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REAL ESTATE TAX GUIDE

NETHERLANDS



QUICK OVERVIEW OF DUTCH REAL ESTATE

Rental income and capital gains of Dutch real estate

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	<i>Rental income</i>	Individual income tax	0.59 – 1.68%
	Capital gains	Real estate profit tax	Not applicable
Non-resident individual	<i>Rental income</i>	Individual income tax	0.59 – 1.68%
	Capital gains	Real estate profit tax	Not applicable
Resident company	<i>Rental income</i>	Corporate income tax	Up to 25%
	Capital gains	Corporate income tax	Up to 25%
Non-Resident company	<i>Rental income</i>	Corporate income tax	Up to 25%
	Capital gains	Corporate income tax	Up to 25%

Rental income

Individuals

Introduction

Rental income is taxed as ordinary private or business income.

Liability to tax

Rental income received by individuals is subject to individual income tax.

Basis to tax

Income of individuals is allocated in three 'boxes' with different tax rates. Categories of income taxed in box 1 are income out of employment and business profit (entrepreneurial activities). If rental income qualifies as business income, it will be taxed in box 1 against a progressive tax rate to a maximum of

51.75%. The individual must deliver a certain level of labour or entrepreneurial activities. In most cases, direct investment in real estate does not qualify as income taxed in box 1 and will be taxed in box 3.

Income taxed in box 2 is income out of shareholding of at least 5%. Income such as dividends or capital gains realised on the transfer of shares will be taxed against a flat tax rate of 25%.

Income taxed in box 3 is income out of savings and investments whereby the actual rental income is not relevant. Fictional return (1.935% to 5.6% of the value of the net assets) will be taxed at a flat rate of 30%.

Companies

Introduction

Rental income is taxed as business income.

Liability to tax

Rental income earned by companies is subject to corporate income tax as business income.

Basis to tax

Business income up to EUR 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

Capital gains

Individuals

Introduction

In general, capital gains realised by individuals are not directly subjected to personal income tax. Instead, a fictional return (1.935% of 5.6% of the value of the net assets) will be taxed at a flat rate of 30%.

Liability to tax

Capital gains realised by individuals may be subjected to individual income tax in box 1 under specific circumstances. In short, the individual must deliver a certain level of labour or entrepreneurial activities. The realised capital gains are subject to the personal income tax at a rate up to 51.75%.

Basis of tax

Income taxed in box 3 is income out of savings and investments whereby the actual income is not relevant. A fictional return (1.935% to 5.6% of the value of the net assets minus loans related to the real estate) will be taxed at a flat rate of 30%.

Companies

Introduction

Capital gains realised by companies are subject to corporate income tax as business income.

Liability to tax

Business income up to EUR 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

Exemptions

Companies can defer taxation on realised capital gains by creating a reinvestment reserve. The capital gains are not taxed at the moment of selling but a reinvestment reserve will be formed for the amount of the capital gains. The company must make a reinvestment within three years. If another building is bought, the value of the reinvestment reserve can 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.

Dutch VAT & transfer taxes

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	<i>Rental income</i>	Value Added Tax	21%
	Transfer of real estate services	Transfer Taxes	2 / 6%*
Non-resident individual	<i>Rental income</i>	Value Added Tax	21%
	Transfer of real estate services	Transfer Taxes	2 / 6%
Resident company	<i>Rental income</i>	Value Added Tax	21%
	Transfer of real estate services	Transfer Taxes	2 / 6%
Non-Resident company	<i>Rental income</i>	Value Added Tax	21%
	Transfer of real estate services	Transfer Taxes	2 / 6%

* 2% tariff applies on the transfer of dwellings. By dwellings we mean immovable property that is intended for residential purposes.

Value-Added Tax

Individuals

Introduction

Value-added tax is a tax based on the increase in value of a product or service at each stage of the supply chain.

Liability to tax

If a company performs commercial or professional activities in the Netherlands, it will be in principle subject to the VAT.

Basis of tax

As a general rule, the supply and lease of immovable property are exempt from VAT. However, VAT is charged if a newly created building is sold within two 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%.

Interaction with transfer tax

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

Companies

The same rules as for individuals apply.

Transfer Taxes**Individuals***Introduction*

Transfer tax is a tax on the passing of real estate from one person or company to another. Rights of immovable property can qualify as real estate.

Liability to tax

Transfer taxes applies by the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. Transfer tax is also due upon the acquisition of a qualifying interest in a so-called real estate entity.

Basis of tax

The market value of the immovable property will be taxed against a tax rate of 2% or 6%. The 2% tariff applies on the transfer of dwellings and the 6% applies on other real estate.

Exemptions

There are various exemptions available in case of (de)merger or internal reorganisation. However, various detailed conditions apply.

In case the real estate is transferred a second time within six months, the tax due on the second transaction can be reduced by the earlier transaction.

Companies

The same rules as for individuals apply.

Dutch Local taxes

Taxpayer	Basis of tax	Tax levied	Tax rates
Resident individual	Market value *	Municipal Tax	Depend on the municipality
Non-resident individual	Market value	Municipal Tax	Depend on the municipality
Resident company	Market value	Municipal Tax	Depend on the municipality
Non-Resident company	Market value	Municipal Tax	Depend on the municipality

* There are certain rules to determine the market value for local taxes. Every municipality determines this market value which is open for appeal.

Introduction

Every municipality levies an annual municipal tax on Dutch real estate. The annual municipal tax is deductible from rental income.

Liability to tax

Every owner or user of residential or commercial buildings in the Netherlands is liable to local municipal tax.

Basis of tax

The local tax is based on the so-called 'WOZ-value'. For commercial real estate it is the market value, given certain legally prescribed assumption. Local authorities determine the WOZ-value (in Dutch: WOZ-waarde) and each municipality has its local tariff.

Dutch Net Wealth/worth taxes

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	Net value of real estate	Individual income tax	30%
Non-resident individual	Net value of real estate	Individual income tax	30%
Resident company	Not applicable	Not applicable	Not applicable
Non-Resident company	Not applicable	Not applicable	Not applicable

Individuals

Introduction

The Netherlands do not levy a separate wealth or worth tax. Instead, individual income tax is levied on the total value of assets, including real estate. Loans on real estate are deductible from the taxable basis.

Liability to tax

Individual income tax (box 3) is due to the net wealth of individuals. Net wealth includes the value of real estate less the liabilities related to the real estate.

Basis of tax

Income taxed in box 3 is income out of savings and investments whereby the actual income is not relevant. A fictional return (1.935% to 5.6% of the value of the net assets minus loans related to the real estate) will be taxed at a flat rate of 30%.

Vehicles for Dutch real estate

Commonly used vehicles for Dutch real estate

Corporate entity

The so-called 'BV', the Dutch limited liability company, is the most frequently used vehicle for the ownership of Dutch real estate. The equity is divided into shares and the shareholders of the BV are not personally liable for the business debt.

Individuals who hold 5% or more of the shares in a Dutch company are holders of the so-called substantial interest (in Dutch: *aanmerkelijk belang*). Income derived from the substantial interest are subjected to a 25% income tax rate (box 2). Profits made by the BV are subject to the corporate income tax at a tax rate up to 25%.

Transparent vehicles

Investments in real estate are often done on a collective basis by some of the entities and/or individuals. For Dutch tax purposes, there is no distinction between taxation of partnerships and joint ventures. In some cases, a partnership of mutual fund can be structured as tax transparent entity. The profits and losses of the entity will hereby be allocated directly to the partners. Furthermore, partners of a transparent entity are not subjected to Dutch dividend withholding tax upon distribution of profits. This structure thus avoids multiple level taxation. Examples of transparent vehicles are the closed CV and the closed FGR (*fonds voor gemene rekening*, or mutual fund).

The CV has at least one managing partner and one limited partner. In case a partner leaves the CV, the entity ceases to exist. The CV is treated as transparent for tax purposes (closed-CV) unless the CV doesn't have stringent restriction regarding the admittance of new members or transferring shares (open-CV). Similar rules apply to the FGR.

Partners of a so-called 'open-CV' or 'open-FGR' are subjected to taxation (personal income tax or corporate income tax). Individuals who hold 5% or more interest in the open-CV or open-FGR are holders of a substantial interest. Income such as dividends paid from the open-CV or open-FGR is taxed in box 2 against a flat tax rate of 25%. Besides, the open-CV or open-FGR is trading as a company for Dutch tax purposes. Profits made by the open CV are subject to the corporate income tax at a tax rate up to 25%.

Trusts

The concept of the trust is not known under Dutch law. For tax purposes, the assets and liabilities of a trust are allocated to the trustor as personal income. Profits realised by the trusts will be taxed by the trustor as personal income tax.

Foreign partnership

The residence of a partnership is determined by the place where the crucial decisions are made. Usually, the residence is the place where all partners meet.

In case a foreign partnership carries an enterprise in the Netherlands, the partnership is subject to Dutch corporate income tax or the partners are subject to Dutch personal income tax. The foreign partnership

qualifies as a permanent establishment in the Netherlands by owning Dutch real estate. The partners are subjected to Dutch personal income tax.

Specific real estate vehicles for Dutch real estate

Real estate investment trusts

Under Dutch law, there are no specific real estate vehicles.

In some circumstances it's possible to form an FBI (in Dutch: fiscale beleggingsinstelling). The FBI is a special form of a fund which can be used for portfolio investments. However, several detailed conditions apply when establishing an FBI. Among other things, an FBI is required to distribute its profits no later than eight months after the end of the financial year. In addition, the shareholder cannot hold the shares as a so-called substantial interest. The shares of individuals who hold 5% or more of the shares cannot qualify as the shares of an FBI-fund. The applicable corporate income tax on FBI-funds is 0%. In case the FBI pays out profits, dividend withholding tax will be due.



ACQUIRING DUTCH REAL ESTATE

DIRECT PURCHASE OF REAL ESTATE

This section discusses the most important tax implications of the direct purchase of real estate. First, the impact on resident individuals and non-resident individuals is discussed. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident Individuals

Transfer Taxes

Individuals which acquire Dutch real estate are subjected to transfer taxes and is due by the purchaser. The market value of the immovable property is subjected to transfer tax. The tariff of 2% applies on the transfer of dwellings. Other real estate is subjected to 6% transfer tax.

Value-added tax

The supply of real estate is exempt from VAT, unless a building site or a newly created building is sold within two years after its first occupation. 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 within two years after its first occupation, under circumstances the transfer of real estate can also be exempt from transfer tax.

Non-resident individuals

Non-resident individuals are treated in the same manner as resident individuals.

Resident companies

Transfer Taxes

the acquisition of Dutch real estate is subject to transfer taxes. The market value of the immovable property will be taxed against a tax rate of 2% or 6%. The transfer tax is payable by the purchaser. The transfer tax is not deductible as business costs. If the real estate is transferred a second time within six months, the tax due on the second transaction can be reduced by the earlier transaction.

Value-added tax

The supply of real estate is exempt from the VAT unless a building site or a new building is sold within two years after its first occupation. The applicable VAT rate is 21%. If the supply of the immovable property is charged with VAT, the transfer is exempt from transfer tax.

Non-resident companies

Non-resident companies are treated in the same manner as resident companies, since Dutch real estate is considered to be a permanent establishment.

Main advantages

In contrast to the indirect purchase of real estate, the surplus over the rental income can be returned to the investors home country without owing dividend withholding tax. Thereby, interest costs may be directly deductible from real estate income.

INDIRECT PURCHASE OF REAL ESTATE

This section discusses the most important tax implications of the indirect (shares) purchase of real estate. First of all is discussed the impact on resident individuals and non-resident individuals. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident individuals

Transfer taxes

If an individual acquires at least 1/3 of the shares in a so-called 'real estate company', the acquisition is subject to transfer tax. A company qualifies as real estate company if the asset-based market value of the company consists for more than 50% of immovable property and at least 30% of this located in the Netherlands at the moment of the transaction or at any moment in the 12-month period preceding the transaction. In addition, the main activity 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 2% or 6% and is due by the purchaser.

Non-resident individuals

Non-resident individuals are treated in the same manner as resident individuals.

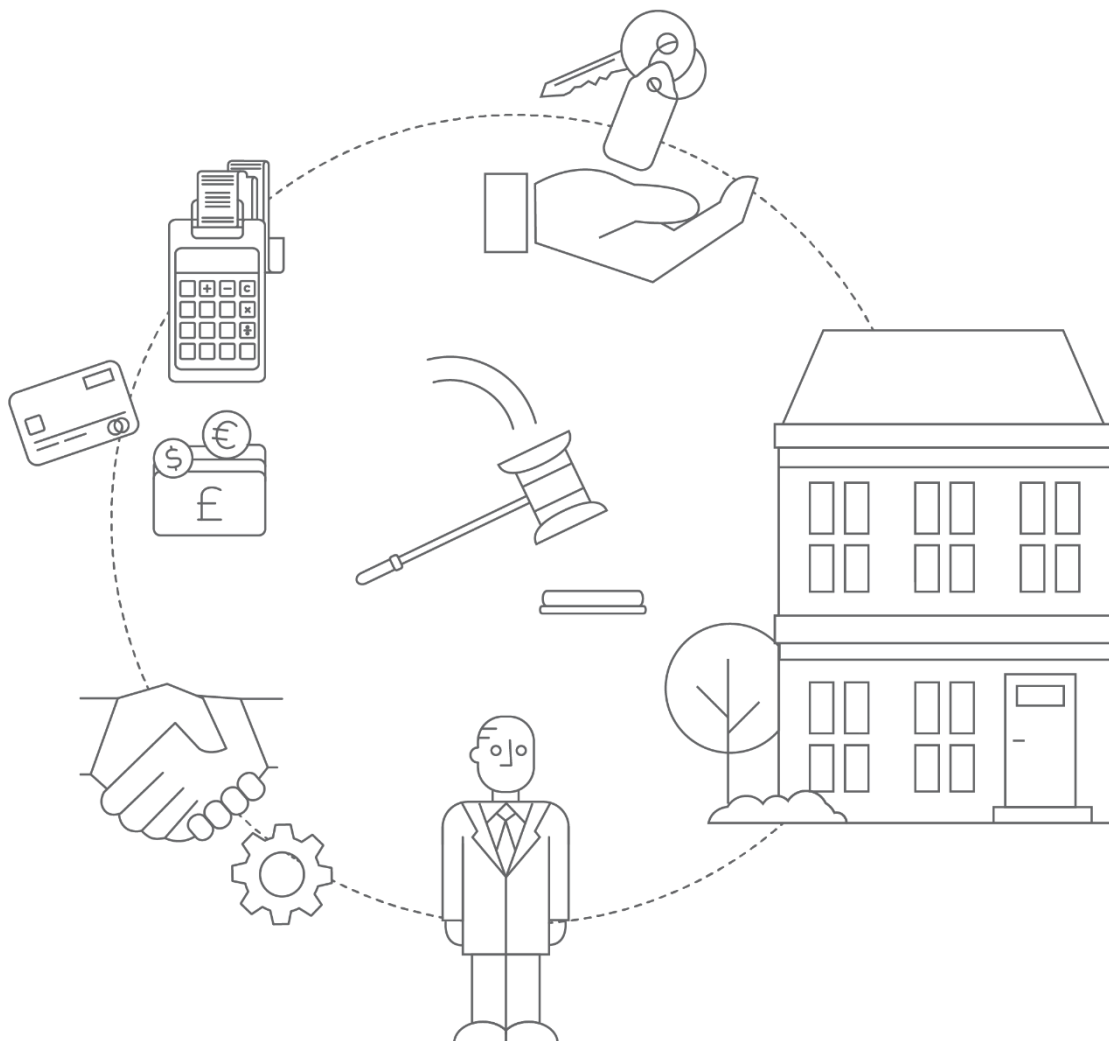
Resident companies

Transfer taxes

Usually, a share transfer is not subject to transfer taxes. However, a transfer of shares in a so-called 'real estate company' is subject to transfer taxes. A company qualifies as a real estate company if the asset-based market value- of the company consists for more than 50% of immovable property and at least 30% of this located in the Netherlands at the moment of the transaction or at any moment in the 12-month period preceding the transaction. In addition, the main activity 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 2 or 6%.

Non-resident companies

If a non-resident company acquires the shares in a so-called Dutch real estate company, the acquisition is subject to transfer taxes. The market value of the immovable property will be taxed against a tax rate of 2% or 6% and is due by the purchaser.





HOLDING DUTCH REAL ESTATE

DIRECT HOLDING OF REAL ESTATE

This section discusses the most important tax implications of the direct holding of real estate. First, the impact for resident individuals and non-resident individuals is discussed. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident individuals

Personal income tax

Income derived from the real estate such as rental income is subject to individual income tax. If the real estate can qualify as a company or as an asset of an individual company, the income will be taxed in box 1 against a tax rate up to 51.75%. In most cases, direct investment in real estate does not qualify as income taxed in box 1 and will be taxed in box 3.

If the real estate does not qualify as a company or as an asset of an individual company, the real estate is subjected to box 3. Income taxed in box 3 is income out of savings and investments whereby the actual income is not relevant. A fictional return (1.935% to 5.6% of the value of the net assets) will be taxed at a flat rate of 30%.

Deductibility of costs, interest and depreciation

If the real estate falls within box 1, the interest and depreciation costs are deductible from rental income. Buildings are normally depreciated at 2 – 4 % each year and are normally based on the acquisition and improvement costs. If the beneficial owner is due dividend withholding tax, the dividend withholding tax is deductible from the individual income tax.

If the real estate falls within box 3, the interest and depreciation costs are not deductible since a fictional return will be taxed.

Losses – carry back/forward

If the interest costs and depreciation costs are higher than the rental income, there may be losses. If the real estate falls within box 1, the losses may be offset against the Dutch taxable income in box 1 of the previous 3 years and the current and next nine years.

Non-resident individuals

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

Resident companies

Corporate income tax

Business income such as rental income and capital gains are subject to corporate income tax. Business profits up to EUR 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%. All income gains and expenses of companies are taken into account on an accrual basis.

Deductibility of costs, interest and depreciation

Companies can deduct interest costs and depreciation costs from rental income. Depreciation of buildings can take place on an annual basis for 2–4 and is generally based on the acquisition costs and improvement costs if applicable. However, land is not depreciable.

Anti-tax avoidance directive

The anti-tax avoidance directive (ATAD) is a directive published by the OECD and will be implemented by the European countries. ATAD contains certain interest restrictions that may affect investors in real estate.

Losses – carry back/forward

Losses may arise if there is an excess on interest and depreciation allowance over the rental income. Such losses may be offset against all Dutch taxable profits of the previous three years. However, if a Dutch company stops his activities and thereby change its ownership for at least 30%, carry-forward may be denied.

Non-resident companies

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 HOLDING OF REAL ESTATE

This section discusses the most important tax implications of the indirect (shares) holding of real estate. First, the impact for resident individuals and non-resident individuals is discussed. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident individuals

Personal income tax

Individuals who hold 5% or more of the shares in a Dutch company are holders of the so-called substantial interest. Income derived from the substantial interest and income received with the sale of the shares are subjected to a 25% income tax (box 2).

The shares of individuals who hold less than 5% of the shares in a Dutch company falls within box 3. The actual revenue of the shares will not be taxed, but a fictional return (1.935%–5.6% of the value of the net assets) will be taxed at a flat rate of 30%.

Dividend withholding tax

Shareholders of a Dutch company are subject to a 15% dividend withholding tax in case of distribution of dividends. However, the tax paid is deductible from personal income tax.

Deductibility of costs, interest payments and depreciation

Interest costs on loans to buy the shares and dividend withholding tax are deductible from the income taxed in box 2.

Losses

The loss arising from a substantial interest will be offset against the income from a substantial interest of the previous year and the next six years.

Non-resident individuals

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

Resident companies

Corporate income tax

Income derived out of shareholding qualify as business income for companies. Business profits up to EUR 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

Dividends received from a shareholding of at least 5% in subsidiary are exempt from corporate income tax (participation exemption, in Dutch: deelnemingsvrijstelling). Losses resulting from participating in a subsidiary are not deductible.

Deductibility of costs, interest payments and depreciation

Interest and depreciation cost may be deductible from the business income.

Anti-tax avoidance directive

The anti-tax avoidance directive (ATAD) is a directive published by the OECD and will be implemented by the European countries. ATAD contains certain interest restrictions that may affect investors in real estate.

Fiscal unity

It is possible for a Dutch corporate entity to form a fiscal unity with its subsidiaries in case an interest of at least 95% is held in the subsidiary. In case of a fiscal unity, losses of the company can be offset

against profits made by other companies within the fiscal unity. Also, real estate can be transferred between entities belonging to the same fiscal unity without corporate income tax being due.

Distribution of income and gains

Dividend paid to another Dutch resident who owns at least 5% of the payers share capital are exempt from dividend withholding tax on the score of the participation exemption (in Dutch: deelnemingsvrijstelling). In some circumstances, interest and other financing costs paid to related parties can be treated as a dividend. In that case, interest and other costs cannot be deducted from the income. If a company stops his activities, the liquidation distributions paid to the shareholders are taxed in the same manner as a dividend.

Non-resident companies

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 19% or 25%.



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 51.75% (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 (1.935% to 5.6% of the value of the net assets) will be taxed at a flat rate of 30%.

VAT / transfer tax

As a general rule, the supply and lease 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, the applicable tax rate is 21%. Thereby, the supplier and the recipient can opt for a VAT-able supply or lease of the property.

Transfer taxes applies by the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The market value of the real estate will be taxed against a tax rate of 2 / 6%. If the real estate is transferred a second time within six months, the tax due on the second transaction can be reduced by the earlier transaction.

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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

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 supply and lease of immovable property are exempt from VAT. However, VAT is charged if a new building is sold within two 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 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 taxes applies by the acquisition of the legal or economic ownership of Dutch real estate and is payable by the purchaser. The market value of real estate will be taxed against a tax rate of 2% or 6%. If the real estate is transferred a second time within six months, the tax due on the second transaction can be reduced by the earlier transaction.

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 go by without making a reinvestment, the amount of the reserve must be added to the company's business profits.

Losses

The gains realised on the sale of the real estate may be offset against tax losses. If, however, a loss is realised on the sale of the property, this loss may be offset against the previous year and the next six years.

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 25% 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. 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 2 or 6%.

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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

VAT / Transfer Tax

As a general rule, the supply and lease of immovable property are exempt from VAT. However, VAT is charged if a new building is sold within two 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 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.

The transfer of shares is in the beginning not subjected to transfer tax. However, a transfer of shares in a so called 'real estate company' is subject to real estate transfer tax. The purchaser is due to 2 – 6% transfer tax over the market value of the immovable property.

Deferral of tax

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

Losses

Losses arising on the sale of shares may be offset against profits of the previous year or next six years.

However, if a company sell their interest in a subsidiary, the losses arising on this sale cannot be offset against profits of the previous year or next years 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 19% or 25%.

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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

VAT / Transfer tax

As a general rule, the supply and lease of immovable property is exempt from VAT. However, VAT is 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 new building is sold within 2 years after its first occupation, the transfer of the real estate is exempt from transfer tax.

Transfer taxes apply by the acquisition of the legal or economic ownership of Dutch real estate. The market value of the immovable property will be taxed against a tax rate of 2 or 6%. There are various exemptions available in case of (de)merger or internal reorganisation. However, various detailed conditions apply.

If the real estate is transferred a second time within six months, the tax due on the second transaction can be reduced by earlier 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 unit are not visible for tax purposes. The transfer of real estate within the fiscal unit 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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

However, if a company sells 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 and lease of immovable property is exempt from VAT. However, VAT is 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 new building is sold within 2 years after its first occupation, the transfer of the real estate is exempt from transfer tax.

A transfer of shares in a so-called 'real estate company' is subject to transfer taxes. The purchaser is due 2 / 6% transfer tax over the market value of the immovable property.

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 19% or 25%.

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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

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 new building is sold within 2 years after its first occupation, the transfer of the real estate is exempt from transfer tax.

Transfer taxes applies by the acquisition of the legal or economic ownership of Dutch real estate. The acquiring company is due to a transfer tax of 6% over the market value of the immovable property.

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 200.000 is taxed against a tax rate of 19%. For profits of more than EUR 200.000 are taxed against a tax rate of 25%.

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

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 new building is sold within 2 years.

Transfer taxes applies by the acquisition of the legal or economic ownership of Dutch real estate. The foreign company is due to a transfer tax of 2% –or 6% over the market value of the immovable property.

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



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