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# The Netherlands

## International Estate Planning Guide

Private Client Tax Committee

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## Table of Contents

I. Wills and disability planning documents.....	4
A. Will formalities and enforceability of foreign wills.....	4
1. The form of last will and testaments.....	4
2. Codicils.....	4
3. Post-death variations .....	4
4. The Hague Testamentary Dispositions Convention .....	4
B. Will substitutes (revocable trusts or entities) .....	4
C. Powers of attorney, directives and similar disability documents .....	4
II. Estate administration .....	5
A. Overview of administration procedures .....	5
1. Administration of the estate.....	5
2. Certificate of inheritance .....	5
3. Executor and administrator .....	6
B. Intestate succession and forced heirship.....	6
1. Intestate succession.....	6
2. Statutory division.....	6
3. Forced heirship rights.....	7
4. Disinherited spouse.....	8
5. Last will and testament.....	8
C. Marital property.....	8
1. Community of property regime .....	8
2. Marriage conditions.....	9

3. Same-sex couples.....	9
4. Dutch international matrimonial property law .....	9
D. Tenancies, survivorship accounts and payable-on-death accounts.....	10
III. Trusts, foundations and other planning structures .....	10
A. Common techniques.....	10
B. Fiduciary duties (trustees, board members, directors etc).....	12
C. Treatment of foreign trusts and foundations .....	12
IV. Taxation .....	13
A. Domicile and residency .....	13
B. Gift, estate and inheritance taxes .....	13
1. Inheritance tax.....	13
2. Gift tax.....	14
3. Calculation of inheritance and gift tax .....	14
4. Tax-free allowances .....	14
5. Other inheritance tax and gift tax exemptions .....	15
6. Taxation of the assets of a trust or foundation .....	15
7. Inheritance tax and gift tax double tax treaties .....	15
8. Tax assessment .....	15
C. Taxes on income and capital.....	16
1. Corporate income tax.....	16
2. Personal income tax.....	16
3. Taxation of the assets of a trust or foundation .....	19
4. Non-residents.....	19
5. Temporary residents .....	19

6. Tax assessment ..... 20

7. Double taxation treaties ..... 20

## I. Wills and disability planning documents

### A. *Will formalities and enforceability of foreign wills*

#### 1. THE FORM OF LAST WILL AND TESTAMENTS

Generally, a last will and testament is executed in the form of a deed prepared by a Dutch civil-law notary. A holographic will (handwritten by the testator) is also possible, although very uncommon. A holographic will must be deposited by a Dutch civil-law notary. In the deed of deposit, the testator must declare, among other things, that his or her holographic will meets the statutory standards and is deposited by the civil-law notary executing the deed.

#### 2. CODICILS

Dispositions with regard to clothing, personal objects, jewellery, furniture and specific books can be made in a codicil that needs to be handwritten, dated and signed by the testator.

#### 3. POST-DEATH VARIATIONS

The beneficiaries under a will cannot make a post-death variation of the will. The preparation of a will is a strictly personal matter that cannot be delegated to the beneficiaries.

#### 4. THE HAGUE TESTAMENTARY DISPOSITIONS CONVENTION

The Netherlands is a party to the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (the 'Hague Testamentary Dispositions Convention'). Under this convention, a will made in another jurisdiction is recognised as valid, if its form complies with the internal law of:

- the country where the testator made the will;
- the country of the testator's nationality, domicile or habitual residence (either at the time when the testator made the will or at the time of the testator's death); or
- the country where the assets are located (for immovable property).

The Netherlands has made a reservation under Article 10 of the Hague Testamentary Dispositions Convention to the effect that oral testamentary dispositions are not recognised as valid. Under Article 75, paragraph 1 of the European Union Succession Regulation, the Hague Testamentary Dispositions Convention remained in full force also after 17 August 2015.

### B. *Will substitutes (revocable trusts or entities)*

The Netherlands has no trust law. However, it is a party to the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (the 'Hague Trusts Convention'). The Netherlands recognises trusts governed by the laws of other jurisdictions.

### C. *Powers of attorney, directives and similar disability documents*

If a person is put under legal restraint (*curatele*) by the sub-district court, the court appoints a legal guardian (*curator bonis*) to represent him or her. A sub-district court can also impose a fiduciary administration for an adult's property if the adult cannot administer his or her own property. The fiduciary administrator manages the property.

A power of attorney, given before the loss of capacity, remains valid. Foreign powers of attorney are normally recognised, but a notarial power of attorney is required for certain legal acts, such as mortgaging Dutch immovable property.

To plan for loss of capacity a 'living will' can be made. A living will usually contains one or more powers of attorney and may also contain medical provisions, such as a do not resuscitate order.

## II. Estate administration

### A. Overview of administration procedures

#### 1. ADMINISTRATION OF THE ESTATE

The EU Succession Regulation, also applicable in the Netherlands (entered into force on 17 August 2015), determines the law governing the succession as a whole, including the succession, the transfer of possession of goods and rights upon death, and the administration of the estate. Therefore, a foreign grant of probate is recognised if it complies with the formalities prescribed by the law governing the succession. The EU Succession Regulation does not distinguish between movable and immovable property.

Under Dutch domestic law, there are no special formalities in relation to the transfer, gathering and administration of the estate. The heirs can take possession of all the deceased's assets from the moment of death. The deceased's estate passes directly to the heirs (*saisine*) unless the deceased has provided otherwise in his or her last will and testament. An heir can opt to refuse the inheritance or to accept it subject to the privilege of an inventory (beneficial acceptance). In the case of refusal, the heir renounces his or her inheritance. In the case of acceptance subject to the privilege of an inventory, there will be no liability for debts exceeding the value of the heir's share in the estate.

Both refusal and acceptance subject to the privilege of an inventory are effected by making an official statement to the clerk of the court within which the deceased last resided. If the deceased was resident outside the Netherlands, the District Court of The Hague is the competent court.

An heir can also choose to accept the estate unconditionally (*zuivere aanvaarding*). Unconditional acceptance is effected by making an official statement to this extent. Also, an heir who unambiguously and without reservation acts like an heir who unconditionally accepted the estate, by the sale or encumbrance of, or in any other manner, withdrawal of assets, frustrating recourse by creditors, thereby unconditionally accepts the deceased's estate, unless he or she previously already made a different choice.

An heir is not obliged to settle a liability of the deceased's estate out of his or her other capital, unless the heir has unconditionally accepted his or her appointment as heir.

#### 2. CERTIFICATE OF INHERITANCE

Under Dutch law, the certificate of inheritance (*verklaring van erfrecht*) has an important function in the winding up of an estate. A certificate of inheritance is a statement, issued by a Dutch civil-law notary, providing evidence of the beneficiaries' authorisation to dispose of the assets that form part of the estate. The persons granted with the authorisation to dispose of the estate's assets can identify themselves in judicial matters by means of the certificate of inheritance. If the deceased has appointed an executor, a certificate of executorship (*verklaring van executele*) can be issued in a similar manner. By means of such a declaration, the executor can identify

him or herself and exercise the powers granted to him or her in the last will and testament.

### 3. EXECUTOR AND ADMINISTRATOR

If the deceased has appointed an executor with the authority to administer the estate, the executor represents the heirs during administration. The executor can sell the deceased's assets if there are insufficient funds to discharge all the legacies and other liabilities of the estate. In all other cases, the executor requires the heirs' unanimous consent to dispose of the assets. The deceased can limit the executor's authority. For example, the executor can be responsible only for handling the funeral or the payment of a specific legacy. If the deceased has expressly authorised the executor to act as a settlement administrator (*afwikkelingsbewindvoerder*), the executor can dispose of the assets included in the estate without the heirs' consent or cooperation. Once the executor has completed his or her task, the individual must render an account of the estate administration to the heirs.

It is possible to provide in the last will and testament that the beneficiary's acquisition is placed under fiduciary administration (*bewind*). As a result of the administration, the property is not controlled and managed by its owner (the beneficiary) but by the fiduciary administrator (*bewindvoerder*) appointed in the will. During the administration, the owner's debts may not be recovered from the inherited property. The duration of the administration must be determined in the will. In any event, an administration ceases upon the death of the person who acquired the property. In addition, when five years have lapsed after the institution of the administration, the beneficiary may request the district court to terminate the administration, provided that it is plausible that he or she can properly manage the assets him or herself. In some respects, the administration is similar to a trust. One of the main differences from a trust is that property kept under administration is held in the name of the owner and not in the name of the administrator.

In the event of a gift, the donor may also stipulate that the gift is put under administration.

#### B. *Intestate succession and forced heirship*

##### 1. INTESTATE SUCCESSION

The inheritance law distinguishes between four groups of heirs. An heir in a preceding group excludes the heirs in the latter groups. The groups are as follows:

- spouse (and registered partner) and descendants;
- parents, siblings and their descendants;
- grandparents and their descendants; and
- great-grandparents and their descendants.

In the absence of a will, cohabitants are not entitled to a share in their partner's estate.

##### 2. STATUTORY DIVISION

If a deceased person leaves behind a spouse (or registered partner) and one or more children, the spouse and the children will inherit the estate, each taking an equal share. This does not mean that each of the heirs receives a share in the property of the estate. To protect the surviving spouse, Dutch inheritance law provides that all property of the estate vests in the surviving spouse. The surviving spouse must discharge all liabilities of the estate. The children receive a pecuniary claim equal to their share in the estate that, in principle, can only be

collected upon either: (i) the death of the surviving spouse; or (ii) the bankruptcy of the surviving spouse or the application of a debt rescheduling arrangement. In his last will and testament, a testator may include other events upon which the claim can be collected, such as remarriage of his or her spouse. This so-called statutory division (*wettelijke verdeling*) applies automatically unless the deceased has provided otherwise in his or her last will.

The children's claims bear interest if the statutory interest (ie, an interest in non-commercial matters that is periodically determined by the government) is higher than six per cent. Since 1 January 2015, the statutory interest has been two per cent. The deceased can provide for a different interest rate in his or her will. In addition, the deceased's heirs can agree upon a different rate of interest between themselves.

If a child predeceases his or her parent, that child's descendants are entitled to the deceased's share of his or her parent's estate. If there are no descendants, the living parents and siblings of the deceased child equally inherit the deceased's portion of his or her parent's estate.

### 3. FORCED HEIRSHIP RIGHTS

The children of the deceased have forced heirship rights (*legitieme portie*). They can be disinherited but may always make a pecuniary claim of 50 per cent of the value of the share they would have received on intestacy. This claim needs to be made within five years of the deceased's death. After this five-year period, the forced heirship claim lapses.

The children's forced heirship rights only apply with respect to the estate of their deceased parent. Therefore, for example, if the deceased was married and the full community of property regime applied, the children are entitled to a quarter of the total property of the deceased and his or her spouse because their deceased's parent's estate comprised only half the total property.

A child claiming his or her forced heirship rights does not become an heir. The child has a pecuniary claim against his or her deceased parent's estate. This claim can be recovered from estate assets. If the estate is insufficient to recover the entire claim, the child can recover his or her claim from certain gifts that were made by the deceased, for example:

- gifts made within five years preceding the deceased's death;
- gifts made to descendants; and/or
- gifts made with the intention of infringing upon forced heirship rights.

The child may recover his or her claim from trust assets if the trust settlement is considered a donation by the deceased. The child can collect his or her forced heirship rights six months after his or her parent's death. However, the parent's will may contain a provision that the child can only collect his or her forced heirship rights after the death of the deceased parent's:

- spouse or registered partner; or
- life partner with whom the parent entered into a notarial cohabitation agreement.

This provision can also apply if the deceased's spouse, registered or life partner is not a parent of the child.



#### 4. DISINHERITED SPOUSE

A disinherited spouse or registered partner has several statutory rights. For example, he or she can claim:

- the use (usufruct) of the family home and household effects; and
- the use (usufruct) of other estate assets if he or she, when considering all circumstances, needs the assets for maintenance.

#### 5. LAST WILL AND TESTAMENT

A form of last will that is frequently made by Dutch testators in order to ensure that the surviving spouse in any case continues to have control of the entire estate on the death of one of the spouses is the statutory division. The testator can stipulate in his or her last will that the surviving spouse has to pay compound interest of six per cent to provide that the claims of the children will have accrued on the death of the surviving spouse.

In order to enhance the effect of inheritance tax on the statutory division, the surviving spouse's portion from the estate of the deceased may be diminished, causing an increase of the children's portion. In any case, a certain portion must pass to the surviving spouse because, otherwise, a division between the spouse and children cannot be made. If, in the example given, the portion of the surviving spouse were to be limited to one per cent, the claims of the children would be 99 per cent. If the deceased has stipulated in his or her last will that the surviving spouse has to pay compound interest of six per cent, the claims of the children will have accrued on the death of the surviving spouse.

Another form of last will that is frequently made by Dutch testators is a will containing a bequest of usufruct of the estate for the benefit of the surviving spouse. In this last will, the children are appointed as the sole heirs (the surviving spouse is usually excluded as an heir) and the usufruct of the children's portions is bequeathed and devised to the surviving spouse. The surviving spouse as usufructuary has the authority to manage the estate of the deceased, to use it and to enjoy its proceeds. Under Dutch law, the usufructuary may also be granted the right to dispose of and to expend the goods subject to the usufruct without the heirs' consent or cooperation.

#### C. *Marital property*

##### 1. COMMUNITY OF PROPERTY REGIME

If a couple marries without making a prenuptial agreement, the couple automatically falls under the community of property regime (*wettelijke gemeenschap van goederen*). As of 1 January 2018, there were significant changes in this default matrimonial property regime under Dutch law.

For marriages entered into prior to 1 January 2018, the statutory community of property was a full community of property, including all property, either acquired before or during the marriage, even property acquired by inheritance, legacy or gift. A testator or donor could provide under an exclusion clause that an inheritance portion, legacy or donation is the recipient's private property, and therefore will not form part of the community of property.

For marriages concluded on or after 1 January 2018, a limited community of property regime applies. From this community of property, all property individually acquired prior to the marriage, as well as all property acquired by inheritance, legacy or gift, is excluded. Under the new

regime, a testator or donor may provide under an inclusion clause that an inheritance portion, legacy or donation will form part of the community of property the recipient is involved in.

Certain assets that are very closely connected to one of the spouses (eg, compensation for disability resulting from a car accident) are excluded from the community of property regime, both the current and former.

A community of property is automatically dissolved if the marriage ends by the death of one of the spouses or by divorce. Unless otherwise agreed, all property is divided equally. Entering into a community of property, either by marriage or as a result of the amendment of marriage conditions during the marriage, is not regarded as a gift that needs to be taken into consideration in determining the children's forced heirship rights.

## 2. MARRIAGE CONDITIONS

Spouses can agree upon marriage conditions (*huwelijksvoorwaarden*) before marriage. Marriage conditions must be incorporated in a deed, executed by a Dutch civil-law notary. Marriage conditions can also be made, and existing marriage conditions amended, during the marriage.

The spouses can freely negotiate marriage conditions and can, among other things:

- exclude any or some of the property from the community of property regime;
- insert a periodical settlement clause regarding the income that remains after the household expenses are paid; and/or
- agree on a final settlement clause, according to which, at the end of the marriage by divorce and/or death, property is administered as if the spouses were subject to full community of property (the Dutch Civil Code contains general rules regarding settlement clauses in marriage conditions).

## 3. SAME-SEX COUPLES

Same-sex couples can enter into a marriage or registered civil partnership (*geregistreerd partnerschap*). In relation to property law, succession law and tax law, same-sex couples are treated in exactly the same way as heterosexual couples. A registered civil partnership enjoys the same legal treatment as marriage for the purposes of property law. There are no special provisions in family law in relation to cohabitants.

## 4. DUTCH INTERNATIONAL MATRIMONIAL PROPERTY LAW

The Netherlands, France and Luxembourg have ratified the HCCH Convention on the Law applicable to Matrimonial Property Regimes (Hague Matrimonial Property Regimes Convention 1978, or 'the Convention'). The Convention entered into force on 1 September 1992. The Convention applies only to the matrimonial property regime of couples that were married after 1 September 1992 or that have designated the applicable law to their matrimonial property regime after that date, even if they were married before then.

The Convention's main rule is that the spouses are free to designate the law applicable to their matrimonial property regime. The rules of the Convention that apply if no designation has been made are the following: the principle rule is that the law of the state in which both spouses established their first habitual residence after marriage governs the proprietary consequences of the marriage. However, under certain circumstances, the law of the state of which both spouses

are nationals at the time of their marriage prevails. These circumstances apply in the following instances:

- The state of the common nationality of the spouses has made a declaration in accordance with the Convention's rules that it is a nationality state. The Netherlands has made such a declaration; France and Luxembourg have not. However, if such spouses have had their habitual residence in a habitual residence state for five years before their marriage, the law of that state will be applicable.
- The state of which both spouses are nationals has not ratified the Convention and is a nationality state, and the spouses make their habitual residence there.
- The spouses do not establish their habitual residence in the same state shortly after marriage.

If the spouses do not have a common nationality and do not establish a common habitual residence in one state shortly after marriage, the law of the state with which the matrimonial property regime is most closely connected applies.

The rule is that the applicable law at the beginning of the marriage does not change automatically during marriage. There are exceptions to this rule. The most important exception is that, if the spouses have neither designated the applicable law nor made a marriage contract, the applicable law changes when the spouses have had their habitual residence in a state for a period of ten years.

On 29 January 2019, the EU Regulation on Matrimonial Property Regimes entered into force, also applying to the Netherlands. This determines, inter alia, the applicable law to the matrimonial property regime of spouses married on or after the date of entry into force of the regulation. As a starting point, the spouses may elect the applicable law to their matrimonial property regime, being either the law of their habitual residence or their nationality or, if these differ, the habitual residence or nationality of one of them.

In the absence of a choice of law, the matrimonial property regime of the spouses is governed by the law of the state where the spouses establish their first common habitual residence after they are married.

On 29 January 2019, the EU Regulation on the Property Consequences of Registered Partnerships entered into force as well, also applying to the Netherlands. This regulation provides for similar provisions as the EU Regulation on Matrimonial Property Regimes for registered partnerships.

#### *D. Tenancies, survivorship accounts and payable-on-death accounts*

In the case of property that is jointly owned by two or more owners a vesting or take-over clause can be agreed upon between the co-owners. As a result of such a clause, upon the death of one of the owners, the other owner(s) acquire or have the right to take over the deceased's share in the common property. A vesting or take-over clause may stipulate that the other owner(s) are compelled to compensate the deceased owner's estate.

As a result of a death under a life insurance agreement or any third-party insurance, a beneficiary can acquire endowment insurance or a life annuity.

### **III. Trusts, foundations and other planning structures**

#### *A. Common techniques*

The Netherlands is a civil law jurisdiction. Statutory law constitutes the most important source of Dutch law. The courts, however, also play an important role in the formation of law. The trust concept is not known in Dutch domestic law. However, the Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985 came into effect in the Netherlands on 1 February 1996. This means that the Netherlands recognises trusts insofar as they fall within the definition of trusts given by the convention.

Foundations are forms mainly associated with activities other than businesses, for example, charitable, cultural and social activities. Foundations are recognised in the Netherlands. This applies also for foundations governed by another jurisdiction's laws. A foundation under Dutch law (*stichting*) is a legal entity under Dutch law with two main characteristics:

- the foundation does not have any members or shareholders; and
- the foundation aims at realising a goal, as defined in its articles of association, by using capital contributed to the foundation for that purpose.

A foundation may stipulate its own goal (provided such a goal does not contravene the law). Its goal is not necessarily limited to charitable purposes and may also include commercial activities. The foundation being a legal entity of its own means that, in principle (save for misconduct), the liability of persons involved with it (as board members or otherwise) is limited.

A foundation is to be incorporated through the execution of a notarial deed by a Dutch civil-law notary; such a deed must contain the articles of association of the foundation. The foundation and its board members must be registered with the Trade Register of the Dutch Chamber of Commerce.

The foundation is a rather flexible structure, mainly for the following reasons:

- The only mandatory corporate body of a foundation is its board. The articles of association must provide for the appointment and dismissal of the board members. There are no requirements, however, as to the manner of providing for appointment and dismissal (unlike, for instance, in respect of a private company, where the board members must be appointed by the general meeting of shareholders, or in specific cases by the supervisory board).
- Several types of board members may be created, with varying representation powers.
- While a foundation's statutory seat must be in the Netherlands, a foundation may hold office outside the Netherlands.
- Apart from the board, the articles of association may define other corporate bodies, with specific powers within the foundation (eg, a supervisory board), to be defined in its articles of association. A foundation may also have a one-tier board.
- There is no requirement for the Dutch Ministry of Justice to approve the articles of association as a condition for incorporation.
- In addition, a number of capitalisation, auditing and publication requirements, as applicable to public and private limited companies under Dutch law, do not apply to foundations.

When considering a foundation, one should bear in mind that pursuant to statutory law a foundation: (i) may not make distributions to its incorporator(s) and the members of its corporate bodies; and (ii) may only make distributions to other persons if such distributions are of an idealistic or social nature. These restrictions pertain to the distributions of profits, capital and/or reserves. They do not prevent the foundation from entering into contracts with such persons, pursuant to which it is required to make payments.

In the Netherlands, foundations are often used as a trust office (*stichting administratiekantoor*). When used as a trust office, assets (eg, shares in a company or an art collection) are transferred to the foundation, against the issuance by the foundation of depository receipts (*certificaten*). By doing so, separation is made between the legal title to (*juridische gerechtigdheid*) and beneficial ownership of (*economische gerechtigdheid*) the particular assets. Dutch law does not contain any specific provisions in this respect. General contract law does, however, apply. The relationship between the trust office and the depository receipt holders is governed by the provisions according to which the depository receipts are issued. These provisions are called the trust conditions (*administratievoorwaarden*) and may be agreed upon by the transferee of the goods concerned, the foundation and the depository receipt holder.

The issuance of depository receipts is often used as a method to safeguard continuity within a company. A shareholder in a private limited company can convert his or her voting shares into non-voting depository receipts with the voting power accumulating to the board of the foundation acting as a trust office. Usually the shareholder or any person(s) designated by him or her will acquire a controlling vote in the board. Consequently, the depository receipts are transferred to the next generation, if so desired, under further terms and conditions (eg, a fiduciary administration to a certain age). Any future dividends or other payments on the shares as well as increase in value of the shares will accrue to the depository receipts holders without any gift or estate tax being due. By making specific arrangements regarding the constitution of the board once the shareholder has resigned, the shareholder can strengthen the continuity and independence of the (family) enterprise.

#### B. *Fiduciary duties (trustees, board members, directors etc)*

Board members of a foundation have the duty of care and duty of good faith. In the Netherlands, the duty of care entails the duty to 'properly perform' management duties. A breach of these duties may give rise to an action by the foundation or give grounds for a successful appeal on tort (*onrechtmatige daad*). The duty of good faith is part of the reasonableness and fairness requirement that Dutch law imposes on the relationship between the foundation and its board members.

Regardless of the allocation of tasks, board members are collectively responsible for proper management. All board members will be jointly and severally liable for the failure of one or more co-board members. An individual board member is only exempted from liability if the individual proves that he or she cannot be held seriously culpable for the mismanagement and that he or she has not been negligent in preventing the consequences of the mismanagement.

#### C. *Treatment of foreign trusts and foundations*

The Netherlands does not have trust law. However, it is party to the Hague Trusts Convention. The Netherlands recognises trusts governed by another jurisdiction's laws, if they were created according to the rules of the convention. A foreign trust is governed by the applicable law. If no applicable law has been chosen, a trust is governed by the law to which it is most closely connected.

In general, trust assets are not affected by succession and forced heirship rules. However, it is, at least theoretically, possible that the settlement of assets into a trust is regarded as a gift that harms forced heirship entitlements. This could result in a claim of a forced heir to the trust assets. Under the Hague Trust Convention, a trust may not need to be recognised if it harms forced heirship entitlements.

Dutch law entails the incorporation theory (*incorporatieleer*). Under the incorporation theory, a legal entity is always governed by the laws of the state in which it is incorporated and has its statutory seat (this in contrast with the '*siège réel*' theory, under which the place where the legal entity's judicial and economic integration is situated is decisive). Foreign foundations can therefore operate in the Netherlands under their own domestic law.

#### **IV. Taxation**

##### *A. Domicile and residency*

In the Netherlands, resident individuals are liable to tax on their worldwide income and wealth. Non-residents are only taxable on certain types of income and wealth with a Dutch source. Domicile is not a relevant consideration for taxation purposes in the Netherlands.

The residence of a person must be determined on the basis of all circumstances. As such, determining tax residence is a highly factual matter, whereby actual circumstances are leading, and intentions are of less or even no relevance at all. In accordance with Dutch Supreme Court case law, a person is resident for tax purposes if a 'durable bond of a personal nature' exists. A person may have multiple durable bonds with different states, whereby the strongest durable bond is not decisive for residency. Moreover, even though the centre of vital interests may lie in one state, this does not rule out the ability to have a 'durable bond of a personal nature' with another state.

When determining whether a person may have a durable bond of a personal nature with the Netherlands and therefore qualify as a Dutch tax resident, the following circumstances are particularly relevant: the availability of a permanent home, where one has a place of habitual abode and where one's family is located. Also, among others, place of employment, place of medical treatment, one's memberships and even the place where one has taken up insurance are taken into account. The number of days spent in or outside the Netherlands is, in practice, only one of the (less) relevant factors.

For non-residents, the connecting factor that will give rise to a tax liability as non-resident taxpayer is the ownership of certain assets that have a Dutch source, including, among others, ownership of real estate situated in the Netherlands, a (profit) stake in a business in the Netherlands and a substantial shareholding in a Dutch company (subject to the application of a treaty for the avoidance of double taxation).

##### *B. Gift, estate and inheritance taxes*

###### **1. INHERITANCE TAX**

Inheritance tax is payable on the worldwide estate of a deceased who is (deemed to be) a resident of the Netherlands at the time of his or her death (in relation to Dutch residence, see paragraph IV.A above). Inheritance tax is payable by the recipient. A person who dies within ten years after leaving the Netherlands is a deemed resident in the Netherlands if he or she still was a Dutch national at the time of his or her emigration and death. A non-resident deceased (that

has not been a resident in the preceding ten years or did not have Dutch nationality) is not subject to Dutch inheritance tax, not even with regard to Dutch situs assets.

## 2. GIFT TAX

Gift tax is levied on gifts from a donor who is (deemed to be) a resident in the Netherlands and is payable by the recipient. A person who leaves the Netherlands is a deemed resident ten years after leaving the Netherlands if he or she was still a Dutch national at the time of his or her emigration and of the gift. If a non-Dutch national leaves the Netherlands, he or she is deemed to be a tax resident for the following year, for gift tax purposes only.

## 3. CALCULATION OF INHERITANCE AND GIFT TAX

Inheritance tax is not only due on what is acquired directly from an estate. The Inheritance Tax Act 1956 includes various anti-abuse provisions to prevent tax avoidance. For calculation of inheritance and gift tax, assets are valued at fair market value at the time of death or of the gift. With respect to some specific properties, the Inheritance Tax Act 1956 stipulates special valuation rules.

Inheritance and gift tax are imposed at a progressive rate, depending on both the size of the acquisition and the relation between the deceased and the beneficiary. The following rates apply (2021), depending on the beneficiary:

<i>Acquisition (€)</i>	<i>Spouses/children (%)</i>	<i>Other descendants (%)</i>	<i>Others (%)</i>
0–128,750	10	18	30
128,751 and more	20	36	40

## 4. TAX-FREE ALLOWANCES

For inheritance tax, the most important tax-free allowances are as follows (2021):

For partners, the tax-free allowance is €671,910. Deducted from this amount is half the cash value of pension rights derived by a partner from the death of the deceased. However, a minimum allowance of €173,580 always remains. Any inheritance of pension rights or certain annuities comparable to pension rights is exempt from inheritance tax. Besides spouses and registered partners, cohabitants may also qualify for partnership within the Inheritance Tax Act 1956 if they meet several requirements.

The tax-free allowance for children whose cost of living was for the greatest part paid by the deceased and for whom it is expected that within the coming three years they will not be able to earn half the income a physically and mentally healthy person would earn is €63,836.

For other children and grandchildren, the figure is €21,282; for parents, €50,397; and for others, €2,244.

For gift tax, the following annual tax-free allowances apply (2021): for children, €6,604; and for others, €3,244. The above allowances include a temporary increase of €1,000 due to the Covid-19 pandemic.

## 5. OTHER INHERITANCE TAX AND GIFT TAX EXEMPTIONS

Subject to the satisfaction of strict conditions, the following inheritance tax and gift tax characteristics apply to entrepreneurial assets and substantial shareholdings that represent entrepreneurial assets:

- the difference between the liquidation value of a business and the lower value as a going concern can be tax exempt conditionally;
- the first €1,119,845 of the value as a going concern and 83 per cent of the excess above the first €1,119,845 of the value as a going concern can be tax exempt conditionally; and
- for the tax on the remaining 17 per cent of the value as a going concern, a conditional extension for payment for a period of ten years can be obtained.

The main condition is that the business must be continued for a period of five years after the gift or death of the deceased. Transfers to designated charitable organisations are exempt from inheritance tax and gift tax.

The acquisition of Dutch immovable property from both non-resident and resident donors is subject to eight per cent real estate transfer tax (*overdrachtsbelasting*). The transfer tax rate for the acquisition of dwellings is two per cent if the buyer intends to use the property for residential purposes. For resident donees, it is possible to (partially) offset the real estate transfer tax against the gift tax. If a non-resident taxpayer transfers Dutch immovable property as a gift, no gift tax is due. However, the acquisition of such immovable property is taxable for real estate transfer tax purposes. No inheritance tax is payable on a non-resident's immovable assets that are situated in the Netherlands. If Dutch real estate is acquired by way of inheritance, this is not considered taxable for Dutch real estate transfer tax purposes.

## 6. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

As mentioned above, the Netherlands has no trust law. However, the tax treatment of (foreign) trusts and trust-like entities is regulated by the Personal Income Tax Act and the Inheritance- and Gift Tax Act (see paragraph IV.C.3 below).

## 7. INHERITANCE TAX AND GIFT TAX DOUBLE TAX TREATIES

In relation to inheritance tax, the Netherlands has entered into seven double taxation treaties, with Austria, Finland, Israel, Sweden, Switzerland, the United Kingdom and the United States. In relation to gift tax, the Netherlands has entered into treaties with Austria and the UK. In the absence of a tax treaty, Dutch unilateral law for the avoidance of double taxation may provide relief.

## 8. TAX ASSESSMENT

The deadline for filing the inheritance tax return is eight months after the death of the deceased. Postponement is granted on request. The tax must be paid within six weeks after a notice of assessment.

If an heir or legatee living abroad receives property from a Dutch resident's estate, the heirs who live in the Netherlands are liable for the payment of the non-resident heir's or legatee's taxes.

Declarations for gift tax must be filed within two months after the end of the calendar year in which the gift was made.



### C. *Taxes on income and capital*

Corporate income tax and personal income tax are the direct taxes on income levied in the Netherlands from legal entities and natural persons, respectively. The Netherlands does not separately levy a net wealth tax of any sort. However, the Personal Income Tax Act 2001 does subject a deemed return from savings and (portfolio) investments to tax, which has certain characteristics of a net wealth tax. There is no separate capital gains tax in the Netherlands, however, both natural persons and legal entities may be subject to tax on gains. Natural persons that derive such gains from business activities or from a substantial shareholding will be exposed to personal income taxation (see paragraph IV.C.2 below), while legal entities are subject to corporate income taxation unless an exemption applies (see paragraph IV.C.1 below).

#### 1. CORPORATE INCOME TAX

Corporate income tax is levied from entities specified in the Corporate Income Tax Act 1969. Examples are public companies with limited liability, private companies with limited liability, limited partnerships with an open-end character and cooperatives. These entities are deemed to carry on a business with all of their assets. Associations/foundations are subject to corporate income tax insofar as they carry on a business enterprise or (potentially) compete with other businesses.

Resident entities are subject to tax on their worldwide profits. Non-resident entities are taxable in the Netherlands to the extent that they derive income from certain Dutch sources (eg, permanent establishment and Dutch real estate).

Corporate income tax is levied at 25 per cent, whereby the first €245,000 of profits is taxed at 15 per cent (2021). The Dutch Government proposed a gradual decrease of the aforementioned rates, but given the uncertainties following Covid-19, it may be expected that rates will not be reduced further in 2021.

Revenue generated through a foreign permanent establishment is exempted from the Dutch corporate income tax base. An object-based exemption exists which will provide that losses incurred through foreign permanent establishments will be offset against Dutch profits. The object-based exemption will not apply to so-called 'low-taxed foreign portfolio investment branches' and 'fiscal investment institutions'.

#### 2. PERSONAL INCOME TAX

Resident individuals are subject to personal income tax on their worldwide income. Pursuant to the Personal Income Tax Act 2001, there are three categories or so-called 'Boxes' of income (see below). The tax rates vary, depending on the Box. Deductible amounts like interest are generally assigned to the same box as the income to which they are related. Certain personal allowances are deductible in Box 1, Box 3 or Box 2 (in this order) if the income from the preceding box is not sufficient for deduction. These allowances are: alimony; losses on loans granted to starting entrepreneurs; childcare expenses; medical expenses; and gifts. Partners (spouses, registered partners and certain cohabitants) are, in principle, taxed individually. However, there are also categories of joint income and deductible expenditure. Partners can apportion this joint income and deductible expenditure among themselves and as such choose the most beneficial apportionment between the two of them.

Married persons or persons that have entered into a registered partnership recorded in the municipal register of births, deaths and marriages automatically qualify as partners (except if

they are permanently separated). Persons living together without being married can qualify as partners for tax purposes if they meet specific conditions.

If a person lives in the Netherlands, that person will generally be subject to the Dutch compulsory social security system. This system comprises the General Old Age Pension (Algemene Ouderdomswet or AOW), Surviving Dependents (Algemene Nabestaanden Wet or Anw) and Long-Term Care Act (Wet Langdurige Zorg or Wlz) schemes. Contributions to these insurance schemes are charged on earnings. The contributions are finally collected via the annual Dutch personal income tax assessment. Social security contributions are only calculated on the first two brackets in Box 1. The Netherlands grants levy rebates (*heffingskortingen*). The most important levy rebates are the general levy rebate granted to all resident taxpayers of €2,837 (maximum in 2021) and the employment levy rebate granted to resident, employed taxpayers of €4,205 (maximum in 2021).

*Box 1: income from employment, business and principal dwelling*

In this Box, the following categories of income are taxed:

1. income from business activities;
2. income from present and past employment;
3. income from other activities that cannot be qualified as business activities or employment (any freelance activity; eg, occasional lecturing and consultancy work);
4. periodical payments received from individuals (eg, alimony) or insurance companies (eg, a pension);
5. periodical payments received from the state or a public body (eg, the state pension); and
6. income from owner-occupied dwellings.

Income in this Box is subject to tax at progressive rates ranging from 37.10 per cent to 49.50 per cent. The highest income tax rate will apply to income from employment and dwellings in excess of €68,508. In addition, income from employment is generally subject to wage withholding tax. Wage withholding tax can be offset against personal income tax. In Box 1, only a limited number of deductions are allowed. The most important are interest paid on a loan contracted for the acquisition, improvement and maintenance of the principal, owner-occupied residence. Subject to certain terms and conditions, the interest paid on such loan can, in principle, be deducted for a period of 30 years.

Income from business activities includes capital gains. Gains resulting from the normal administration of private wealth consisting of immovable property (including dwellings) are generally tax free, unless they result from activities going beyond normal property management.

Emigrating individuals who have paid annuity or pension premiums will receive a protective tax assessment that is not collected in advance as deferral is granted. The taxpayer must provide security if he or she emigrates outside the European Economic Area (EEA). The deferral is terminated so that the tax becomes payable if the taxpayer transfers the annuity policy for a profit, gives security over the policy or receives a lump-sum pension payment within ten years following the individual's exit.

Emigrating individuals may also be confronted with exit taxes in the case of a capital sum insurance for the owner-occupied dwelling.

*Box 2: income from substantial shareholdings*

Income from a substantial shareholding (ie, five per cent or more) includes dividends and capital gains, and is taxed at a flat rate of 26.90 per cent (2021).

For non-resident taxpayers, this Box only applies to shares held in resident companies, as this qualifies as income with a Dutch source. Dividends received from a substantial shareholding are taxed on a cash basis when they are received and capital gains on a substantial shareholding are taxed in the year of the (deemed) disposal. Generally, tax treaties on income and capital gains (if applicable) prohibit the Netherlands from levying its full domestic rate.

Dividends paid by resident companies are subject to a 15 per cent dividend withholding tax. This withholding tax may be offset against Dutch personal income tax payable by resident taxpayers.

Emigrating individuals with a substantial shareholding in a legal entity are deemed to dispose of their shareholding prior to their migration, except for certain temporary residents (see paragraph IV.C.5 below). This deemed disposition is subject to the applicable flat tax rate of 26.90 per cent. The emigrating individual will receive a protective tax assessment that is not collected in advance. The taxpayer must provide security if he or she emigrates outside the EEA. The protective tax assessment does not have any time limit, so that the deferred tax collection will take place in any case, either over time insofar as income is repatriated from the legal entity or at once in the case a prohibited action is taken.

*Box 3: income from savings and investments*

Property and assets in Box 3 are deemed to generate a return on investments on the net fair market value of assets. The assessment base consists of two parts. The income from savings and investments is attributed to a part of assets which is taxed based on fictitious profit of 1.898 per cent, a part is taxed based on a fictitious profit of 4.501 per cent and another part is taxed based on a fictitious profit of 5.69 per cent. In accordance with this methodology, actual returns are not taxed. The net fictitious yield is taxed at a flat rate of 31 per cent. The income tax cannot be negative (eg, where liabilities exceed assets). Assets include all tangible and intangible assets. Second houses are also subject to taxation in Box 3. Excluded from the yield assessment base is movable property used for personal use (eg, cars, yachts and art collections), unless such property is mainly held as an investment. Below is a table that shows the different effective tax rates in Box 3:

<i>Taxable income (€)</i>	<i>Deemed return (%)</i>	<i>Tax rate (%)</i>	<i>Effective tax rate (%)</i>
0–50,000	1.898	31	0.589
50,001–950,000	4.501	31	1.395
950,001 and more	5.69	31	1.764

Certain approved investments and monies below a certain value may be excluded from the yield investment base. The first €50,000 of the assessment base is tax free. These exemptions apply per person. A (married) couple together is therefore eligible for a double exemption.

For non-resident taxpayers, this Box 3 taxation is effectively limited to Dutch real estate and direct or indirect rights therein.

### 3. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

The Netherlands has no trust law. However, the Personal Income Tax Act 2001 and Inheritance Tax Act 1956 regulate the tax treatment of (foreign) trusts and trust-like entities (eg, non-Dutch foundations). The transfers of assets to a trust can be tax free because, for tax purposes, such a transfer is deemed not to have taken place and therefore no taxable event has occurred. The assets of a trust are attributed to the settler for tax purposes and income taxes are levied on the settler (or the heirs after the demise of the settler). Exceptions apply if, for example, a beneficiary has a fixed interest. In such a case the beneficiary him or herself is taxable on the fixed interest. The value of such interest is generally taxed in Box 3. The attribution rules do not apply to such fixed interest.

In relation to payments made from the (foreign) trust to beneficiaries, other than the settler, gift tax is assessed on payments when the settler is (deemed) resident in the Netherlands. The beneficiaries must also pay inheritance tax on trust assets upon the demise of the settler, if the settler was a (deemed) Dutch resident.

### 4. NON-RESIDENTS

Non-resident individuals pay tax on Dutch-source income. Generally speaking, this consists of income from substantial shareholdings held in Dutch resident companies (see paragraph IV.C.2, Box 2) and/or Dutch real estate and direct or indirect rights therein and rights to shares in the profit of an enterprise which has its management situated in the Netherlands (see paragraph IV.C.2, Box 3).

In some cases, non-residents are so-called 'qualifying non-resident taxpayers'. This is possible when a non-resident taxpayer lives in an EU country; in Liechtenstein; Norway; Iceland; Switzerland; Bonaire, Sint Eustatius or Saba; and pays tax in the Netherlands on more than 90 per cent of his worldwide income. If these conditions are met, the taxpayer is entitled to the same deductible items, tax credits and tax-free allowance as residents of the Netherlands. This regime is especially favourable for foreign employees working in the Netherlands, as the interest paid on loans contracted for purchase, renovation or maintenance of a main residence in the state of actual residence will be deductible from Dutch earnings.

### 5. TEMPORARY RESIDENTS

An important income tax incentive for expats (incoming employees) immigrating to the Netherlands is the 30-per-cent ruling. Under conditions, this ruling allows for a deduction of 30 per cent of the incoming employee's income for deemed extraterritorial expenses.

More importantly, the individual can opt to be treated as foreign taxpayer for Box 2 and Box 3. As a result, he or she will, in principle, not be taxable for a substantial shareholding in a company incorporated and managed outside the Netherlands or private wealth (except for (rights related to) Dutch real estate).

The 30-per-cent ruling is granted for a period of five years. This five-year period is reduced with the period (in months) spent in the Netherlands ending in the 25-year period prior to immigration. Furthermore, in order to be eligible for the ruling, the incoming individual should not have resided within a 150 kilometre radius of the Dutch border during more than two-thirds of the 24-month period prior to emigration. A 30-per-cent ruling, granted before 2019, is valid for a period of eight years.

Temporary residents who emigrate from the Netherlands within eight years, and who have not been a Dutch resident in excess of ten years in the past 25 years, are not subject to an exit tax with regard to substantial shareholding(s) in non-resident legal entities (see paragraph IV.C.2, Box 2).

#### 6. TAX ASSESSMENT

The official income tax year for natural persons runs from 1 January to 31 December.

Taxpayers must file their tax declaration before 1 May in the assessment year. The assessment year is the calendar year following the tax year (eg, for the tax year 2021, taxpayers must file tax declarations before 1 May 2022).

Postponement is possible upon request. However, the final assessment must be issued within three years from the end of the tax year concerned. This deadline is extended with the duration of any deferral. The tax must be paid within six weeks of notice of the assessment.

#### 7. DOUBLE TAXATION TREATIES

In relation to corporate income tax and personal income tax, the Netherlands has entered into many double taxation treaties, for example with Belgium, China, Switzerland, the UK and the US. Tax treaties override domestic law. Under most tax treaties concluded by the Netherlands, double taxation is generally avoided by the exemption-with-progression method. The relief is granted by reducing the tax amount by a percentage equal to the percentage that the foreign-source income bears to worldwide income. However, the credit method generally applies to withholding tax on dividends, interest and royalties (ie, the individual is taxed in both states, but the state of residence gives a credit for the tax paid in the other state).