and nonresident companies (or individuals), and nonresident companies (or individuals) can operate freely, either directly or indirectly, within the Netherlands and can be members of Dutch partnerships and can enter into commercial agreements with resident companies or individuals.[156]

1.4 Traditionally, the Netherlands' economy has been internationally oriented, and this fact is reflected in its tax practice. Both the unilateral measures and the bilateral tax treaties provide a climate favorable to internationally operating enterprises. The tax exemption for intercorporate dividends and the desire to avoid double taxation have caused the Netherlands to create an extensive tax treaty network to reduce withholding taxes. In addition, as noted below,[157] the country has a liberal approach toward exchange and capital control.

1.5 Individual income tax rates range from 17.5 percent to 72 percent, and individuals also pay a net wealth tax of 0.8 percent on net wealth in excess of certain levels. Companies pay taxes at a rate that varies between 45 percent (on the first fl. 40,000) and 60 percent (on the next fl. 10,000), whereas any excess over fl. 50,000 is taxed at 48 percent. The "classical system" is applied, and a shareholder is not entitled to a credit against his individual income taxes for underlying corporate income taxes, as is the case under an "imputation system."[158]

1.6 Dutch foreign exchange rules, which are found in the Foreign Exchange Decree, 1945 (*Deviezenbesluit, 1945*) and implementing regulations, are discussed briefly below because they may interfere with tax planning. Most transactions between residents and nonresidents of the Netherlands are no longer subject to the approval of the Central Bank (*De Nederlandsche Bank*).[159] However, the Central Bank still requires prior approval by its Foreign Exchange Regulations Division (*Afdeling Deviezenregelingen*) for, among other things:

i. loans made by a resident of the Netherlands to a nonresident that in the aggregate exceed fl. 10,000,000 or the equivalent thereof in another currency in a calendar year;
ii. borrowings obtained by a resident of the Netherlands from one or more nonresidents that in the aggregate exceed fl. 500,000 or the equivalent thereof in another currency in a calendar year;
iii. guarantees, sureties and other securities made by a resident of the Netherlands for the benefit of one or more nonresidents.

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[156] *See* text at 2.3, *infra*.
[157] *See* text at 1.6, *infra*.
[158] *See also* KLUWER-HARRAP, BRANCHES AND SUBSIDIARIES IN THE COMMON MARKET (1976) [hereinafter cited as KLUWER.].
[159] Special regulations apply with respect to banks or credit institutions.

1.6.1. Under current practice, a foreign exchange license for loans by a Dutch resident to a nonresident in excess of fl. 10,000,000 (or the equivalent thereof in another currency) in a calendar year generally is obtained without difficulty. The Central Bank does not generally object to a loan being expressed in a currency other than Dutch guilders,[160] and the Central Bank has informally indicated that it has adopted a flexible attitude toward—and, in general, does not interfere with—the terms of loans made by and borrowings obtained by residents.

1.6.2. In the case of borrowings by residents from nonresidents, the Central Bank distinguishes between borrowings whose proceeds will be used outside the Netherlands and borrowings whose proceeds will be used for investments within the Netherlands. A borrowing obtained by a resident of the Netherlands from one or more nonresidents in excess of fl. 500,000 or the equivalent thereof in any foreign currency in a calendar year will in general be approved by the Central Bank if the proceeds will be used by the resident for investment (e.g., acquisition of a foreign subsidiary) or lending outside the Netherlands.

If the proceeds of the borrowing will be used within the Netherlands, the Central Bank is prepared to grant permission if rather stringent conditions are met. If the foreign lender is the parent company of the borrower, repayment of the principal amount of the borrowing is prohibited during the first five years, and the proceeds of the borrowing must be used for "durable" investments.[161] If the term of the borrowing is ten years or longer, repayment must be made in at least five equal annual installments or at least ten equal semi-annual installments (whether or not preceded by a period without repayment); the borrower is not allowed to prepay, the interest rate is fixed in advance and remains the same for the whole period; and no bearer certificates may be issued if the borrowing is expressed in Dutch Guilders.

2. Resident v. Nonresident

2.1 Resident companies in the Netherlands are subject to corporate income tax on their worldwide income. Companies are considered resident in the Netherlands if (1) they are created under Dutch law[162] and/or (2) "facts and circumstances" result in residence within the Netherlands.[163] Tax treaties entered into by the Netherlands may have a bearing on the application and tax consequences of both principles.[164]

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[160]For tax consequences *see* text at 3.3, *infra.*

[161]*See* text at 3.3, *infra.*

[162]CITA 1969, *art.* 2. As noted in Part I of this article, they consist mostly of B.V.S. *See* 14 INT'L LAW. 693 (1980).

[163]Among the most important "facts and circumstances" are the location of the company's head office and day-to-day management; 4 General Act on National Taxation. *See also,* M.J. ELLIS AND D. JUCH, THE PARTICIPATION EXEMPTION IN THE NETHERLANDS, (1977) and KLUWER, *supra* note 158 at 14-15.

[164]Art. 66 of the Netherlands Constitution [hereinafter cited as NETH. CONST.] *See also* ELLIS AND JUCH, *supra* note 163 at 15.

In determining its worldwide income, a resident company may claim exemptions with respect to certain dividend income and related gains and certain foreign source income.[165] Furthermore, a B.V. or N.V. may qualify as an "investment company" and be exempt from corporate income tax.[166] The tax statute provides also for the possibility that certain corporate entities may be designated as tax exempt organizations.[167]

2.2 Companies that have not been created under Dutch law may become subject to tax by the Netherlands because (1) as a result of "all facts and circumstances" they are, in effect, managed within the Netherlands[168] or (2) part of their income is generated within the Netherlands. The latter type of company is taxed by the Netherlands only in regard to certain specified types of Dutch source income,[169] the most important of which are:

i. profits arising from a business conducted through a permanent establishment or agent in the Netherlands, e.g., a fixed place of business, construction site, etc.,
ii. income arising from real estate situated within the Netherlands or from a loan secured by a mortgage on such real estate,
iii. profit sharing, other than that based on share-ownership, in resident enterprises, and
iv. income, subject to the dividend withholding tax.[170]

The Netherlands' taxing power over these income categories may be restricted in some cases by the application of tax treaties.[171]

2.3 Almost all of the provisions that deal with profit determination and that are discussed in the next paragraphs also apply to nonresident companies[172] that must calculate their Dutch source taxable profits. However, there are some exceptions. For example, two nonresident companies cannot file a consolidated tax return, and nonresident companies usually are not permitted to deduct a notional "payment" of interest or royalties by their Dutch branch to the head office abroad.

The Netherlands does not subject branches of foreign companies to special branch taxes if these branches remit profits to their head office. When a business (of a foreign company) is moved from the Netherlands to abroad, a final return becomes due and any hidden reserves (a deemed profit realization amounting to the difference between fair market value and book value of assets, including goodwill) are subjected to tax.[173]

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[165] *See* section 4 *infra.*
[166] *See* sub-section 4.8 *infra.*
[167] CITA 1969, art. 5, e.g., sickness funds.
[168] *See also* ELLIS AND JUCH, *supra* note 163 at 14-15.
[169] CITA 1969, art. 17; ITA 1964, art. 49.
[170] *See* text at 8.1, *infra.*
[171] NETH. CONST., art. 66.
[172] CITA 1969, art. 18.
[173] ITA 1964, art. 16.

3. Profit

3.1 For tax purposes, the annual profits are determined according to "sound business practice" and methods, consistently applied, which may only be modified if sound business practice justifies the change.[174] The concept of sound business practice or "good commercial practice" resembles the American concept of generally accepted accounting principles, and it is to be applied unless statutory provisions or court decisions require or allow otherwise. Because the CITA and ITA do not provide statutory rules governing depreciation, valuation of inventories, capitalization of costs, etc., the concept of sound business practice, as construed by the Netherlands Supreme Court in its many decisions on the subject, is of considerable importance in determining taxable profits.

3.2 Taxable profits include any and all gains, which are included in and are taxed as ordinary income,[175] unless specifically exempted by statute. Capital gains are thus taxable as ordinary income while capital losses generally are fully deductible. Gains may be exempt either because they are derived by persons exempt from corporate income tax[176] or because the gain itself is exempt, *e.g.*, capital gains realized on the sale of shares belonging to a qualifying participation are not taken into account when determining taxable income.

3.3 Taxable profit includes any currency exchange profits and losses incurred by a company. Current receivables and payables are usually converted at the exchange rates prevailing at balance sheet date, while inventories are converted at rates prevailing when the goods were acquired. Fixed assets must be converted at historical rates.

Long-term loans denominated in a foreign currency are to be converted into Dutch guilder values at the lower of either historic rates or rates prevailing on balance sheet day, while long-term borrowings denominated in a foreign currency are to be converted into Dutch guilder values at the higher of either historic rates or at rates prevailing on balance sheet day. It is arguable, however, that these assets and liabilities must be valued at current rates of exchange if there is a permanent and substantial difference between current and historical rates.

3.3.1 To illustrate the above, if a Dutch company acquired a 50 percent stock participation in a United States based company, and it financed that acquisition in 1968 with borrowings denominated in United States currency, its taxable profit will include exchange gains derived upon the repayment of the loan.[177] However, the tax authorities may require the company to recog-

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[174]ITA 1964, art. 9; e.g., a change in the principles of accounting should especially not be made to seek a one-time tax advantage, because it is likely to be disallowed.

[175]ITA 1964, art. 7.

[176]*See also* text at 2.1 *supra*.

[177]Supreme Court, April 20, 1977, BNB 1977/162; for a more detailed discussion, *see* ELLIS AND JUCH, *supra* note 163 at 65ff.

nize its exchange gains prior to the time of repayment because of the apparent permanent change in the money market situation.

3.4 The statute permits a company to build up several "tax-free reserves." The most important of these reserves, which are aimed at deferring taxes and are formed by tax deductible reserve contributions, include:

i. maintenance reserves, which can be formed for the purpose of spreading evenly over the years major expenditures incurred at certain regular intervals, e.g., survey of ships,
ii. reserves that are designed to cover risks that in the normal course of business would be insured by a substantial number of taxpayers,[178] and
iii. replacement reserves, which can be formed by adding to the reserve the excess of sales proceeds (or insurance proceeds if property is damaged or destroyed) over book value, provided the taxpayer intends to replace the capital asset. Upon replacement of the asset the cost price is reduced by the amount of the reserve[179] e.g., for depreciation purposes. Upon total or partial dissolution of the reserve, any freed balances are added to income.

3.5 Generally, all capital assets whose value diminishes with time and that are used in the course of business are depreciable for tax purposes.[180] The amount of depreciation is dependent upon (1) the difference between the original purchase price (including all capital costs) and residual value, (2) the estimated useful life of the asset and (3) the method used to apportion the depreciable amount over the years.

Any depreciation method is proper as long as it is in accordance with sound business practice and consistently applied. The straight line method (fixed percentage), the declining balance method and the asset utilization method are often used, although the latter two methods are allowed only in special circumstances.

3.5.1 Although no official depreciation guidelines or rates are specified, usually 2–5 percent for buildings, 10 percent for machinery, 25–33 percent for cars are acceptable as annual depreciation rates, when applying the straight line method. Formation expenses and most of purchased goodwill can be amortized over a period of five years.

3.6 The Supreme Court in its many decisions under Article 9 of ITA 1964 has accepted a number of inventory valuation methods, which include:

[178]ITA 1964, art. 13.
[179]ITA 1964, art. 14.
[180]ITA 1964, art. 10. Some capitalized expenses can be depreciated, although their "value" may not necessarily diminish with time, e.g., formation expenses, goodwill, etc.

i. the lower of cost or market value;
ii. the cost method, with valuation on the actual price of FIFO or LIFO basis;
iii. the base inventory method, which allows the base inventory to be valued at the cost price prevailing at the time this method is adopted and allows the taxpayer to form a reserve to replenish actual inventories on the balance sheet at current cost (any excess is entered on the asset side while a shortage is entered on the liabilities side of the balance sheet).

As noted in subsection 3.1, assets, including inventories, should be valued on a consistent basis. A change may be effectuated if "sound business practice" so requires.[181] A report, which was the result of a study ordered by the Department of Finance, suggested that legislation be introduced to mitigate the consequences of inflation on valuation of assets. However, to date only minor changes have been introduced via temporary legislation.

3.7 Except for certain types of financial operations, such as banking activities, the Central Bank does not require that fixed ratios between debt and equity be maintained by Dutch companies. Also, for tax purposes, there are no requirements as to specific maximum ratios, and a Dutch company, therefore, can be thinly capitalized. In this respect it generally can be said that, for Dutch tax purposes, "substance" will be recognized over "form" only in exceptional cases,[182] and thus, in general, as long as a Dutch company can be required to repay borrowed funds to its creditors, these liabilities should be recognized as valid debt for Dutch tax purposes.

3.8 Among those items that are not deductible for tax purposes are the corporate income tax, profit distributions (including disguised distributions) and expenses incurred in connection with a participation (exceeding 5 percent of the capital) in a nonresident corporation.[183] Expenses that are incurred by a resident company and are allocable to its foreign branch operations or to real estate situated abroad effectively are not deductible, but do reduce foreign source income. Furthermore, Dutch authorities may partially disallow deductions for payments to related or commonly controlled entities if the payments are excessive and not based on arm's-length principles.[184] Technically, such payments are treated as disguised dividends and are also subject to dividend withholding tax.[185]

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[181]The replacement valuation method is not accepted. For valuation of assets expressed in foreign currency, *see* text at 3.3 *supra*.

[182]*See also* S.N. FROMMEL, TAXATION OF BRANCHES AND SUBSIDIARIES 147, and Supreme Court, December 27, 1967, BNB 1968/80, and EUROPEAN TAXATION 1975 at 57, 384.

[183]CITA 1969, art. 13(4).

[184]*See also* S.N. FROMMEL, *supra* note 182 at 72ff. The terms "related" or "common control" are not defined in the statute, but are construed on a case-by-case basis.

[185]*See* text at 8.1 *infra*.

If a foreign parent company enriches its Dutch subsidiary through dealings that are not based on arm's-length principles, the fair market value involved in such a transaction could be deducted as an expense by the subsidiary and for tax purposes be treated as an "informal" contribution to the capital of the Dutch company. A recent decision by the Supreme Court[186] seems to confirm the former position but also casts doubt as to whether such dealings do indeed result in an informal contribution to capital. The concept of "informal capital" is not recognized for purposes of Dutch corporate law.

3.9 Net losses incurred may be carried back to the preceding year or be carried forward for offset against profits of the following six years.[187] No limitation in time applies as to the carry forward of losses sustained in the first six years following the establishing of a business. Temporary legislation allows losses incurred between 1974 and 1979 to be carried back two years and forward eight years.[188]

In order to prevent "trafficking" in tax loss entities, CITA provides that, if a business has been nearly or completely stopped at the time of transfer of shares, loss carry forwards are denied unless future profits primarily benefit former shareholders, i.e., where at least 70 percent of the shares are held by this latter category.[189]

3.9.1 A non-resident company can apply the same provisions with respect to its Dutch source losses. If a nonresident company wants to convert its Dutch branch into a subsidiary, the nonresident company may request the Department of Finance[190] to allow a tax exempt change of status in order to preserve any ordinary or start-up losses for use against future subsidiary profits. Special rules apply for losses sustained by companies that file a tax return on a consolidated basis[191] and for foreign source losses.[192]

4. Foreign Source Income

4.1 Resident companies are in principle subject to tax in the Netherlands on their worldwide income. Companies can invoke the provisions of the Unilateral Decree for the Prevention of Double Taxation of 1965 (as supplemented in 1970) and various tax treaty provisions for exemption for certain types of foreign source income, subject to the satisfaction of various require-

[186] Supreme Court, May 31, 1978, BNB 1978/252, involving a foreign parent company that did not charge interest on a loan made to its second-tier Dutch subsidiary.

[187] CITA 1969, art. 20.

[188] 1973 losses may be carried back one year and forward eight years. The 1980 budget contains legislation permitting 1980 and future losses to be carried back two years and forward eight years.

[189] Minister of Finance on July 1, 1971, when ruling on CITA 1969, art. 20(4).

[190] CITA 1969, art. 14.

[191] *See* text at 5.1 *infra.*

[192] *See* text at 4.3 *infra.*

ments. In addition, Article 13 CITA exempts certain dividends and capital gains derived by corporate entities from qualifying participations in the capital of other (foreign) companies.

4.2 The Unilateral Decree of 1965[193] specifies certain categories of income that are exempt from Dutch taxation provided that the income (or capital gain) was subject to an income tax levied by the central government of a foreign country. To qualify for this exemption, in regard to the foreign income, a general liability for taxation abroad must exist, but the fact that no tax is actually paid, e.g., because of a tax holiday granted abroad, does not necessarily affect the exemption available under the Unilateral Decree. The most important types of income specified by the Unilateral Decree are:

i. profits[194] of an enterprise conducted wholly or partly abroad, either through a permanent establishment or via a permanent agent,
ii. income from real estate situated abroad and from loans secured by real estate situated abroad (including capital gains), and
iii. income from a construction site abroad, which must be in existence for a period that exceeds twelve months (in order to qualify as exempt income from a permanent establishment).

4.3 If a company generates losses abroad, these losses can be set off against domestic profits. However, these losses must be consolidated with foreign profits of the same year and the next six years.[195] If foreign profits exceed worldwide profits, the excess is carried over to any of the six following years, and it increases the foreign income of such year.

4.4 Where the provisions of the Unilateral Decree apply and the requirements are satisfied, double taxation at the corporate level is avoided through a "tax remission" determined according to the following formula;[196]

$$\begin{array}{l}\text{amount of} \\ \text{tax reduction}\end{array} = \frac{\text{foreign income}}{\text{total income}} \times \begin{array}{l}\text{Dutch tax on} \\ \text{total income}\end{array}$$

The amount of tax attributable to foreign income is thus deducted from the total tax payable, which effectively results in an exemption although foreign income is included in total income.[197] The mechanisms for avoiding double taxation as provided by the Unilateral Decree usually are incorporated in the

[193]*See* R.L. van de Water; De Eenzijdige Regeling, Kluwer, *supra* note 158, and Tax Management Int'l J., (September 1979).

[194]Including capital gains realized in the course of a business conducted by a permanent establishment.

[195]Unilateral Decree 3(3), (1965).

[196]Unilateral Decree 3(1), (1965); for a translation, *see* Commerce Clearing House Inc., Number 149, (1970).

[197]Because individuals pay tax at a progressive rate the formula does not result in a total exemption for them; *see* text at 8.7.3 *infra* (*progressievoorbehoud*).

tax treaties entered into by the Netherlands;[198] however, under the tax treaties the "subject to tax" requirement normally is not imposed.

4.4.1 Foreign interest and royalty income are included as taxable income, but a supplement to the Unilateral Decree[199] contains a special means for preventing double taxation. The supplement introduced a tax credit for certain foreign taxes, which credit is not normally available under Dutch tax rules.[200] The credit applies to interest and royalties received from residents in developing countries for taxes levied as an income tax or withholding tax.

4.4.2 Foreign taxes paid on income that is not eligible for relief under either the Unilateral Decree or tax treaties generally can be deducted as an expense. If dividend income is exempt under CITA 1969, Article 13, foreign withholding taxes do not effectively qualify as an expense or credit because of this exemption.[201]

As noted above, the Netherlands has entered into an extensive tax treaty network, which reduces foreign withholding taxes. A survey of the tax treaties entered into and the applicable treaty withholding rates on dividends, interest and royalties is given at the end of this article.

4.5 Foreign source dividends may be eligible for what is generally referred to as the "participation exemption" or "affiliation privilege."[202] Corporate entities holding shares in another entity, domestic or foreign, are exempt with respect to dividends received on such shares or capital gains realized upon the alienation of such shares. The exemption of dividends is based on the principle that the same income should not be taxed twice (*ne bis in idem*) and has been applied ever since the introduction of the first corporate income tax acts. The exemption was broadened in 1969, when it was extended to capital gains. The exemption, which is enunciated in Article 13 of CITA 1969,[203] can be invoked by every corporate taxpayer. Thus, a company need not obtain or maintain a special status to qualify for the exemption.

4.6 The shareholding with respect to which the participation is to be applied (*deelneming*) must meet the following requirements:

i. the shares must have been held since the beginning of the financial year,[204]
ii. the paying entity must be an entity whose capital is wholly or partly divided into shares,

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[198] *See e.g.*, United States-Netherlands Tax Treaty, art. 19(3).

[199] Unilateral Decree, 3(A).

[200] The tax treaties usually also provide for credits for foreign withholding taxes on interest, dividends or royalties.

[201] CITA 1969, art. 13(4).

[202] For an extensive discussion *see*, ELLIS AND JUCH note 163 *supra*.

[203] For a translation, *see* Commerce Clearing House Inc., Number 149 (1970), and ELLIS AND JUCH, *supra* note 156 at 75.

[204] *See* ELLIS AND JUCH, *supra* note 163 at 21ff.

iii. the recipient must own at least 5 percent of the paid-up share capital of the distributing company (the revenue authorities may, in accordance with regulations on the subject, accept ownership of less than 5 percent).[205]

In the case of a foreign shareholding,

i. the foreign company must be subject to a tax levied upon its profits by the central government of a country, and

ii. the recipient must not own the foreign shares as a portfolio investment.

4.6.1 The last mentioned condition has long been the subject of controversy, especially since a Supreme Court decision in 1973[206] and the subsequent discussions in Parliament that it prompted. In general, it can be said that, if a corporate recipient has a real function either at the top of a corporate group or as an intermediary holding company within a corporate group, the participation exemption can be applied. Because this condition has been the subject of controversy and its interpretation is a matter of substance rather than form, a taxpayer may in a particular situation seek an advance interpretation from the revenue authorities.[207]

4.7 Expenses incurred in connection with shareholdings are generally only tax deductible[208] to the extent that the *deelneming* by which the expenses were incurred generates profits that are directly or indirectly taxable within the Netherlands. For example, interest paid on borrowings, the proceeds of which were used to buy the shares of a foreign company, is not normally deductible. However, if the shares of a domestic company are acquired the interest would be deductible.

4.7.1 Because under the participation exemption, dividends and related gains are exempt from tax, current losses accrued or incurred in respect of the *deelneming* are not deductible. Only upon liquidation (dissolution) of a foreign or domestic company can a Dutch corporate shareholder take a deduction for an amount that is equal to the difference between the net consideration paid at the time of acquisition of the shareholding and/or the total of capital contributions made and the proceeds of the liquidation. A loss realized upon sale of qualifying stock is thus not deductible.[209]

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[205] *See* ELLIS AND JUCH, *supra* note 163 at 24ff. Neither the recipient nor distributing company can be an investment company as defined in CITA 1969, art. 28. *See* 4.8 *infra*.

[206] Supreme Court, November 7, 1973, BNB 1974/2 (EUROPEAN TAXATION 1973, 433); *see also* Ellis and Sherman, CANADIAN TAX J. vol. XXII no. 2; Van Raad, TAX MANAGEMENT INT'L J., April, 1974; B. Mellink and J.R. Schaafsma, BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION, 9, 1974, and ELLIS AND JUCH, *supra* note 163 at 27.

[207] *See* 6.5 *infra*.

[208] CITA 1969, art. 13(4); *see also* text at 3.8.1 *supra*.

[209] CITA 1969, arts. 13(5), 13(1).

4.8 A qualifying investment company is virtually exempt from corporate income tax,[210] i.e., the tax rate to be applied is zero. The intention of the exemption is to avoid double taxation. Therefore, the investment company must distribute its profits (which must be derived primarily from shares, bonds, securities and real estate) to its shareholders. A qualifying investment company may not be owned 25 percent or more by a nonresident individual, fund or company, and the investment company must be a resident N.V., a resident B.V. or a resident investment association.

5. Consolidation, Mergers, Liquidation

5.1 Resident companies may file their tax return on a consolidated basis (fiscal unit),[211] and thus combine the profits and losses of affiliated companies and freely transfer assets and liabilities to each other without serious tax consequences. The parent company must own virtually all of the shares of a resident subsidiary and both must have the same fiscal years and report their income on the same principles in order to qualify to file on a consolidated basis. Filing on a consolidated basis requires the approval of the Department of Finance and such approval is subject to the acceptance of conditions imposed by the Department. These conditions are standard ones published by the Department and deal with, *inter alia,* the manner in which pre-consolidation losses and profits are combined with future losses and profits, asset valuation methods, methods of consolidating results, shifting of assets between companies and the disposal of subsidiary stock (which otherwise would be tax exempt because of the participation exemption).

Not all resident subsidiaries need become part of the fiscal unit, and the unit can be terminated either upon request made by the unit or as a result of not complying with the 100 percent control test. The fiscal unit approval must be applied for before the end of a fiscal year and the unit can only start at the beginning of such a year. Similarly, a fiscal unit can be terminated only at the end of a fiscal year.

5.2 Dutch civil law does not yet recognize the statutory merger,[212] which provides for a dissolution of a company following a transfer of all of its assets and liabilities for stock of the acquiring company. Lacking statutory provisions in the Civil Code, the tax acts have not provided for special tax-free liquidations or similar provisions, and a United States type of merger (or acquisition followed or preceded by a liquidation) will thus create problems, because the company that transfers its assets and liabilities will have to recognize gains that are taxable as ordinary income (unless statutory exemptions—such as the participation exemption—apply).

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[210]CITA 1969, art. 28.

[211]CITA 1969, art. 15.

[212]*See* text at 12.1 in Part I of this article. 14 INT'L LAW. 724 (1980).

Under Article 14 of CITA 1969, a corporate entity that transfers its entire business or an independent part thereof to another corporate taxpayer (whether resident or nonresident) may accomplish tax free a situation resembling a merger. The transfer must be for shares of the transferee, which may not be disposed of within three years following the transfer, and the transferee must carry the assets and liabilities so acquired at the same value on its books as on the books of the transferor, i.e., no step-up in basis is realized. Depending upon whether all statutory requirements have been met, the Article 14 "reorganization" is[213] or is not [214] conditioned upon approval of the Department of Finance.

5.2.1 As mentioned above, a parent company and its subsidiaries in a fiscal unit may freely shift assets between each other without immediate tax consequences. Often, where a Dutch parent acquires all of the shares of another company, it immediately applies for fiscal unit status; subsequently, the newly acquired subsidiary may distribute all of its business to the parent free from corporate income tax and the subsidiary may thereafter be liquidated. However, as in the Article 14 "reorganization," this procedure does not result in a step-up in basis for the assets and liabilities acquired.

5.2.2 Because of the absence of legislation governing mergers[215] and regulations providing for a step-up in basis, transactions in which a corporate taxpayer disposes of its entire business are rare because of the prohibitive tax bill that would result.[216]

Thus, most acquisitions and "mergers" are stock-for-stock arrangements or stock-for-cash acquisitions. When dealing with the individual shareholders of Dutch companies one should realize that capital gains realized by individuals are normally not subject to tax; however, if an individual, either alone or with his relatives, has a "substantial interest" (*aanmerkelijk belang*) in a corporation he normally is subject to income tax at a flat 20 percent tax rate upon disposal of his shares. This tax may be deferred if, under the provisions of Article 40 of ITA 1964, the individual exchanges shares for new shares to be issued by the transferee corporation.

A foreign company acquiring shares of a resident company will usually do so through a resident holding company and subsequently will apply for the fiscal unit in order to offset the losses of the holding company against the operating income of the target company. The losses of the holding company usually are the result of high leverage.[217] If a domestic branch acquires the shares of the target company, consolidation is not normally possible.

If, however, the target company is in a loss position and its losses may soon

[213]CITA 1969, art. 14(2) (to ensure collection of tax).
[214]CITA 1969, art. 14(1).
[215]*See* text at 12.1 in Part I of this article. 14 INT'L LAW. 724 (1980).
[216]*See* text at 5.3, *infra*.
[217]*See* text at 4.7 and 1.6.2, *supra*.

not qualify for compensation with future profits, then an asset acquisition may be more attractive. A final decision also will depend upon investment incentives available[218] in the case of asset acquisitions and the depreciation available after assets have been acquired and a step-up in basis achieved.

5.3 Upon liquidation, a corporate entity is deemed to dispose of its assets and must recognize gain to the extent that the fair market value of its assets exceeds their book value and to the extent that reserves are terminated. These gains are included in taxable income and taxed at the ordinary corporate income tax rate.[219] The proceeds of the liquidation are subject to the dividend withholding tax[220] to the extent that they exceed the company's capital (which for this purpose includes most of paid in surplus).[221] The liquidator must withhold the 25 percent statutory withholding tax on the excess, although this rate may be reduced under tax treaty provisions. The capital portion of the proceeds is not subject to withholding or individual income tax.

5.3.1 If a company repurchases its own shares, any excess of the purchase price over paid in capital (excluding premium) as a general rule[222] is deemed a dividend and is taxed accordingly (withholding and income tax, unless the participation exemption can be applied).

6. Returns and Assessments

6.1 Companies and other corporate taxpayers file tax returns on an annual basis, i.e., after the close of every financial year, whether or not the company had operations or whether or not it realized taxable profits.[223] Forms are issued by the tax authorities of the district in which the company's registered office (not necessarily the same as its corporate seat) is established. The corporate taxpayer will always deal with these authorities (*inspecteur*) unless the involvement of the Department of Finance is necessary or requested. A self-assessment system applies only with respect to value added taxes, wage withholding taxes and some less important taxes. Corporate and individual income taxes are levied by way of assessment by the district tax inspectors.

6.2 Company returns are due on the July 1 following the end of a calendar year or, for those (resident) taxpayers not on a calendar year, on the first day of the seventh month following the end of the fiscal year (which is speci-

[218]*See also* text at 8.5, *infra.*

[219]Double taxation occurs first at the company level and subsequently at the shareholder level, unless the fiscal unit rules apply.

[220]For a further discussion on the dividend withholding tax, *see* text at 8.1 *infra.* The proceeds are not subject to withholding tax if the recipient can apply the participation exemption.

[221]*See also* note 229 *infra.*

[222]Supreme Court, November 14, 1956, BNB 1957/20.

[223]CITA 1969, art. 24ff.

fied in the Articles of Association as the financial year). Extensions may be requested, provided that estimated taxable profits are indicated (non- or late filing may trigger estimated assessments). Normally, corporate taxpayers receive a provisional assessment during the second half of their fiscal year, which assessment is normally based upon 85 percent of the taxable profit reported or estimated for the preceding year. In the year following incorporation, the provisional assessment is based on estimated profits and figures supplied by the taxpayer. Upon receipt of the return, the tax inspector normally issues an additional provisional assessment. A final notice of assessment is due for issue three years after the end of the calendar or fiscal year for which the return is filed, to which period any extensions for filing are added. A five-year period (from the same date) applies if, after the inspector collects or receives information previously not known to him nor available to him, he decides to issue an assessment to amend the previous final assessment.

6.3 Tax payments are generally due within one month following the date of notice unless the receiver allows extensions. Interest is charged on late payments. The law provides for penalties in case of misstatements of profits, failure of filing or willful and gross negligence by the taxpayer. Civil penalties include the doubling of the tax payable or the levying of fixed amounts. Criminal penalties include imprisonment for a period of up to four years.

6.4 Returns must be accompanied by a copy of the financial statements, details of directors' and supervisory directors' remunerations and details about subsidiaries. After receipt of the return, the tax inspector may request additional information. Tax audits of corporate taxpayers are periodically undertaken by district tax auditors. These audits are usually scheduled to take place every three years. Small corporate taxpayers who file simple tax returns are not audited. If a taxpayer disagrees with the final notice of assessment he may object by lodging a protest within two months with the tax inspector involved. The inspector will issue a decision (no time limit is set for this), which can be appealed within two months to the tax chamber of a court of appeal (*Gerechtshof*). An amended assessment may be appealed directly to the court of appeal. This court's decision on the law—but not on factual issues—may be challenged before the Supreme Court.

6.5 A corporate entity may request an advance opinion ("tax ruling") of the tax authorities with respect to a contemplated transaction. The request for ruling normally is filed with the tax inspector in the taxpayer's district. In exceptional situations, e.g., because of broader impact or existing controversy, the Department of Finance can be approached for a ruling.

In practice the tax inspector will abide by the opinion after issuance[224] provided the relevant facts and circumstances were properly and fairly

[224]The Supreme Court, in its decision on September 26, 1979, further elaborates on this subject.

described when the tax ruling was issued and have not changed materially since then.

6.5.1 Requests for rulings are usually filed if the result of a transaction is unclear because of qualification of the facts or interpretation of the statute. Requests for ruling may also be filed to fix the basis and principles upon which a taxpayer will file his tax return. There is no basis in the statute or regulations for the advance opinions; they have been developed as a matter of administrative practice. Except in rare situations, the statutes and regulations do not require that a request for a ruling be filed in any particular case, and the tax inspector cannot be forced to rule on a matter.

Common examples of tax rulings are those that seek advice concerning the application of the "participation exemption" or with respect to the arm's-length character of financing or licensing transactions. In other instances the arm's-length character is expressed as a minimum tax basis, e.g., in case of a foreign entity wishing to start a service operation within the Netherlands such a basis may be set at a percentage of cost incurred by the service operation. The request for ruling is normally filed in advance of a transaction, and an answer from the inspector usually is obtained within a few weeks following the filing of the request. Requests filed with the Department often take longer. The tax inspectors usually request disclosure of the names of the persons involved in a transaction.

7. Tax Aspects of Formation

7.1 Formation expenses[225] of a company formed under Dutch law may be deducted in full during the first year of operations. Alternatively, these expenses (capital taxes, registration fees, legal fees, etc.) can be capitalized and subsequently amortized over a three to five year period.

7.2 Usually the most significant cost encountered in forming a Dutch company is the capital tax,[226] a stamp tax type of levy collected by the tax authorities under the provisions of the Act for Taxes on Legal Transactions (and regulations thereunder). The capital tax is a one time levy on capital contributions made to a resident corporate entity and assessed against the company at a current rate of 1 percent.

Basically, the tax is levied upon the face value of shares issued or the consideration paid for such shares,[227] whichever is higher. Thus, any premium paid over par is subject to the levy as well. Under Dutch law the capital

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[225]For discussion regarding companies "in formation" *see* text at 2.2 in Part I of this article, 14 INT'L LAW. 696-97 (1980).

[226]Not deductible for income tax purposes if capital was used for acquisition of stock of foreign subsidiary—Supreme Court, BNB 1977/176.

[227]*See* text at 4.6 in Part I of this article, 14 INT'L LAW. 703-04 (1980).

tax is levied not only upon formation of a company, but also on a foreign company if and when it becomes managed and controlled in the Netherlands, unless its "origin" is within the European Economic Community (E.E.C.).[228]

7.2.1 Some limited exemptions may be claimed with respect to the application of the capital tax, e.g., in case of assets-for-stock or stock-for-stock reorganizations or acquisitions. However, these exemptions apply only if limited regulatory requirements are met,[229] or only if companies resident in E.E.C. countries are involved, e.g., a Belgium company can generally contribute shares of its 100 percent owned United States subsidiary tax free to a Dutch company, but this is not the case if a Canadian parent contributes its United States subsidiary to a Dutch company.

7.3 For purposes of CITA 1969, Article 13, paragraph 4, most formation expenses, to the extent exclusively related to the formation, are not expenses incurred in connection with the foreign shareholding and thus can be deducted even if a Dutch company is formed for the purpose of holding the stock of a foreign subsidiary.[230]

As to the tax aspects of a company in formation, i.e., a situation in which, while awaiting the approval of the Department of Justice, the incorporators perform acts on behalf of the company in formation on a regular basis, it can be said that any actions taken are for the account of the company during the period of formation.[231]

8. Various Taxes, Incentives and Aspects of Individual Income Tax

8.1 Under the provisions of the Dividend Withholding Tax Act of 1965, a withholding tax is levied on all dividends, including disguised and (most) stock dividends, while liquidation proceeds are subject to withholding to the extent that these proceeds exceed the capital paid in on the shares issued by the company in liquidation.[232]

The withholding tax generally applies on the date that the dividend is put at the disposal of a shareholder. In such cases, the distributing company must file a dividend withholding tax return and remits the funds to the tax collector

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[228]For the consequences of a transfer of corporate seat, *see* 14 INT'L LAW. 729 (1980). *See also* EUROPEAN TAXATION, (1974) (Compania Shell de Venezuela Ltd.)

[229]If the capital of a Dutch company is paid up by contributing shares of another company, ITA 1964, art. 44, provides that, for purposes of shareholder taxation, the base of shares issued shall be deemed equal to the nominal paid-up share capital of such other company. This may create a claim for withholding tax in case of a subsequent liquidation.

[230]Please note 7.2 *supra.*

[231]For corporate formation consequences, *see* 2.2 in Part I of this article. 14 INT'L LAW. 696-97 (1980).

[232]The withholding rate is reduced where tax treaties can be invoked by the recipient (*see* Appendix).

within one month after that date. The withholding tax constitutes an advance payment for resident taxpayers and can be credited against income tax payable. For nonresidents, the withholding tax is usually a final levy, except in certain situations, e.g., where the recipient holds a substantial interest in the paying entity.[233] Companies subject to withholding tax are those formed under Dutch law or resident in the Netherlands. In addition to dividends and liquidation payments, certain payments made under the terms of profit sharing notes or bonds are also subject to the dividend withholding tax.

8.1.1 Except for the dividend and wage withholding taxes, there are no other withholding taxes in the Netherlands. Thus, royalties, interest, management fees, commissions, rents, etc. can be paid to nonresidents free of withholding taxes. However, the recipient may be subject to income taxes with respect to these income categories depending upon his status for Dutch taxation purposes, e.g., he is the holder of a substantial interest, payment is effectively connected with a permanent establishment, etc.

8.2 The acquisition of title to immovable property situated within the Netherlands is subject to a real estate transfer tax[234] currently levied at the rate of 6 percent. The measure of this tax is the value of the property transferred, whereas shares in a real estate holding company, i.e., a company whose gross assets consist primarily (70 percent) of immovable property situated within the Netherlands, is deemed immovable property if the transferee obtains or has a substantial interest[235] in the company. By statute, the tax is payable by the purchaser, but it is customary and allowable for parties to agree among themselves who shall bear the tax. Acquisition by inheritance or gift is generally exempt from the transfer tax unless a "tainted share" (as described above) is acquired and there are also some additional exemptions available in the case of corporate reorganizations.[236]

8.3 Local governments (the municipalities) impose an annual real estate tax on those who own or use real property. Real property, for purposes of this tax, means land, houses, apartments, shops, office buildings, factories, etc. Rates are determined and taxable basis fixed (usually fair market value) at the limited discretion of the local legislator.

8.4 On January 1, 1969, the Netherlands adopted the system of value added taxes (VAT) (B.T.W. or *Omzetbelasting*) which replaced a previous cumulative turnover tax. VAT is levied on the delivery of goods (including movable and certain immovable properties), on services rendered within the scope of a business activity and on all imports of goods.

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[233] A dividend effectively connected with a permanent establishment within the Netherlands is exempt under CITA 1969, art 13.

[234] *See* Act on Legal Transactions and Regulations, art. 2ff.

[235] For a definition of "substantial interest," *see* text at 8.7.2 *infra*.

[236] *See* text at 5.2, *supra*.

In the VAT system, the tax on invoices received can be credited against the tax due on sales and services invoiced. Returns are filed monthly or quarterly, depending on the size of the business. Excess credits are refunded, and tax due is remitted to the tax collector. Normally the final consumer, who has no way to credit the VAT, carries the burden of the tax. Some business transactions are exempt from VAT, and sometimes VAT paid cannot be credited by an entrepreneur or enterprise. The general rate is fixed at 18 percent, but some goods and services are only subject to a 4 percent rate.[237]

8.5 A system that had combined accelerated depreciation rules and investment allowances, was replaced by the Act on the Investment Account (WIR) in May of 1978. The new incentives were believed to be necessary to benefit companies in loss positions, to stimulate certain types of investments and to obtain for the government a degree of control over investment policies.

8.5.1 The WIR is, in essence, a grant or subsidy in the amount of a percentage of investment cost. The payment of the grant is effectuated by using the tax assessment system and, thus, a taxpayer can deduct from his tax payable (on either provisional or final assessments) those grants to which he is entitled. Taxpayers who are in a loss position actually receive the grants in cash. The grants in the latter case are paid by means of negative tax assessments (again on either provisional or final assessments). Under the old system, companies in loss situations merely increased their losses, whereas now they are able to get the benefit of the incentives at a much earlier stage. The basic WIR premiums range between 7 percent for equipment and 18 percent for new buildings.

8.5.2 To stimulate certain categories of investments, special incentives are available in the form of increased grants for investments by small-scale enterprises, investments that exceed certain levels of money, investments in certain areas with high unemployment rates and investments involving a relocation of business to certain cities.[238] The Department of Economic Affairs is, in general, responsible for the proper administration of the various incentive programs and issues statements upon which grants subsequently are fixed by the tax inspector.

8.5.3 In order to obtain a certain level of governmental control over investments, other legislation also provides for a levy upon investments made in crowded industrial areas. This levy is referred to as the SIR levy. The burden of the SIR levy is to some extent reduced because it is added to the cost

[237]Besides the VAT, cars are made subject to an additional special type of VAT currently levied at 17.5 percent (rate scheduled to be increased).

[238]A decree from the Department of Economic Affairs provides for grants, in addition to those available under the WIR, for special undertakings.

of investment and thus increases the basis for WIR premium purposes and depreciation. The SIR levy can reach 13 percent if substantial investments in buildings in condensed industrial areas are contemplated.

8.6 A controversial bill still pending in Parliament called the Capital Increase Sharing Act (VAD) seeks to provide the individual employee with a share of "excess profits" realized by his employer ("individual" VAD). The bill also seeks to allocate a portion of these "excess profits" to a fund to be administered by representatives of the government and the unions to provide benefits to all employees ("collective" VAD).

At present it is not clear if or in what form VAD will be passed by Parliament, although if enacted it could be levied as a tax on taxable profit, in which case it could be credited against foreign taxes in some instances.[239]

8.7 Individuals who are residents of the Netherlands are taxed on a worldwide income basis.[240] Individuals of Dutch nationality who reside elsewhere generally are not subject to taxation by the Netherlands. Whether an individual is considered a resident of the Netherlands will depend upon residence criteria as construed and adopted by the courts. In general, the closer one's ties with the Netherlands the more likely he is to be considered a resident. A court will pay special attention to a person's home, registration in municipal register, financial ties (bank accounts), intentions, etc.

8.7.1 Resident taxpayers include as major components of taxable income: (i) employment income, (ii) business income, (iii) investment income[241] (dividends, interest, etc.), (iv) income in the form of periodic payments, (v) gains derived from the sale of stock that is part of a substantial interest and (vi) rental income. They deduct expenses incurred in deriving income and certain specified expenses not connected with any particular component of income, such as: (i) pension contributions, (ii) social security contributions, (iii) alimony payments, (iv) interest,[242] (v) medical expenses, (vi) gifts and (vii) losses previously incurred.

As noted above, rates of income tax vary between 17.5 percent and 72 percent. Basis exemptions are available depending upon a person's marital status.[243]

8.7.2 Capital gains are normally exempt from tax unless they constitute business income or are derived from the sale of shares that constituted a

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[239]Because the basis of VAD is taxable profit it will not affect those companies who have little or no taxable profits.

[240]The cash basis is used except for business income.

[241]Owners of stock in foreign companies may have to include a percentage of the value of that stock as a deemed dividend (*see also* TAX MANAGEMENT INT'L J., (January 1979 at 4)).

[242]Recently introduced proposals would limit interest deductions.

[243]In 1980, a married man could claim a marital deduction of Fl. 10,489. *See also*, TAX MANAGEMENT INT'L J. (November 1979).

substantial interest at some time during the prior five years. A substantial interest exists if all of the following conditions are met:[244]

1. the shares are held, directly or indirectly, as a private investment by the individual taxpayer either alone or jointly with close members of his family,
2. the shares held by the family amount to at least one third of the nominal value of the issued share capital of the corporation, and
3. the taxpayer and his spouse own more than 7 percent of the nominal value of the issued shares.

Upon disposal of shares that are part of a substantial interest, the difference between the taxpayer's base and sale price is subject to a flat 20 percent tax rate. If the difference results in a loss, 20 percent of the loss can be deducted from the income tax otherwise payable.

8.7.3 Resident taxpayers include foreign source income in their worldwide income. The Unilateral Decree of 1965 and tax treaties provide for relief in case of double taxation. Generally, foreign source employment income, income from real property located abroad and profits allocable to a foreign permanent establishment are exempt, provided that this type of income is subject to tax abroad. However, foreign source income is included in a resident's tax base and, because of the progressive tax rates, foreign source income thereby increases the tax burden.[245]

Foreign dividend and interest income are fully taxable, but credits may be claimed, as, for example, those based upon tax treaty provisions.

8.7.4 Nonresident individuals are liable for Dutch income taxes with respect to certain specified items of income, the most important of which include:

1. business profits derived through a permanent establishment within the Netherlands,[246]
2. income derived from real estate situated within the Netherlands or from claims secured by mortgages on such real estate (no tax currently applies to capital gains unless they constitute business profits),
3. dividends, interest or capital gains derived from a resident company in which the foreign individual directly or indirectly owns a "substantial interest,"[247]
4. wages and pensions derived from employment within the Netherlands (or salaries paid to directors of a Dutch company).

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[244] ITA 1964, art. 39.

[245] *See* note 200 *supra.* The exemption is equal to:

$$\frac{\text{foreign source income}}{\text{total worldwide income}} \times \begin{array}{l}\text{Dutch income tax on}\\ \text{worldwide income}\end{array}$$

[246] The statute does not define these terms. To some extent, reference can be made to definitions used in tax treaties.

[247] *See* text at 8.7.2 *supra.*

The aggregate amount of these items (the latter two of which are usually not taxed by the Netherlands if tax treaties are involved) constitutes gross income. Gross income can be reduced by deductions of, among others, interest paid on debts secured by real estate situated within the Netherlands, interest expenses effectively connected with a business carried on with the Netherlands, social security premiums, and losses carried forward from the previous six years or carried back from the subsequent two years. Net income calculated in accordance with the above rules is taxed at the same rates applicable to income earned by resident taxpayers. Some statutory deductions, such as old age allowances and allowances for married taxpayers, are only available to nonresidents in limited circumstances (the most important of which is the case of employment income).

8.7.5 Resident and nonresident individual taxpayers are also subject to a net wealth tax[248] that is levied upon total net wealth as calculated on January 1 of each calendar year.[249] The rate of this tax (a non-deductible item for income tax purposes) is currently 0.8 percent. Remissions may be available for certain assets, e.g., real estate, situated abroad. Approximately the first 60,000 Dutch guilders of net wealth, depending upon the marital status, is exempt from the tax. Nonresident individuals are subject to the net wealth tax with respect to the net capital of a business carried on within the Netherlands through a permanent establishment, real estate situated within the Netherlands (to be reduced by any debt secured by mortgages on such real estate), as well as claims secured by mortgages on such real estate and profit sharing rights, other than those resulting from share ownership or employment, in enterprises managed within the Netherlands.[250] The fl. 60,000 exemption is not available to nonresidents.

8.7.6 The Netherlands extends favorable tax rulings to an employee of a foreign enterprise who is temporarily[251] transferred to the Netherlands as an employee of a foreign company or as an employee of an affiliated Dutch enterprise. Such tax rulings can be obtained if the employee so transferred is not a Dutch citizen and if he and his family register in one of the municipal registers and thus establish a permanent residency within the Netherlands. Such rulings provide for a deduction equal to 35 percent of gross salary as a deemed expense.

8.8 The Netherlands has a comprehensive system of social security laws. This legislation provides substantial benefits in case of sickness, accidents, unemployment and retirement. Two categories of benefits are extended:

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[248]This tax is creditable against United States taxes (United States-Netherlands Tax Treaty art. 19(2))

[249]Individuals are always taxable on a calendar year basis.

[250]Tax treaty provisions may exempt nonresidents.

[251]There is initially a maximum of five years.

1. to all residents for old age benefits, including pensions for widows and orphans, child allowances, and illness compensations, and
2. to employees who work and earn salaries for benefits in case of disability, sickness and unemployment.

Contributions are made by employers and employees[252] and assessed through withholding on wages paid and are collected by the tax collector and public institutions. Withholding is not always final and additional assessments may be made. The maximum total of premiums payable for an employee earning approximately fl. 55,000 amounts to approximately fl. 19,000, of which the employee's burden is approximately fl. 8,000.

8.9 A gift tax is imposed on gifts made by (i) Netherlands residents or (ii) those of Dutch nationality who departed from the Netherlands less than ten years before the date of the gift, and (iii) persons not of Dutch nationality who departed from the Netherlands less than one year before the date of the gift. The country of residence of the beneficiary is not relevant for purposes of determining whether a taxable event took place. The tax rates are the same as those applied for inheritance tax purposes and range between 3 percent and 54 percent. The inheritance tax rate applied with respect to nonresidents does not exceed 6 percent. Certain transfers are exempt if they do not exceed specified levels and estate tax treaties may also limit the tax.

Individuals liable for inheritance tax include residents and those deemed resident for inheritance tax purposes, i.e., Dutch nationals who died within ten years of leaving the Netherlands. Nonresidents are subject to inheritance taxes with respect to certain categories of assets situated within the Netherlands, including real estate, business assets forming part of a permanent establishment and profit shares in a Dutch enterprise other than mere stock ownership.

[252]As mentioned above, the contributions constitute deductible items for income tax purposes (individual and corporate).

Appendix

The Following Withholding Tax Rates Apply Under Treaties in Effect on January 1, 1980:

Netherlands Tax Payable on Payments to Residents of Treaty Countries

Treaty Country	Dividends: General Rate	Dividends: Special Rate*	Royalties	Interest†
Australia	15	15	No Withholding Tax	No Withholding Tax
Austria	15	0		
Belgium	15	5		
Canada	15	0(100)		
Czechoslovakia	10	0		
Denmark	15	0		
Finland	15	0		
France	15	5		
Germany	15	10		
Indonesia	20	0		
Ireland	15	0		
Israel	15	5		
Italy	0	0		
Japan	15	5		
Luxembourg	15	2.5		
Malta	15	5		
Morocco	25	10		
Neth. Antilles	15	0		
Norway	15	0		
Singapore	15	0		
South Africa	15	5		
South Korea	15	5		
Spain	15	5(50)		
Surinam	20	7.5/15		
Sweden	15	0		
Switzerland	15	0		
Thailand	25	5		
United Kingdom	15	5		
United States	15	5		
Zambia	15	5		

*The special rate applies if the recipient is a company owning at least 25%, except for the treaties with:
Canada (100%) - Italy (75%) - Spain (50%) - United Kingdom (10%).

†Different rates may apply to profit sharing bonds and loans secured by real estate.

(Continued on next page)

Appendix *(Continued)*

Foreign Tax under Treaties on Payments by Residents of Treaty Countries to a Resident of The Netherlands

TREATY COUNTRY	DIVIDENDS		ROYALTIES	INTEREST*
	General Rate	Special Rate*		
Australia	15	15	10	10
Austria	15	5/10	0/10	0
Belgium	15	5	0	0/10
Canada	15	0(100)	15	15
Czechoslovakia	10	0	5	0
Denmark	15	0	0	0
Finland	15	0	0	0
France	15	5	0	0/10/12
Germany	15	25	0	0
Indonesia	20	10	5/10/20	10/20
Ireland	15	0	0	0
Israel	15	15	5/10	10/15
Italy	30	0(75)	0	15/30
Japan	15	10	10	10
Luxembourg	15	2.5	0	0
Malta	0	0/15	0/10	10
Morocco	25	10	10	10/25
Neth. Antilles	15	0	0	0
Norway	15	0	0	0
Singapore	0	0	0	10
South Africa	15	5	0	10
South Korea	15	10	10/15	10/15
Spain	15	5/10(50)	6	10
Surinam	20	7.5/15	5/10	5/10
Sweden	15	0	0	0/5
Switzerland	15	0	0	0/5
Thailand	25	10/15/20	5/15	5
United Kingdom	15	5	0	0
United States	15	5	0	0
Zambia	15	5	10	10

NOTE: The following treaties have been extended to the Netherlands Antilles: NL-Denmark - NL-Norway - NL-United Kingdom - NL-United States. However, special provisions apply in the relation with the Antilles which may cause a different regime for withholding taxes.

NOTE: (1) The treaty between the Netherlands and the United Kingdom has been extended to Malawi.

(2) Treaties between The Netherlands and Hungary and Rhodesia are in existence, but the current situation is unclear.