

# The Netherlands

## International Estate Planning Guide

Private Client Tax Committee

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## 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 their holographic will meets the statutory standards and it must be 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 Hague Conference on Private International Law (*Conférence de La Haye de droit international privé* or HCCH) and the 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. According to Article 75, paragraph 1 of the European Union Succession Regulation, the Hague Testamentary Dispositions Convention was allowed to remain in full force 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. *Power 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 fiduciary administration (*meerderjarigenbewind*) on an adult's property if the adult cannot administer their 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 contain 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 (which entered into force on 17 August 2015), determines the law governing succession as a whole, including the succession, the transfer of the 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 their death. The deceased's estate passes directly to the heirs (*saisine*) unless the deceased has provided otherwise in their 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 their 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 affected by making an official statement to the clerk of the court of the district within which the deceased last resided. If the deceased was resident outside of 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 by unconditional acceptance, by the sale or encumbrance of or in any other manner withdrawal of assets, thereby frustrating recourse by creditors, thereby accepts the deceased's estate unconditionally unless the heir has already made a different choice earlier.

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

#### 2. CERTIFICATE OF INHERITANCE

Under Dutch law, the certificate of inheritance (*verklaring van erfrecht*) has an important function during 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 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 themselves 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 the administration process. 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 made 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 their 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 (*testamentair bewind*). As a result of this type of administration, 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 heir's private debts may not be recovered from the inherited property. The duration of administration must be determined in the will. In any event, administration ceases upon the death of the person who acquired the property. In addition, when five years have lapsed after the institution of administration, the beneficiary may request that the district court terminates the administration, provided that it is plausible that they can properly manage the assets themselves. In some respects, administration is similar to a trust. One of the main differences between this type of administration and 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 that a gift exists, the donor may also stipulate that the gift is put under administration (*schenkingsbewind*).

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

##### 1. INTESTATE SUCCESSION

Dutch 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.

Heirs in the same group inherit from a deceased's estate in equal shares, except for half-brothers and half-sisters. The share of a half-brother or half-sister shall be half of the share of a full sibling or a parent.

## 2. STATUTORY DIVISION

If a deceased person leaves behind a spouse (or registered partner) and one or more children, the spouse and 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 of the 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: (1) the death of the surviving spouse; or (2) the bankruptcy of the surviving spouse or the application of a debt rescheduling arrangement. In their last will and testament, a testator may include other events upon which the claim can be collected, such as the remarriage of their spouse. This so-called statutory division (*wettelijke verdeling*) applies automatically, unless the deceased has provided otherwise in their last will.

The testator may provide by testamentary disposition that a stepchild shall be involved in the statutory division as if they were their own child.

The children's claims bear interest if statutory interest (ie, interest in non-commercial matters that is periodically determined by the government) is higher than six per cent. As of 1 January 2025, statutory interest is six per cent. The deceased can provide for a different interest rate in their will. In addition, the deceased's heirs can agree upon a different rate of interest between themselves.

If a child predeceases their parent, that child's descendants are entitled to the deceased's share of their parent's estate by means of 'substitution' (*plaatsvervulling*). If there are no descendants, the living parents and siblings of the deceased child equally inherit the deceased's portion of their parent's estate.

## 3. FORCED HEIRSHIP RIGHTS

The children of the deceased have forced heirship rights (*legitieme portie*). They can be disinherited, but they are able to 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, their spouse is already entitled to half of the total property. The deceased parent's estate comprise the other half of the total property. The disinherited child is entitled to a quarter of half of the total property.

A child claiming their forced heirship rights does not become an heir. The child has a pecuniary claim against their 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 their 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 their claim from trust assets if the trust settlement is considered a donation by the deceased. The child can collect their forced heirship rights six months after their parent's

death. However, the parent's will may contain a provision that the child can only collect their 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 partner 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, they can claim:

- the use (usufruct) of the family home and household effects; and
- the use (usufruct) of other estate assets if they, when considering all the circumstances, need the assets for maintenance purposes.

#### 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 their last will that the surviving spouse has to pay compound interest of six per cent in order to ensure that the claims of the children have accrued in value upon the death of the surviving spouse.

In order to enhance the effect for inheritance tax purposes in regard to the statutory division, the surviving spouse's portion from the estate of the deceased may be diminished, causing an increase in 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 their last will that the surviving spouse has to pay compound interest of six per cent, in most cases, the claims of the children will have grown significantly upon 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 type of 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 to 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 as a gift. A testator or donor could provide through an

exclusion clause that a portion of the inheritance, legacy or donation is the recipient's private property and, therefore, does not form part of the community of property (*uitsluitingsclausule*).

For marriages concluded on or after 1 January 2018, a limited community of property regime applies. In regard to this type of community of property, all property individually acquired prior to the marriage, as well as all property acquired by inheritance, legacy or as a gift, is excluded. Under the new regime, a testator or donor may provide, through the use of an inclusion clause, that a portion of the inheritance, legacy or donation forms part of the community of property that the recipient is involved in (*insluitingsclausule*).

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

A community of property is automatically dissolved if the marriage ends due to the death of one of the spouses or 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 the marriage conditions (*huwelijkse voorwaarden*) 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 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. 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 but before 29 January 2019, or that designated the applicable law to their matrimonial property regime during that period, even if they were married before then.

The Convention's main rule is that 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 principal 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; and
- the spouses do not establish their habitual residence in the same state shortly after marriage.

If 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 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, which also applies in the Netherlands. This determines, inter alia, the applicable law in regard to the matrimonial property regime of spouses married on or after the date of entry into force of the regulation. As a starting point, spouses may elect the applicable law in regard to their matrimonial property regime, being either the law of their habitual residence or their nationality or, if these differ, the nationality of the habitual residence of one of them.

In the absence of a choice of law, the matrimonial property regime of 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, which also applies in the Netherlands. This Regulation provides similar provisions as set out in the EU Regulation on Matrimonial Property Regimes but 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 takeover 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 takeover clause may stipulate that the other owner(s) are compelled to compensate the deceased owner's estate.

As a result of 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 the 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 set out in the Convention.

Foundations are 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 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. A foundation being a legal entity 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 Business Register of the Dutch Chamber of Commerce.

A foundation is a rather flexible structure, 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 their appointment and dismissal (unlike, for instance, in respect of a private company, where the board members must be appointed by a 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; and
- 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 the suitability of a foundation, one should bear in mind that, pursuant to statutory law, a foundation: (1) may not make distributions to its incorporator(s) and the members of its corporate bodies; and (2) 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. These restrictions 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. However, general contract law does 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 their voting shares into non-voting depository receipts, with the voting power accumulating in regard 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 on the board. Consequently, the depository receipts are transferred to the next generation, if so desired, under further terms and conditions (eg, fiduciary administration in regard to a certain age). Any future dividends or other payments on the shares, as well as any increase in value of the shares will accrue to the depository receipt 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 a duty of care and a duty of good faith. In the Netherlands, a duty of care entails the duty to 'properly perform' management duties. A breach of these duties may give rise to action by the foundation or provide 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 are jointly and severally liable for the failure of one or more co-board members. An individual board member is only exempt from liability if the individual proves that they cannot be held seriously culpable for mismanagement and that they have not been negligent in preventing the consequences of mismanagement.

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

The Netherlands does not have a law on trusts. 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 possible, at least theoretically, that the settlement of assets into a trust is regarded as a gift that harms forced heirship entitlements. This could result in a claim by a forced heir in regard to the trust assets. Under the Hague Trusts 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 to 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 for 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 the 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. This is determined based on, inter alia, the availability of a primary residence, where the person has a place of habitual abode and where the family is located. Also, among others, the number of days spent in or outside the Netherlands, the place of employment, the place of medical treatment, one's memberships and even the place where one has taken up insurance are taken into account.

A person may have multiple durable bonds with different states, whereby the strongest durable bond is not decisive for residency purposes. 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. In such a case, a tax treaty may provide a tiebreaker in order to determine a person's tax residence. It is worth noting that the Netherlands has concluded only a very limited number of treaties regarding gift and/or inheritance tax.

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, the 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

In the Netherlands, gift and inheritance tax is levied pursuant to the Inheritance Tax Act 1956. Inheritance tax is payable on the worldwide estate of a deceased person who is (deemed to be) a resident of the Netherlands at the time of their 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 they were a Dutch national at the time of their emigration and death. A recipient of a non-resident deceased person (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 they were a Dutch national at the time of their emigration and of the gift. If a non-Dutch national leaves the Netherlands, they are deemed to be a tax resident for the following year, for gift tax purposes only.

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

### 3. CALCULATION OF INHERITANCE AND GIFT TAX

Inheritance tax may apply not only to assets acquired directly from an estate, but also in other situations covered by the Inheritance Tax Act 1956, which includes various anti-abuse provisions to prevent tax avoidance. For the purpose of the calculation of inheritance and gift tax, assets are valued at a 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 relationship between the deceased/donor and the beneficiary. The following rates apply (2025), depending on the beneficiary:

<b>Acquisition (€)</b>	<b>Spouses/children (%)</b>	<b>Other descendants (%)</b>	<b>Others (%)</b>
0–154,197	10	18	30
154,197 and over	20	36	40

There are individual tax exemptions for both inheritance and gift tax, which depend on the relationship between the deceased or the donor and the beneficiary (see sections IV.B.4 and IV.B.5)

### 4. TAX-FREE ALLOWANCES

For inheritance tax purposes, the most important tax-free allowances are detailed below (2025).

For partners, the tax-free allowance is €804,698. Half the cash value of pension rights derived by a partner from the death of the deceased is deducted from this amount. However, a minimum allowance of €207,886 always remains. Any inheritance of pension rights or certain annuities comparable to pension rights is exempt from inheritance tax. In addition to spouses and registered partners, cohabitants may also qualify for partnership within the definition of 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 €76,453.

For other children and grandchildren, the figure is €25,490; for parents, €60,359; and for others, €2,690.

For gift tax purposes, the following annual tax-free allowances apply (2025): for children, €6,713; and for others, €2,690. Children can receive a one-time tax-free gift of €67,064 for study or a one-time tax-free gift of €32,195 to be spent as they please.

## 5. OTHER INHERITANCE TAX AND GIFT TAX EXEMPTIONS

The Inheritance Tax Act 1956 provides for a tax facility for the transfer of business assets and substantial shareholdings that represent business assets as part of a business succession, otherwise known as the business succession facility. 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 €1.5m of the value as a going concern and 75 per cent of the excess above the first €1.5m of the value as a going concern can be tax exempt conditionally; and
- in regard to tax on the remaining 25 per cent of the value as a going concern, a conditional payment extension can be obtained for a period of ten years.

The main condition is that the business must be continued for a period of three years after the gift or death of the deceased. As from 1 January 2024, immovable property that is made available to third parties no longer qualifies as business assets, but is, according to legal fiction, classified as passive investment assets.

In addition, the levy of Dutch personal income tax may be (partly) deferred if certain requirements are met. Deferral is only available for the transfer of business assets (Box 1) and substantial shareholdings that represent business assets (Box 2). As from 1 January 2025, for both boxes, the main requirement is that the successor is at least 21 years of age at the time of the transfer. This replaces the previous requirement that the successor must have been involved in the business for at least 36 months. The age requirement does not apply in the case of acquisitions upon death.

The Dutch government recently announced that, as of 1 January 2026, business restructurings carried out during the holding and continuation periods will no longer affect the application of business succession facilities, provided the shareholder's economic entitlement to the business does not materially change.

Further changes to business succession facilities may also take effect on that date, depending on the legislative process.

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 a 10.4 per cent real estate transfer tax (RETT) (*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. An RETT exemption applies for people between the ages of 18 and 35 who acquire residential property that acts as their principal dwelling, according to which the acquisition value of the property may not exceed €525,000.

For completeness, we note that the Dutch government has announced its intention to reduce the general RETT rate for residential properties from 10.4 per cent to eight per cent as of 1 January 2026.

For residents, it is possible to (partially) offset RETT against 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 RETT 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 RETT purposes.

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

As mentioned above, the Netherlands does not have a law on trusts. 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 section IV.C.3).

## 7. INHERITANCE TAX AND GIFT TAX IN 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 is received.

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 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 section IV.C.2), while legal entities are subject to corporate income taxation unless an exemption applies (see section IV.C.1).

### 1. CORPORATE INCOME TAX

Corporate income tax is levied on entities specified in the Corporate Income Tax Act 1969. Examples of such entities include public companies with limited liability, private companies with limited liability, cooperatives and funds for joint account. These entities are deemed to carry on a business with all of their assets. Associations and foundations are subject to corporate income tax insofar as they carry on a business enterprise or (potentially) compete with other businesses.

As of 1 January 2025, Dutch limited partnerships and comparable foreign partnerships are treated as transparent for Dutch tax purposes, unless they qualify as a fund for joint account. One of the conditions for qualifying as a fund for joint account is that the arrangement must be established for the purpose of collective investment, which requires participation by at least two investors who are not family members.

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, a permanent establishment or Dutch real estate).

Corporate income tax is levied at 25.8 per cent, with the first €200,000 of profits taxed at 19 per cent (2025).

Revenue generated through a foreign permanent establishment is exempt from the Dutch corporate income tax base. An object-based exemption exists that provides 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'. The Dutch participation exemption also conditionally exempts shareholder income.

## 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, such as 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 the deduction. These allowances are alimony; losses on loans granted to entrepreneurs starting a new venture; 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.

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 bracket in Box 1. Social security contributions are effectively capped annually at €10,628 (2025).

The Netherlands grants levy rebates (*heffingskortingen*). The most important levy rebates are the general levy rebate, which is granted to all resident taxpayers, of €3,068 (maximum in 2025), and the employment levy rebate, which is granted to resident, employed taxpayers, of €5,599 (maximum in 2025).

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

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

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

Income in this box is subject to tax at progressive rates, ranging from 35.82 per cent to 49.5 per cent. The highest income tax rate will apply to income from employment and dwellings in excess of €76,817. In addition, income from employment is generally subject to a 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 a loan can, in principle, be deducted for a period of 30 years. The rate at which mortgage interest is deductible in the highest income tax bracket has been reduced to 37.48 per cent.

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 they emigrate outside the European Economic Area (EEA). The deferral is terminated so that tax becomes payable if the taxpayer transfers the annuity policy for a profit, provides security in regard to 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 regard to 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 progressive rates, divided into two brackets. The rates of the two brackets are 24.5 per cent and 31 per cent. The second bracket will start to apply at an income of €67,804.

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 a company with its (deemed) place of effective management in the Netherlands 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. For Dutch personal income tax (and dividend withholding tax) purposes, dividends and capital gains also include certain deemed dividends and deemed capital gains.

More specifically, a deemed benefit may arise if a substantial interest holder has, either individually or together with a partner or certain close relatives, borrowed more than €500,000 from a company in which the substantial interest is held. The excess above this threshold is treated as a taxable benefit. Under certain conditions, loans used for the acquisition, improvement and maintenance of a principal residence are excluded.

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). This deemed disposition is subject to the applicable tax rates, ranging from 24.5 per cent to 31 per cent. The emigrating individual will receive a protective tax assessment that is not collected in advance. The taxpayer must provide security if they emigrate 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 that prohibited action is taken.

### *Box 3: income from savings and investments*

In Box 3 the net deemed return on, inter alia, savings and (passive) investments is taxed at a rate of 36 per cent. In short, all taxable income/taxable assets not yet covered by Boxes 1 and 2 fall within the scope of Box 3. Considering that Dutch taxation in Box 3 is based on net deemed returns, the system could, in terms of its effects, be considered to be a net wealth tax. Actual income derived from Box 3 assets (eg, interest, dividends and capital gains) is currently not taxed.

For resident taxpayers, Box 3 income is based on the deemed returns on three asset classes: (1) savings (including cash), (2) other assets (eg, investment portfolios and Dutch real estate) and (3) debts. A deemed return is linked to each asset class and the total taxable Box 3 income is, in short, calculated by adding up the deemed return on asset classes (1) and (2) and subtracting the deemed return on asset class (3). These deemed returns are calculated on 1 January each year. For the 2025 tax year, the applicable deemed returns are 1.44 per cent for savings, 5.88 per cent for other assets and -/- 2.62 per cent for debts.<sup>1</sup>

For non-resident taxpayers, Box 3 taxation is effectively limited to Dutch real estate and the direct or indirect rights therein. Debts connected to Dutch real estate may be taken into account.

For both resident and non-resident taxpayers, certain approved investments and savings below a certain threshold may be excluded from the taxable base. A tax exemption of €57,684 (2025) per year applies to every taxpayer individually; for tax purposes, partners are eligible for a double tax exemption (ie, an exemption of €115,368).

The Box 3 income tax system has been widely criticised and has been the subject of multiple court cases over the past few years because of the use of a (relatively high) deemed yield in a period in which the (risk-free) market yields were historically low. As a result, certain taxpayers were confronted with an income tax burden in Box 3 of more than 100 per cent of the actual yield.

In recent years, the Dutch Supreme Court has ruled on several occasions that Box 3 violates the right to property and the prohibition of discrimination under the European Convention on Human Rights, in cases where the actual return on assets and liabilities is lower than the deemed return. Affected taxpayers are entitled to compensation in such cases, provided they can demonstrate that their actual return in a given tax year was lower than the deemed return.

The Dutch Supreme Court has clarified that an actual return includes all income and value changes, both realised and unrealised, without taking into account associated costs, except for interest on debts. Only nominal returns are relevant, and results from other tax years must be disregarded.

<sup>1</sup> Please note that the deemed returns on cash and debts for the year 2025 are preliminary only and will be determined at the beginning of 2026.

Following this ruling, taxpayers may effectively opt for taxation based on either the deemed or the actual return in Box 3, subject to providing sufficient evidence and timely objection to the tax assessment.

In response to this ruling by the Dutch Supreme Court, the Dutch legislator is preparing new Box 3 legislation, which is expected to enter into force in 2028. The proposed system seeks to tax the total actual return on Box 3 assets annually, consisting of both regular income and changes in the value of assets. The envisaged tax rate is 36 per cent, equal to the rate applicable in 2025.

Under the current draft, a hybrid system is proposed. As a general rule, the new regime will apply a wealth accumulation tax (*vermogensaanwasbelasting*), under which both regular income (such as interest, dividends and rent) and realised or unrealised changes in the value of assets are subject to tax, after the deduction of certain expenses.

By way of an exception, a capital gains tax (*vermogenswinstbelasting*) is proposed for specific asset categories, notably real estate and shares in startups. While regular income from such assets remains subject to annual taxation, gains or losses on these assets will only be taxed upon realisation, for example upon a sale.

Furthermore, Box 3 losses incurred in a given year may be carried forward and offset against future Box 3 income, without limitation in regard to time.

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

The Netherlands does not have a law on trusts. 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 themselves is taxable on the fixed interest. The attribution rules do not apply to such a fixed interest.

In relation to payments made from the (foreign) trust to beneficiaries, other than the settler, gift tax is assessed based on such payments when the settler is a (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.

Following the death of the settlor, the assets of the trust would, from a Dutch personal income tax, gift and inheritance tax perspective, generally be attributed to the settlor's heirs on a pro rata basis, based on their entitlement to the estate (main rule). This attribution can only be prevented if the heirs can demonstrate that neither they nor their tax partners are beneficiaries of the trust or can become beneficiaries. If a person is explicitly disinherited, the assets will not be attributed to them under the main rule. However, if that person is, in fact, a (direct or indirect) beneficiary of the trust assets, they are presumed to qualify as an heir and, thus, the assets will be attributed to them for Dutch tax purposes.

### 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 section 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 that has its management situated in the Netherlands (see section 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, Liechtenstein, Norway, Iceland, Switzerland, Bonaire, Sint Eustatius or Saba and pays tax in the Netherlands on more than 90 per cent of their worldwide income. If these conditions are met, the taxpayer is entitled to the same deductible items, tax credits and tax-free allowances 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 the purchase, renovation or maintenance of a main residence in the state of their actual residence is 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 certain conditions, this ruling allows for a deduction of 30 per cent of the incoming employee's income for deemed extraterritorial expenses.

As from 1 January 2024, this allowance is capped at the maximum salary under the Standards for Remuneration Act (*Wet normering van topinkomens* or WNT). In 2025, the WNT cap is €246,000, resulting in a maximum tax-free allowance of €73,800. The cap applies to employees who commenced the 30 per cent ruling on or after 1 January 2023. For employees who already applied the ruling before that date, the cap will take effect as from 1 January 2026.

As from 1 January 2027, the exemption rate will be reduced from 30 per cent to 27 per cent. This reduction does not apply to employees who made use of the ruling before 2024.

Individuals applying the 30 per cent ruling could previously opt for partial non-resident taxpayer status for Box 2 and Box 3. This option was abolished from 1 January 2025. A transitional rule applies to individuals who applied this status as from a date before 1 January 2024; they may continue to do so until 31 December 2026.

The 30 per cent ruling is granted for a period of five years. This five-year period is reduced according to 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 for 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 during the assessment year. The assessment year is the calendar year following the tax year (eg, for the tax year 2025, taxpayers must file tax declarations before 1 May 2026).

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 according to the duration of any deferral. Tax must be paid within six weeks of the receipt of a 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. Tax treaties override domestic law. Under most tax treaties concluded by the Netherlands, double taxation is generally avoided through the use of the exemption-with-progression method. Relief is granted by reducing the tax amount by a percentage equal to the percentage that the relevant foreign-source income bears to the 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 issues a credit for the tax paid in the other state). In the absence of a tax treaty, Dutch unilateral law for the avoidance of double taxation may provide relief.

As part of the Organisation for Economic Co-operation and Development's (OECD) base erosion and profit shifting (BEPS) project, the Netherlands has endorsed the multilateral instrument (MLI). The MLI applies to a large number of tax treaties concluded by the Netherlands and forms the basis of (future) tax treaty negotiations. In light of this development, it is expected that tax treaties can no longer be invoked for structures/transactions that are mainly tax driven and lack economic reality and substance.