

The new UK-NL Tax Treaty

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Content

- Developments in the Dutch tax climate:
 - General
 - Recent changes
- How the new UK-NL tax treaty affects your business:
 - Double taxation
 - Withholding taxes and anti-abuse rules
 - Changes in taxation of staff and directors

Dutch tax climate - General

Corporations

- Corporation tax: 25.5% (headline rate)
- No interest or royalty withholding tax
- Attractive holding and financing regime
- Tax treaties / BITs / TIEAs

Individuals

- Box I (salary): taxed at progressive rates up to 52%
- Box II (substantial shareholdings): benefits are taxed at a flat rate of 25%
- Box III (savings and investments): net asset tax of 1.2% per annum
- 30%-allowance

Dutch tax climate - Recent changes

- Participation exemption
- Innovation box
- Ruling policy
- Tax reform?
- Enhanced relationship

The Treaty - Dual resident entities

- Article 4 – Residence
- Place of effective management is no more ‘tie-breaker’
- Instead, dual residency is ‘solved’ by means of mutual agreement
- No mutual agreement >> no tax treaty benefits, except for articles 21 (elimination double taxation), 24 (non-discrimination) and 25 (mutual agreement procedure)
- Relevant factors for determining residency:
 - Place of senior management
 - Place of board meetings
 - Place of head office
 - The entity’s economic relations with both states
 - Risk of abuse, either of the Treaty or of domestic tax rules

The Treaty - Withholding taxes

	New Treaty	1980 Treaty
Dividends* <i>NL: 15%</i> <i>UK: N.A.</i>	- 0% (10% voting rights, charities or pension schemes) - 10% - 15% (REITs/FBIs)	- 5% (25% voting rights) - 15%
Interest <i>NL: N.A.</i> <i>UK: 20%</i>	0%	0%
Royalties <i>NL: N.A.</i> <i>UK: 20%</i>	0%	0%

*Including liquidation proceeds, or income from purchase of own shares

The Treaty - Anti-abuse rules

- Dividends:
 - Main purpose test >> consultation between States
 - Dividendstripping?
- Interest, Royalties, Other income:
 - Main purpose test
 - Arm's length test
 - Specific provision for interest and royalties paid to branches
 - Indofood?

>> Consequences??

The Treaty - Changes in taxation of staff and directors

- Income from employment (article 14):
 - 183 days provision
 - Ship/aircraft operated in international traffic >> grandfathering
 - Differs from OECD Model Convention
- Directors fees (article 15):
 - Taxed in residence state of company, to the extent attributable to services rendered in that state
- Pensions (article 17):
 - Under circumstances, source state has the right to tax
 - Also government pensions >> grandfathering

The Treaty – Remittance base

- The remittance principle?
- Overrides case law Supreme Court
- Capital gains now also covered(!)

The Treaty – Mutual agreement procedure

- In line with 2008 OECD Model Convention
- Arbitration provision
- No arbitration for dual residents(!)

The Treaty - Procedural aspects

- Status Dutch ratification procedure?
- Entry into force?

Thank you for attending this seminar

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