

Dutch Tax Regime

An impression

Incorporation of a Dutch Limited Liability Company

The basics

Limited Liability Company - BV

- Incorporation of a BV requires a notary – the notary typically also arranges for registration with the Kamer van Koophandel
- The capital of a BV is divided in shares
- The minimum share capital amounts to EUR 0.01
- Director of the BV does not have to reside in the Netherlands – however, location of mind and management may have fiscal implications
- UBO needs to register with the Kamer van Koophandel
- It is possible to act in name of the BV prior to incorporation – for this it is necessary to register with the Kamer van Koophandel with a declaration of the notary that he/she will arrange for the incorporation. Until actual incorporation the BV should be indicated as being under incorporation (BV io)
- It takes between 24 hours and 10 days to complete the incorporation
- Until November 2023 the possibility of turbo liquidation

Legal Framework

Legal Framework

- Corporate Income Tax Act
- Dividend Tax Act
- Personal Income Tax Act
- General Tax Act
- Case Law
- Instructions

Corporate Income Tax

Fiscal Residency

- Corporate residency is determined on the basis of the facts and circumstances – effective place of mind and management and control are significant factors in this assessment
- Companies incorporated under Dutch law are deemed fiscal residents in the Netherlands
- Companies deemed to be a fiscal resident in the Netherlands are subject to Dutch corporate income tax on their worldwide income
- Permanent establishments of non-resident companies are subject to Dutch corporate income tax in their Dutch source income only
- Relevant double tax treaty provisions have to be considered

Tax Rate

- The standard corporate tax rates are progressive
- For 2023 the first bracket applies to taxable profits up to EUR 200,000 and the applicable tax rate is 19%
- The second bracket applies to taxable profits in excess of EUR 200,000 and the tax rate for 2023 is 25.8%
- There are various special regimes available which provide for a full corporate tax exemption or preferential effective corporate tax rates
- There are no provincial or municipal (sur)taxes

Income Determination

- Determination of the taxable income is independent of the commercial result determination
- Capital gains are taxed as ordinary income unless the gain is considered to be falling under the participation exemption
- Dividends are, unless falling under the participation exemption, taxed as ordinary income
- Interest income is taxed as ordinary income
- Royalty income is taxed as ordinary income
- Limitations may apply in determination of depreciation for immovable property
- Anti abuse provisions may limit interest deduction

Participation Exemption

- For shareholdings not qualifying as portfolio investments and where the shareholding reaches at least 5% of the capital the participation exemption applies
- If the conditions are met, the participation exemption will apply and the tax payer does not have an option to ignore the participation exemption (relevant in case of losses)
- Under the participation exemption both dividends and capital gains (or losses) are eliminated in determining the taxable income

Other Issues of Interest

- Dutch resident companies may form a fiscal unity provided the parent company owns at least 95% of the shares in the participating subsidiaries
- A Dutch permanent establishment of an EU or EEA resident company may act as the parent of a Dutch fiscal unity
- Transfer pricing rules apply, but for SME's no reporting obligations arise
- Deemed excessive loans (> EUR 700,000) taken out by the shareholders – excess will be considered income from substantial interest
- Investments in energy efficient and environmental assets in excess of EUR 2,500 may be eligible for additional deductions in determining the corporate income tax base

Personal Income Tax

Fiscal Residency

- Fiscal residency is determined on the basis of all relevant facts and circumstances. The criteria are amongst others the following
 - Where is a permanent home maintained
 - Where are employment duties performed
 - Where is the family residing
 - Where are bank accounts and other assets kept
 - What is the intended length of stay in the Netherlands
- Residents are subject to personal income tax on their worldwide income, subject to tax treaty provisions
- Non-residents are taxable on their Dutch source income only

Tax Rates

- Tax rates in box 1 (employment income and income from principal residence) are taxed at progressive rates varying from 9.28% (36.93% in case national insurance tax has to be considered) to 49.5%
- Income in box 2 (substantial interest) is taxed at a flat rate of 26.9%
- Income in box 3 (income from savings and investment) is taxed at a flat rate of 32%

Cross Border Aspects

Cross Border Considerations

- DAC6 reporting
- Minimum tax (as of 2024)
- Transfer pricing
- Cross border reorganisations (e.g. mergers)

Wrap Up / Questions