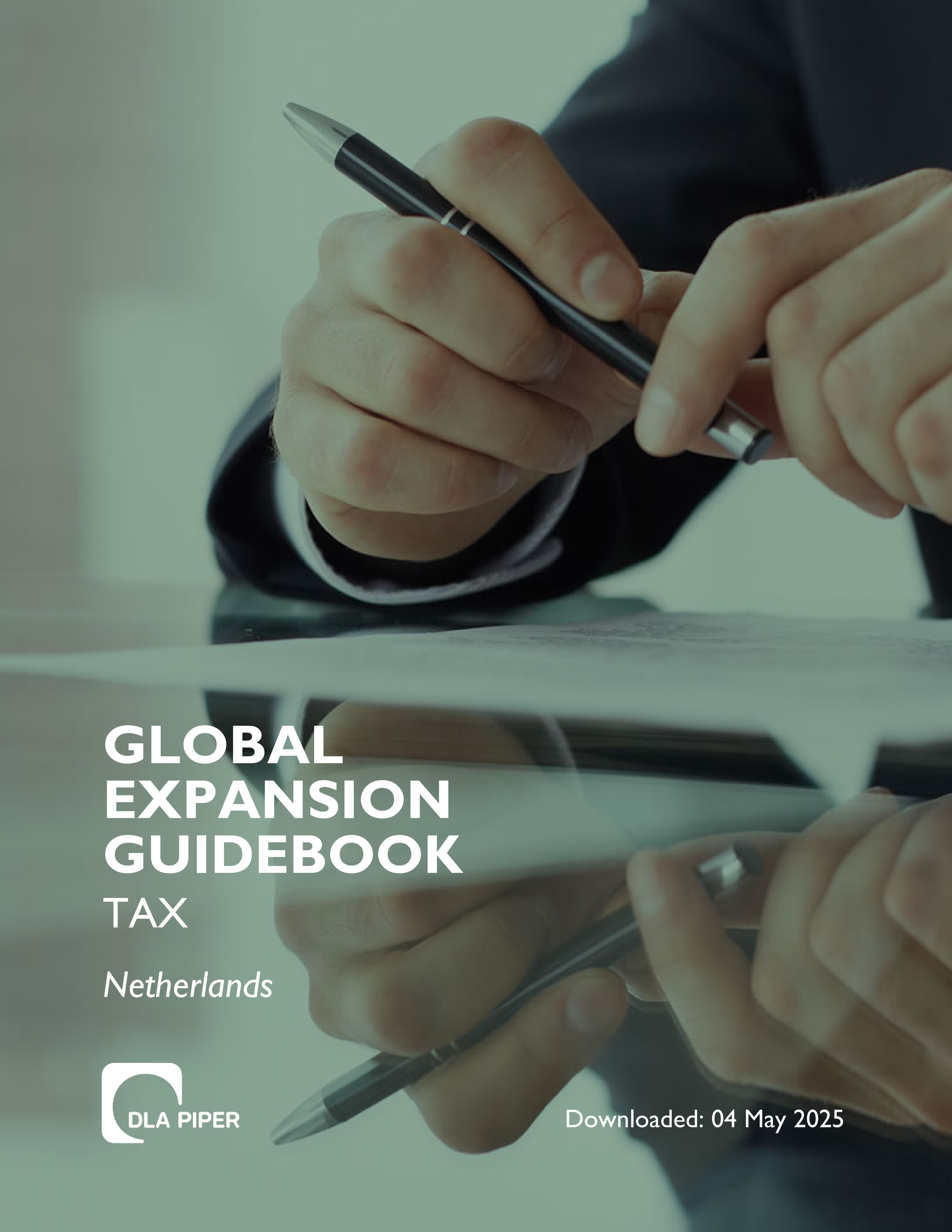

GLOBAL EXPANSION GUIDEBOOK

TAX

Netherlands

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that tax law is dynamic, and the legal regime in the countries surveyed could change.

NETHERLANDS

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RESIDENCE AND BASIS FOR TAXATION

A company that is effectively managed in the Netherlands is treated as a resident company. Companies incorporated under Dutch law are deemed to be residents of the Netherlands.

Domestic

A resident company is subject to income tax on all its income and capital gain from sources anywhere in the world. Exemptions or exclusions may apply for certain income from shareholdings and permanent establishments.

Foreign

A nonresident company is generally taxed only on its Dutch-source income. A network of double taxation treaties operates to modify these rules including reducing the rate of withholding taxes.

TAXABLE INCOME

Domestic

Taxable income of a domestic corporation is equal to all net income less applicable deductions.

Foreign

A nonresident corporation is subject to corporate income tax only on income derived from Dutch sources. Income from Dutch sources include, among other items, business income from operations in the country through a branch, office or other permanent establishment, including a permanent representative, and income derived from the leasing and disposal of real estate located in the Netherlands.

TAX RATES

The standard corporate income tax rate is 25,8 percent. A lower rate of 15 percent applies for taxable income up to EUR395,000.

The Netherlands only levies withholding tax up to 15 percent on outgoing dividends, often reduced under the application of tax treaties or a domestic withholding exemption. As of January 1, 2021, the Netherlands levies a conditional withholding tax of 25 percent (25.8 percent as of 2022) on payments of interest and royalties to low tax jurisdictions and in abusive situations.

TAX COMPLIANCE

Corporate income tax returns must be filed within 5 months after the end of the fiscal year, but extensions may be applicable.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

No broad-based general rulings are available as they are considered incompatible with international and EU standards. However, on an individual basis, taxpayers may request an advance tax ruling or advance pricing agreement from the Dutch tax authorities. The Dutch tax authorities' advance ruling practice has been an integral part of the tax system for many years and contributes to the attractive business climate in the Netherlands.

Tax incentives

There are tax incentives for specific activities, including an IP box regime (Innovation Box) with a reduced effective corporate income tax rate on qualifying IP income of 9 percent, and a payroll tax credit for innovation, competitiveness and employment.

A special tonnage tax regime applies to shipping companies.

A 0 percent tax liability or full exemption is provided for qualifying investment funds.

CONSOLIDATION

The Dutch tax consolidation regime allows a Dutch parent company and its 95-percent-owned domestic subsidiaries to apply for the consolidation regime. In addition, a tax consolidation is allowed between 2 Dutch sister companies that have the same EU parent company which owns an interest of at least 95 percent in both Dutch companies. Profits and losses of the subsidiaries are attributed to the Dutch controlling parent company. A Dutch parent company that indirectly owns at least 95 percent of Dutch affiliates through 1 or more foreign companies based in the EU, Iceland, Norway or Liechtenstein (intermediary companies) may also form a tax group. Similarly, it is possible to set up a tax group between sister companies with their parent company established in the EU, Iceland, Norway or Liechtenstein.

PARTICIPATION EXEMPTION

Dividends from qualifying subsidiaries and capital gains from the sale of shares in a domestic or foreign subsidiary received by a Dutch corporate shareholder are exempted from tax, unless such payments are directly or indirectly deductible for corporate income tax purposes in the country of the subsidiary, irrespective of whether the deduction is actually claimed.

The participation exemption applies when at least 5 percent of the shares in the subsidiary are being held by the Dutch parent company and the subsidiary is not considered a low-taxed passive portfolio investment company.

CAPITAL GAIN

Capital gains are taxed as ordinary income, unless exempt by the participation exemption. Capital losses are deductible, unless attributable to the disposal of a shareholding qualifying for the participation exemption. Certain liquidation losses are deductible. As of January 1, 2021, the liquidation loss scheme is limited to shareholdings that are tax resident in the EU and the EEA (geographical limitation) and shareholdings over which the taxpayers have significant authority (ie, generally shareholdings of 50 percent or more) (material limitation). However, liquidation losses up to EUR5 million may still be taken into account without the geographical and material limitation. In addition, the liquidation must have been completed within 3 years after the moment of ceasing the shareholding or the decision to cease it (temporal limitation). The temporal limitation applies to all liquidation losses.

DISTRIBUTIONS

Dividend distributions paid by a Dutch company or holding cooperative to its shareholders or members are, in principle, subject to Dutch dividend withholding tax. Dividend withholding tax may be reduced under the domestic dividend withholding exemption or under the application of a tax treaty. A return of paid-up capital is, in principle, not subject to Dutch dividend withholding tax.

LOSS UTILIZATION

As of January 1, 2022, the loss utilization rules are limited to 50 percent of the taxable profits. However, tax losses up to EUR 1 million may be utilized in full. In conjunction with the limitation on the utilization of tax losses, the carry-forward period is made indefinite. The carry back period is 1 year. In addition, there are special rules which deny the utilization of tax losses in case of significant changes of ownership of a company.

TAX-FREE REORGANIZATIONS

Tax-exempt mergers, demergers and tax-exempt contributions of assets are available, provided the specific requirements in each case are met. In addition, the consolidation regime may be used to transfer assets or liabilities between group companies without giving rise to tax consequences. Special rules apply to cross-border reorganizations.

ANTI-DEFERRAL RULES

CFC

As of January 1, 2019, CFC rules apply to Dutch corporate taxpayers holding a direct or indirect subsidiary or a permanent establishment that is established in a jurisdiction that is included on:

- A yearly published Dutch blacklist (ie, jurisdictions with a statutory corporate tax rate less than 9 percent) or
- The European list of non-cooperative jurisdictions.

The CFC rules only apply to direct or indirect subsidiaries if the Dutch shareholder, alone or together with an associated enterprise or person, holds an equity interest of more than 50 percent in the subsidiary. Certain exceptions may apply, including where the subsidiary or permanent establishment has "real economic activities."

Under the CFC rules, certain categories of undistributed (passive) income of such CFCs are included in the corporate tax base of the Dutch corporate taxpayer.

In addition to these CFC rules, a shareholding of 25 percent or more in a low-taxed portfolio investment with greater or equal to 90-percent "bad assets" should be revalued annually at the fair market value.

General ANTI-avoidance rule

Wholly artificial constructions which are not in line with the purpose and scope of the law, resulting in a lower taxation, may be restricted under the general anti-avoidance rule.

FOREIGN TAX CREDITS

Subject to limitations, foreign tax credits are available for foreign taxes paid.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Corporate taxpayers owning real estate located in the Netherlands that is used for the purpose of their own business can annually depreciate the cost price of the real estate to its residual value, but not more than when the tax book value has reached 100 percent of its estimated market value (*WOZ value*). The estimated market value is assessed annually by the municipality where the real estate is located. The 100-percent threshold also applies to Dutch real estate that is rented out to 3rd parties.

TRANSFER PRICING

Arm's-length principles are applied under Dutch law to transactions between related entities. Dutch transfer pricing rules are in accordance with OECD guidelines. As of January 1, 2022, new anti-avoidance rules apply that aim to eliminate transfer pricing mismatches arising from a difference in the application of the arm's-length principle.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc

A 15-percent withholding tax applies to dividends paid by a domestic corporation to a person or entity. A domestic dividend withholding tax exemption applies on dividends paid to EU/EEA parent companies and parent companies in a 3rd country that has concluded a tax treaty with the Netherlands that contains a dividends clause, unless anti-abuse provisions apply.

Double taxation treaties operate to modify these rules, including reducing the rate of withholding taxes.

Withholding tax is generally reduced to 0 percent if the corporate shareholder has an interest of 5 percent or more in the subsidiary (domestic and EU/EEA), in line with the Parent-Subsidiary Directive.

As of January 1, 2021, the Netherlands will levy a conditional withholding tax of 25 percent (25.8 percent as of 2022) on outbound payments of interest and royalties to low-tax jurisdictions and in abusive situations.

Service fees

Not applicable for this jurisdiction.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

Real estate transfer tax is levied on the transfer of shares of Dutch real estate companies. Transfer of the shares is subjected to 8-percent transfer tax if the assets consist of mainly (*ie*, 50 percent or more) real estate.

Direct transfer of Dutch real estate is also subject to 8-percent transfer tax, or 2-percent in the case of owner-occupied dwellings. Certain exemptions may apply.

Private individuals may, under certain conditions, benefit from a transfer tax exemption on houses that are used for personal dwelling.

The Netherlands does not levy any other stamp duty, capital duty or registration tax of any kind.

EMPLOYMENT TAXES

Employers must withhold wage taxes and contributions for pension, health and unemployment insurance.

Under certain conditions, employers may provide incoming employees 30 percent of their wage tax-free. Incoming employees must be recruited or seconded from another country to work in the Netherlands and have specific expertise with no or little availability in the Dutch employment market. As of January 1, 2019, the 30 percent tax-free wage is only applicable for 5 years.

OTHER TAX CONSIDERATIONS

Not applicable for this jurisdiction.

KEY CONTACTS

Roderik Bouwman
Partner
DLA Piper Netherlands
roderik.bouwman@dlapiper.com
T: +31 (0)20 5419 894

Daan Arends
Partner
DLA Piper Netherlands
daan.arends@dlapiper.com
T: +31 (0)20 5419 315
View bio

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