

# SELLING AND TRANSFERRING DUTCH REAL ESTATE

## DIRECT SALE OF REAL ESTATE

### Resident individual

#### *Capital gains*

If the real estate qualifies as a trade or business, the capital gains are subject to the personal income tax at a progressive rate of up to 49.5% (box 1). Hereby, acquisition and improvement costs are deductible. Though, if the Dutch real estate does not qualify as a trade or business, individuals are not taxed on capital gains. The real estate falls under box 3. Instead of the capital gains, a fictional return (1.82% to 5.53% of the value of the net assets) will be taxed at a flat rate of 31%.

#### *VAT / transfer tax*

As a general rule, the acquisition (and therefore the sale) of immovable property are exempt from VAT. However, VAT is charged if a building site or a new building is sold within two years after its first occupation. In such case of the supply of immovable property after this two-year period, under specific conditions, the supplier and the recipient can opt for a VAT-able supply of the property, the applicable tax rate is 21%. Thereby, the supplier and the recipient can opt for a VAT-able supply or lease of the property.

In case VAT is charged because a building site or a newly created building is sold, the transfer of real estate is exempt from transfer tax. In case VAT is charged because a newly created building is sold within two years after its first occupation, under circumstances the transfer of real estate can be exempt from transfer tax.

Transfer tax is due upon the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The transfer tax due is calculated on the purchase price or the market value if higher. The applicable tax rate is 8% or 2% if the purchaser acquires a house to use this as a main residence. In case the real estate is transferred a second time within six months, the owed tax of the second transaction can be reduced with the owed tax of the first transaction.

#### *Personal Income Tax – losses*

Losses on the sale made by individuals without a trade or business are ignored. However, if the real estate is acquired as trading of business inventory, the losses may be offset against other taxable income of the previous three years or the next nine years.

### Non-resident individual

Non-resident individuals are treated in the same manner as resident individuals. However, losses arising on the sale of Dutch real estate can only be offset against other Dutch taxable income.

### Resident company

#### *Capital gains*

Capital gains on the Dutch real estate are subject to Dutch corporate income tax as business income. Business income up to EUR 395,000 is taxed against a tax rate of 15%. Profits exceeding EUR 395,000 are taxed against a rate of 25,8%.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and tax book value.

#### *VAT/transfer taxes*

As a general rule, the acquisition (and therefore the sale) of immovable property are exempt from VAT. However, VAT is charged if a new building is sold within two years after its first occupation. In case of an acquisition of immovable property after this two-year period, under specific conditions, the supplier and the recipient can opt for a VAT-able supply of the property. The applicable VAT rate is 21%.

In case VAT is charged because a building site or a newly created building is sold, the transfer of real estate is exempt from transfer tax. In case VAT is charged because a newly created building is sold two years after its first occupation, under circumstances the transfer of real estate can be exempt from transfer tax.

Transfer tax is due upon the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The transfer tax due is calculated on the purchase price or the market value, if higher. The applicable tax rate is 8% or 2% if the purchaser acquires a house to use this as a main residence. In case the real estate is transferred a second time within six months, the owed tax of the second transaction can be reduced with the owed tax of the first transaction.

#### *Corporate income tax: deferral of tax / reinvestment reserve*

In case an entity sells Dutch real estate, the company may form a reinvestment reserve if the company consider acquiring a replacing building. The capital gains on the real estate are not taxed at the moment of selling but will form a reinvestment reserve. If the replacing building is bought, the value of the reinvestment reserve must be deducted from the purchase price of the new property. As a result of this, the future depreciation costs are lower resulting in higher taxable income.

If three years after the year in which the sale took place go by without making a reinvestment, the amount of the reserve must be added to the company's business profits.

#### **Non-resident company**

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate held by a foreign company is considered to be an enterprise of the non-resident company in the Netherlands. However, losses can only be offset against other Dutch taxable income.

## INDIRECT SALE

### Resident individuals

#### *Capital gains*

If an individual owns less than 5% of the shares in a Dutch company, no tax will be levied on capital gains realised by the sale of the shares. However, if an individual owns at least 5% of the company's issued share capital a personal income tax will be levied (box 2). A tax rate of 26.9% applies to the difference between the sales price and the acquisition price of the shares.

#### *VAT / Transfer Tax*

Usually, a share transfer is not subjected to transfer taxes. However, a transfer of shares in a so-called 'real estate company' is subject to transfer taxes in case the acquirer holds an interest of at least one-third in such company as result of the transaction. A company qualifies as a real estate company if the assets-based on market value- of the company consists for at least 50% of immovable property and at least 30% of this is located in the Netherlands. Thereby, the main activity of the company must exist of the acquisition, selling and/or exploitation of immovable property. The market value of the immovable property will be taxed against a tax rate of 8% .

#### *Losses*

If an individual owns at least 5% of the company's issued share capital and sell the shares, the proceeds of disposal of the shares are taxed in 'box 2'. If the disposal of the shares leads to a loss, the loss may be offset against other income taxed in box 2 of the previous year and the next six years.

### Non-resident individual

Non-resident individuals are treated in the same manner as resident individuals insofar they derive Dutch taxable income.

### Resident company

#### *Capital gains*

Capital gains on the Dutch real estate are subject to Dutch corporate income tax as business income. Business profits up to EUR 395,000 is taxed against a tax rate of 15% . For profits of more than EUR 395,000 are taxed against a tax rate of 25,8%.

#### *VAT / Transfer Tax*

As a general rule, the acquisitions and therefor the sale of immovable property are exempt from VAT. However, VAT is charged if a building site or a newly created new building is sold before within two years after its first occupation. In case of an acquisition of the immovable property after this two year period, under specific conditions, the supplier and the recipient can opt for a VAT-able supply of the property. The applicable tax rate is 21%.

In case VAT is charged because a building site or a newly created building is sold, the transfer of real estate is exempt from transfer tax. In case VAT is charged because a newly created building is sold within two years after its first occupation, under circumstances the transfer of real estate can be exempt from transfer tax.

Usually, a share transfer is not subjected to transfer taxes. However, a transfer of shares in a so-called 'real estate company' is subject to transfer taxes in case the acquirer holds an interest of at least one-third in such company as result of the transaction. A company qualifies as real estate company if the assets-based on market value-of the company consist for at least 50% of immovable property and at least 30% of this located in the Netherlands. Thereby, the main activity of the company must exist of the acquisition, selling and/or exploitation of immovable property. The market value of the immovable property will be taxed against a tax rate of 8%.

#### *Deferral of tax*

In contrast to the direct sale of real estate, it is not possible to form a reinvestment reserve.

#### *Losses*

If a company sell their interest in a subsidiary, the losses arising on this sale cannot be offset against profits due to the participation exemption (in Dutch: deelnemingsvrijstelling).

### **Non-resident company**

#### *Corporate income tax*

Foreign companies are solely taxed in the Netherlands for Dutch income (e.g. income earned by an enterprise in the Netherlands).

If a non-resident company held less than 5% of the shares in a Dutch company, no taxes will be due regarding income out of shareholding.

If a non-resident company is a holder of the so-called substantial interest, the company is in principle not liable to tax in the Netherlands. There are, however, some anti-abuse rules. If these rules are applicable, the gains arising on the substantial interest are taxable in the Netherlands. The applicable tax rate is 15% or 25,8%.

## **DIRECT TRANSFER INTRA CONCERN (DUTCH REAL ESTATE TO DUTCH COMPANY)**

### **Resident Company**

#### *Capital gains*

Capital gains received by companies are subject to corporate income tax as business income. Business income up to EUR 395,000 is taxed against a tax rate of 15%. For profits of more than EUR 395,000 are taxed against a tax rate of 25,8%.

#### *VAT / Transfer tax*

As a general rule, the supply and lease of immovable property is exempt from VAT. However, VAT is charged if a newly created building is sold before or within 2 years after its first occupation. Thereby, the supplier and the recipient can opt for a VAT-able supply or lease of the property. The applicable VAT rate is 21%. In case of the supply of immovable property after this two-year period, under specific conditions, the supplier and the recipient can opt for a VAT-able supply of the property. The applicable VAT rate is 21%.

In case VAT is charged because a newly created building is sold, within 2 years after its first occupation, the transfer of the real estate is exempt from transfer tax.

Transfer tax is due upon the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The transfer tax due is calculated on the purchase price or the market value if higher. There are various exemptions available in case of (de)merger or internal reorganization. However, various detailed conditions apply.

In case the real estate is transferred a second time within six months, the owed tax of the second transaction can be reduced with the owed tax of the first transaction.

#### *Fiscal unity*

Under Dutch law, it's possible to form a fiscal unit if a holding company owns 95% of the shares in its subsidiaries. The holding company and the subsidiary must be established in the Netherlands. Transactions within the fiscal unity are not visible for tax purposes. The transfer of real estate within the fiscal unity is therefore also invisible and is not subjected to any tax. There are, however, certain anti-abuse rules in case the fiscal unity ends within a certain period after transferring the real estate.

#### **Non-resident company**

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate held by a foreign company is considered to be a permanent establishment in the Netherlands. In some circumstances, it is possible to form a Fiscal unity with a permanent establishment in the Netherlands. Various detailed conditions apply.

## INDIRECT TRANSFER INTRA CONCERN (DUTCH REAL ESTATE TO DUTCH COMPANY)

### Resident company

#### Capital gains

Capital gains realised on the sale of the shares owned by a company are subjected as business income to the corporate income tax. Business income up to EUR 395,000 is taxed against a tax rate of 15%. For profits of more than EUR 395,000 are taxed against a tax rate of 25,8%.

However, if a company sell the shares in a subsidiary, the gains arising on the sale are exempt from Dutch tax due to the participation exemption (in Dutch: deelnemingsvrijstelling).

#### VAT/ Transfer tax

As a general rule, the supply of shares is exempt from VAT.

A transfer of shares in a so-called 'real estate company' is subject to transfer taxes in case the acquirer holds an interest of at least one-third in such company as result of the transaction. A company qualifies as real estate company if the asset-based on market value- of the company consist for at least 50% of immovable property and at least 30% of this located in the Netherlands. Thereby, the main activity of the company must exist of the acquisition, selling and/or exploitation of immovable property. The market value of the immovable property will be taxed against a tax rate of 8% . There are various exemptions available in case of (de)merger or internal reorganization. However, various detailed conditions apply.

#### *Deferral of tax*

It is possible to defer income and transfer tax if the shares are transferred to a Dutch company in exchange for the issue of shares. Various detailed conditions apply

#### *Fiscal unity*

Under Dutch law, it's possible to form a fiscal unity if a holding company owns 95% of the shares in its subsidiaries. The holding company and the subsidiary must be established in the Netherlands.

Transactions within the fiscal unity are not visible for tax purposes. The transfer of shares within the fiscal unity is therefore also invisible and is not subjected to any tax.

### Non-resident company

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate held by a foreign company is considered to be an enterprise of the non-resident company in the Netherlands.

#### *Corporate income tax*

Foreign companies are solely taxed in the Netherlands for Dutch income (e.g. income earned by an enterprise in the Netherlands).

If a non-resident company held less than 5% of the shares in a Dutch company, no taxes will be due regarding income out of shareholding.

If a non-resident company is a holder of the so-called substantial interest, the company is in principle not liable to tax in the Netherlands. There are, however, some anti-abuse rules. If these rules are applicable, the gains arising on the substantial interest are taxable in the Netherlands. The applicable tax rate is 15% or 25,8%.

## DIRECT TRANSFER INTRA CONCERN (DUTCH REAL ESTATE TO FOREIGN COMPANY)

### Resident company

#### *Capital gains*

Capital gains received by companies are subject to corporate income tax as business income. Business income up to EUR 395,000 is taxed against a tax rate of 15%. For profits of more than EUR 395,000 are taxed against a rate of 25,8%.

#### *VAT / Transfer tax*

VAT is only charged if a new building is sold within 2 years after its first occupation. Thereby, the supplier and the recipient can opt for a VAT-able supply or lease of the property. The applicable VAT rate is 21%. In case VAT is charged because a newly created building is sold before or within 2 years after its first occupation, the transfer of the real estate is exempt from transfer tax.

Transfer tax is due upon the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The transfer tax due is calculated on the purchase price or the market value if higher. There are various exemptions available in case of (de)merger or internal reorganization. However, various detailed conditions apply.

In case the real estate is transferred a second time within six months, the owed tax of the second transaction can be reduced with the owed tax of the first transaction.

#### *Deferral tax*

Taxation on capital gains can be deferred. Various detailed conditions apply, including the condition that the shares cannot be sold for 3 years.

#### *Losses*

The losses may be offset against other taxable Dutch income. Losses of the alienated entity cannot be carried over to the foreign company.

#### *Fiscal unity*

A Foreign company cannot form a Fiscal unity for Dutch tax purposes (besides in specific situations).

### Non-resident company

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate held by a foreign company is considered to be an enterprise of the non-resident company in the Netherlands.



## INDIRECT TRANSFER INTRA CONCERN (DUTCH REAL ESTATE TO FOREIGN COMPANY)

### Resident company

#### *Capital gains*

Capital gains received by companies are subject to corporate income tax as business income. Business income up to EUR 395,000 is taxed against a tax rate of 15%. For profits of more than EUR 395,000 are taxed against a tax rate of 25,8%.

However, if a company sell the shares in a subsidiary, the gains arising on the sale are exempt from Dutch tax due to the participation exemption (in Dutch: deelnemingsvrijstelling).

#### *VAT / Transfer tax*

As a general rule, the supply of shares are exempt from VAT.

A transfer of shares in a so-called 'real estate company' is subject to transfer taxes in case the acquirer holds an interest of at least one-third in such company as result of the transaction. A company qualifies as real estate company if the asset-based on market value- of the company consist for at least 50% of immovable property and at least 30% of this located in the Netherlands. Thereby, the main activity of the company must exist of the acquisition, selling and/or exploitation of immovable property. The market value of the immovable property will be taxed against a tax rate of 8% . There are various exemptions available in case of (de)merger or internal reorganization. However, various detailed conditions apply.

#### *Deferral tax*

Taxation on the capital gains can be deferred. Various detailed conditions apply.

#### *Losses*

The losses may be offset against other taxable Dutch income. Losses of the alienated entity cannot be carried over to the foreign company.

#### *Fiscal unity*

A foreign company cannot form a fiscal unity for Dutch tax purposes.

### Non-resident company

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate held by a foreign company is considered to be an enterprise of the non-resident company in the Netherlands.

## TRANSFER DUTCH REAL ESTATE TO AN EU-COMPANY

If the transferor's home jurisdiction is in the European Union, the liability to tax on the capital gains may be avoidable if the merger and acquisition provisions apply. Several detailed conditions apply which can be found in the Council Directive of 19 October 2009.

This report has been produced in conjunction with Nyenrode Business Universiteit



RSM is the brand used by a network of independent accounting and consulting firms, each of which practices in its own right. The network is not itself a separate legal entity of any description in any jurisdiction. The network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ. The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

© RSM International Association, 2022