



*ministry of Finance*

# Taxation in the Netherlands 2001

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# Introduction

Taxes form an important part of the financial and socio-economic structure of a country. The government asks the public to pay taxes so that it can raise the revenue required to finance the country's basic infrastructure and its services.

Numerous factors determine the business and investment climate of a country. These include geographical location, infrastructure, political and social stability, general levels of wages, and trends in wages. The tax system plays an increasingly important role in the choice of business location, especially with growing economic integration following the disappearance of the internal borders within the European Union on the first of January, 1993.

The Netherlands has a relatively small-scale, but very open economy. It has always recognized that the tax system should not hinder the international expansion of business. Consequently, the Dutch tax system has many features that make the Netherlands an attractive location for businesses operating on an international scale. Examples include the tax treatment of business profits, the participation exemption, the absence of withholding taxes (except for dividend tax) and the large number of tax conventions to which the Netherlands is a signatory. The Dutch Tax Department has ensured that it is very accessible, and it takes a client-oriented approach. Recent international studies have confirmed that the Netherlands scores well as an investment location.

It is therefore no surprise that there is an appreciable demand for information about the Dutch tax system from persons, companies, embassies, and tax authorities abroad. This brochure meets the demand by providing an explanation of the Dutch tax system, and of the different kinds of tax and duty.

Section 1 reviews the organization of the Ministry of Finance together with the departments concerned with tax law and its implementation. Section 2 contains a summary of all state taxes, and several other important taxes. Subsequent sections provide a more detailed explanation of the most important direct and indirect taxes, which are corporation tax, income tax,

value added tax, and excise duty. The tax facilities in the Netherlands are also discussed. A separate section is devoted to Dutch conventions on avoiding double taxation. Section 7 discusses environmental taxes. Finally section 8 reviews Dutch Customs, and gives an explanation of the duties that are levied, and the simplified procedures for their levy.

### *The new tax system*

From 1 January 2001, the Netherlands have a new tax system. This system involves substantial changes to income tax. The new tax system creates a robust taxation system with a broader base and lower rates: a taxation system that addresses future developments.

The objectives of this revision of the taxation system include:

- stimulation of employment opportunity, and strengthening of the Netherlands' economic structure and international competitive edge;
- reduction of the burden of taxation on labour;
- promotion of sustainable economic development ('greening');
- creation of a balanced and just burden of taxation;
- broadening and strengthening of the taxation base, through reduced and amended deductions;
- promotion of emancipation and economic independence;
- simplification of the taxation system.

In order to stimulate the economy and employment opportunity, the basic rates of taxation are lowered. Work is made more attractive by the introduction of an 'employment rebate': those people in paid employment enjoy a tax advantage in the form of a fixed non-taxable deduction.

The reduction in taxation on labour is financed by reductions in expenditure and by increases in indirect taxes, such as VAT and environmental levies.

By lowering the taxation on income from employment, together with a shift from direct to indirect taxation, the Netherlands' economic structure and its international competitive edge will be strengthened. Greater emphasis on environmental levies will make a significant contribution towards achieving sustainable economic development.

### *The guilder and the euro*

In this brochure, figures are given both in guilders (NLG) and euros (EUR). In 2001 a taxpayer can choose whether to make income tax return in guilders or euros. The euro-guilder exchange rate was fixed at six figures (five after the decimal point). EUR 1 = NLG 2.20371. In this brochure, the figures in euro are rounded off.

From 28 January 2002 on, the guilder will no longer be legal tender. Tax return, covering periods that begin on or after 1 January 2002, must be submitted in euros.

# 1 The Ministry of Finance and the Tax Department

## 1.1 Organization chart of the Ministry of Finance

Minister				
State Secretary				
Secretary-General				
Deputy Secretary-General				
Treasury	Directorate-General of the Budget	Central Directorates	Directorate-General for Tax and Customs Policy and Legislation	Directorate-General for the Tax and Customs Administration
<ul style="list-style-type: none"> <li>• Support Unit</li> <li>• Domestic Monetary and Financial Affairs Directorate</li> <li>• Foreign Financial Relations Directorate</li> <li>• Financing Directorate</li> <li>• Financial and Economic Policy Directorate</li> <li>• Export Credit Insurance and Investment Guarantees Directorate</li> <li>• Agency of the Ministry of Finance</li> </ul>	<ul style="list-style-type: none"> <li>• Support Unit</li> <li>• Budget Affairs Directorate</li> <li>• Inspectorate of the Budget</li> <li>• Local Government Finance Directorate</li> <li>• Government Audit Policy Directorate*</li> </ul> <p>* EDP Audit Pool</p>	<ul style="list-style-type: none"> <li>• Support Unit</li> <li>• Central Legal Directorate</li> <li>• Central Information Directorate</li> <li>• Internal Budget Directorate</li> <li>• Human Resources and Organization Directorate</li> <li>• Internal Affairs Directorate</li> <li>• Audit Directorate</li> <li>• State Property Directorate*</li> </ul> <p>* State Property Service</p>	<ul style="list-style-type: none"> <li>• Support Unit</li> <li>• Tax Policy Directorate</li> <li>• International Tax Policy and Legislation Directorate</li> <li>• Direct Tax Legislation Directorate</li> <li>• Consumer Tax Legislation Directorate</li> <li>• Customs Policy and Legislation Directorate</li> </ul>	<ul style="list-style-type: none"> <li>• Support Unit</li> <li>• Directorate for Operational Management and Taxpayer Policy</li> <li>• Directorate for Personnel Affairs</li> <li>• Directorate for Internal Audit</li> <li>• Directorate for Management Support tax and Customs Administration</li> <li>• Directorate for Legal Use Policy Tax and Customs Administration</li> </ul>

## 1.2 The Ministry of Finance

The structure of the Ministry of Finance is shown in the organization chart on the previous page. The Minister and the State Secretary are responsible for budgetary, monetary, and tax policies. The State Secretary is specifically responsible for tax policy. Four Directorates-General are responsible for these policies, with the following division of duties:

- 1 The Treasury is responsible for monetary policy;
- 2 The Directorate-General for the Budget is responsible for budgetary policy;
- 3 The Directorate-General for Tax and Customs Policy and Legislation is responsible for tax policy and legislation;
- 4 The Directorate-General for the Tax and Customs Administration is responsible for the implementation of tax policy. The Tax and Customs Administration is responsible for the actual levying and collection of taxes.

### 1.2.1 The Directorate-General for Tax and Customs Policy and Legislation

The Directorate-General for Tax and Customs Policy and Legislation advises the Minister and State Secretary on general tax policy. It prepares new national legislation and amendments to existing legislation. These advisory and legislative duties are divided between several departments, according to the type of tax involved. At an international level, the duties of the Directorate-General include providing advice on the preparation of tax conventions, consultations on international tax regulations, and their implementation.

### 1.2.2 The Directorate-General for the Tax and Customs Administration

The Directorate-General for Tax and Customs Administration is responsible for the implementation of tax legislation, customs legislation, and non-tax legislation that has been charged to the Tax and Customs Administration. The four directorates within the Directorate-General for the Tax and Customs Administration are primarily responsible for advice about implementation policy. The departments are responsible for different forms of tax.

**Tax and Customs Administration:** client-oriented and readily accessible. As mentioned above, the Tax and Customs Administration is responsible for the actual levying and collection of taxes. The Tax and Customs

Administration has local branches throughout the country. Consequently, persons or companies liable to pay taxes come into contact with the Tax and Customs Administration, either directly or indirectly.

The Tax and Customs Administration is divided into a number of Divisions, which are responsible for the various client groups and target groups. These are Private Taxpayers, Business Taxpayers, and Business Taxpayers/Large Companies. The Administration also has a Customs Division. Taxpayers – both persons and companies – are assigned to the unit in or near their place of residence or establishment. All taxpayers may contact the relevant tax unit on all tax matters.

Businesses may consult the Tax and Customs Administration about the tax consequences of a proposed transaction. The outcome of these consultations may be laid down in the form of advance rulings.

## 2 Summary of taxes in the Netherlands

### 2.1 *Summary of taxes*

#### **Taxes on income and profits**

- Income tax
- Payroll tax
- Dividend tax
- Corporation tax
- Inheritance tax
- Tax on games of chance

#### **Taxes and duties on goods and services**

- Import duty
- Value added tax
- Excise duty
- Taxes on legal transactions
- Motor vehicle tax
- Tax on heavy vehicles
- Tax on private cars and motorcycles
- Environmental taxes

#### **Other important taxes and levies**

- Social security contributions
- Municipal taxes: property tax

## 2.2 A brief explanation of each tax

### 2.2.1 Taxes on income and profits

#### *Income tax*

Income tax is a tax on a natural person's annual income. It is levied at a progressive rate. Personal circumstances are taken into account when making the assessment of the amount of tax to be paid, and certain expenses are tax-deductible. The scheme provides for a personal allowance, the amount of which is dependent on the individual circumstances. There are four tax rates, 32.35%, 37.60%, 42% and 52%. The first two rates include both tax and social security contributions; the last two rates consist solely of tax.

#### *Payroll tax*

Income tax has two advance levies, which are a payroll tax, and a dividend tax. The payroll tax and the social security contributions are levied jointly on earned income or benefits. The employer or body paying the benefit deducts the tax and contributions directly from the pay or benefit, and pays these to the Tax Department. Many natural persons pay only payroll tax, and are not subject to income tax. For natural persons with a high income or many tax-deductible items, the payroll tax serves as an advance levy, and they are subsequently issued with an income tax return and an assessment.

#### *Dividend tax*

The other advance levy for income tax is the dividend tax. Under the present Income Tax Act taxation on income from investments is based on the assumption that people will have a taxable return of 4% on their stocks and other shares. Shareholders are not separately liable for income tax on the actual dividend they receive. For non-residents the dividend tax levied on a dividend is in principle a final levy. Tax conventions generally provide for a lower rate than the 25% mentioned above.

#### *Corporation tax*

Corporation tax is levied on the taxable profit of both private and public companies. Foundations (called 'stichtingen' in Dutch) may also be liable for corporation tax. An important feature of corporation tax is the participation exemption, which ensures that corporation tax is levied only once on the profit obtained within a group. This means that a company receiving dividends does not have to pay corporation tax on these dividends since the tax has already been paid by the company distributing the dividends. Corporation tax is levied at a rate of 35%. The first NLG 50,000 (EUR 22,689) taxable profit is levied at a rate of 30%.

#### *Inheritance tax*

The Inheritance Tax Act has two forms of tax, which are inheritance tax and gift tax. These taxes are, in general, to be paid by the recipient. There are substantial exemptions from both inheritance tax and gift tax. There are no exemptions from inheritance tax payable upon the inheritance or donation of specific assets, for example property. The rates are the same for these taxes, and depend on the value of the assets that have been received and the relationship between the giver and the recipient. There is a minimum and maximum rate.

#### *Tax on games of chance*

The tax on games of chance is levied on prizes that exceed NLG 1,000 (EUR 454). The rate is 25%. The organization awarding the prize generally pays the tax, and the winner receives a net prize.

### 2.2.2 Taxes and duties on goods and services

#### *Import duty*

Import duty is levied on imported goods. This usually amounts to a percentage of the value of the goods being imported. Various rates are applicable, which are determined by the EU. The rates are usually lower for minerals or raw materials, and higher for finished products. Import duty is levied on goods that are imported from countries outside the EU. The revenue is destined for the EU.

#### *Value added tax*

Value added tax (VAT) is a general consumer tax included in the price consumers pay for goods and services. Consumers pay this tax indirectly, and companies remit the tax to the Tax Department. All companies pay VAT, although there are a few exceptions. The VAT paid by one company to another may be reclaimed from the VAT to be paid to the Tax and Customs Administration. There are three rates for VAT:

- a general rate of 19%;
- a lower rate of 6%, applicable mainly to food and medicines;
- a zero rate, applicable mainly to goods and services in international trade, so that goods can be exported free from VAT.

### *Excise duty*

Excise duty is levied on certain consumer goods, i.e. petrol and other mineral oils, tobacco products, and alcohol and alcoholic beverages. A special consumer tax is levied on non-alcoholic beverages. Excise duty, like VAT, is included in the price consumers pay for these goods. The manufacturers and importers of the goods liable to excise duty remit the tax.

### *Taxes on legal transactions*

Three taxes on legal transactions are levied in the Netherlands: these are transfer tax, insurance tax and capital duty. Transfer tax is levied on the acquisition of property located in the Netherlands. The rate is 6% of the market value of the property. Insurance tax is levied on insurance premiums at a rate of 7%. The following types of insurance are exempted from insurance tax: life insurance, accident insurance, invalidity insurance, disablement insurance, medical insurance, unemployment insurance and transport insurance. Capital duty is levied when capital is contributed to companies located in the Netherlands when the capital is comprised of shares. The rate is 0.55% and the tax due is calculated on the value contributed (assets less liabilities), or on the nominal value of the shares, whichever is higher. In certain circumstances, an exemption is made for mergers or reorganizations.

### *Motor vehicle tax*

With the exception of buses, motor vehicle tax is paid on vehicle ownership. The amount depends on the type and weight (sometimes gross) of the vehicle, and in the case of private cars also on the type of fuel the vehicle uses. Furthermore, the amount for private cars and motorcycles is dependent on the province in which the person/owner is resident or the company/owner is established. Buses are charged a levy on the use of the roads.

### *Tax on heavy vehicles*

The tax on heavy vehicles (also known as the eurovignette) is a tax on vehicles with a gross weight of 12,000 kg or more. It is levied for the use of motorways in the Netherlands. The tax has to be paid before the vehicle uses the motorway. There are rates of tax, which are based on the number of axles of the vehicle. There is one rate for three axles or less, and another for four axles or more. Both rates are further divided into three rates for the engine characteristics: non-euro, euro I, euro II and cleaner. The tax can be paid daily, weekly, monthly or annually. A similar tax, based on a directive of the European Union and a Treaty, is levied in Belgium, Denmark, Germany, Luxembourg and Sweden.

### *Tax on private cars and motorcycles*

The tax is included in the price a buyer pays when purchasing a new private car or motorcycle. It is usually paid by the manufacturer or importer. The tax rate depends on the net listed value of the private car or motorcycle. On private cars with a diesel-engine a higher tax rate is applied. For imported vehicles the tax percentage is reduced according to their age. The minimum tax rate is 10% of the net listed value of the vehicle, unless it is more than 25 years old.

### *Environmental taxes*

There are several environmental taxes in the Netherlands. Suppliers or users of mineral oil and other fuels have to pay fuel tax. Taxes have been levied on the withdrawal of groundwater and the disposal of waste since 1 January 1995. A regulatory energy tax came into force on 1 January 1996. A tax on tap water supplies was introduced on 1 January 2000.

## **2.2.3 Other important taxes and duties**

### *Social security contributions*

In addition to income tax, everyone pays social security contributions on their income. The contributions are deducted or levied at the same time as the payroll tax and income tax. Employers deduct these contributions directly from employees' pay. Self-employed persons must pay income tax and social security contributions themselves. There are also employee insurance schemes for persons in paid employment.

Social security schemes are applicable to the entire population. Everyone can make use of the facilities funded by the contributions. Contributions are made to three social security schemes:

- The Widows' and Orphans' Benefits Act (ANW): Persons who have been widowed or orphaned receive an ANW benefit;
- General Old Age Pensions Act (AOW). Everyone who reaches the age of 65 receives an AOW pension;
- The Exceptional Medical Expenses Act (AWBZ). Persons who incur medical expenses not reimbursed by a health insurance fund or a private medical insurance scheme receive an AWBZ benefit.

Under the WAZ, (Invalidity Insurance Self Employed Persons Act) which has been in effect since 1998, entrepreneurs unable to work as a result of an illness or handicap are entitled to benefit. Contributions to the WAZ are collected by the Tax Department. Employers make contributions to the disability benefits schemes for their employees.

### *Municipal taxes*

In addition to the taxes levied by the State, several municipal taxes are also levied. The most important of these municipal taxes is property tax, which is paid by both users and owners of property on the value of that property. The rate varies from municipality to municipality. No income tax or taxes on profits are levied at municipal level. Municipal taxes account for only about 2% of total tax revenue.

## 3 Corporation tax

### *3.1 Taxpayers*

Corporation tax is levied on companies established in the Netherlands (resident taxpayers) and on certain companies not established in the Netherlands which receive income in the Netherlands (non-resident taxpayers). In this context, the term ‘company’ includes companies with a capital consisting of shares, cooperatives, and other legal entities conducting business. The main types of companies referred to in the Corporation Tax Act are the public company (NV) and the private company with limited liability (BV).

Whether a company is deemed to be established in the Netherlands depends on the individual circumstances. Relevant factors include the location of the effective management, the location of the head office, and the location of the shareholders’ general meeting. Under the Corporation Tax Act, all companies incorporated under Dutch law are regarded as being established in the Netherlands.

### *3.2 Tax base and rates*

#### **3.2.1 General**

Corporation tax is levied on the taxable amount, which is the taxable profit made by the company in a particular year less deductible losses. The taxable profits are the profits less tax-deductible donations. In principle, the profits should be calculated in accordance with the provisions laid down in the Income Tax Act to determine the business profits of natural persons. In certain cases, additional stipulations made in the Corporation Tax Act are also applicable. The taxable profit has to be computed in guilders or euros. However, under certain conditions, taxpayers will be allowed to compute their taxable profit in another currency (the ‘functional currency’) for a period of at least 10 years.

#### **3.2.2 Tax rates**

Corporation tax is levied at a rate of 30% for taxable profits up to NLG 50,000 (EUR 22,689) and 35% if and to the extent taxable profits are above that level.

### 3.2.3 Determination of profits according to sound business practice

The profits should be determined according to sound business practice and consistent accounting methods. The concept of sound business practice has been developed mainly in case law. For example, unrealized losses may be taken into consideration, while unrealized profit may be ignored. The requirement of consistent accounting methods means that the method of determining profits may be changed only if this is compatible with sound business practice. Companies operating sea-going vessels may opt for a tonnage-based profit determination, providing that certain requirements are met. An important requirement is that the decision is binding for a period of ten years.

### 3.2.4 Depreciation of fixed assets

The depreciation of fixed assets for tax purposes is a statutory requirement. In principle taxpayers are free to choose a depreciation method. The method chosen must be in accordance with sound business practice. The linear method of depreciation is generally used. A less common method of calculating depreciation is the declining balance method. In case law, the latter method is accepted only for fixed assets with a steadily declining use with age. A combination of both methods, i.e. depreciation according to a declining percentage, may also be used.

Goodwill may only be depreciated if the goodwill has been purchased from a third party but goodwill generated by the company itself cannot be depreciated. An accelerated depreciation is permitted for certain fixed assets, of which the most important are:

- energy-saving fixed assets and other environmentally friendly fixed assets;
- sea-going vessels;
- intangible assets, providing these belong to a business that has been purchased and is not established in the Netherlands.

The above are subject to restrictions.

### 3.2.5 Stock valuation

The following stock valuation methods are permitted: valuation based on cost, valuation based on cost or market value (whichever is lower), or the base stock method. Valuation at cost is in accordance with sound business practice, unless the market value is significantly lower than the cost. This system ignores unrealized profit but unrealized losses can be taken into account directly. The value of the stock can be determined using either the

FIFO or LIFO method. Case law also permits the use of the base stock system subject to certain conditions.

### 3.2.6 Tax-deductible expenses; mixed expenses

The basic principle in determining profits is that all expenses associated with business operations are tax-deductible. If an expense can be regarded as commercially sound then its value is not of importance. However, the deductibility of certain business expenses is subject to restrictions. This concerns mixed expenses, which are business expenses with a private element. Non-deductible expenses include costs connected with pleasure craft used for entertainment purposes, and fines.

The limitations on deductibility of expenses are tighter for companies with one or more natural persons holding a substantial interest in the company, who also work(s) for the company. Basically, a natural person has a substantial interest if he holds 5% or more (directly or indirectly) of the share capital of the company. In that case, 10% of the company's costs in connection with food, drinks, tobacco, and representation, including receptions and entertainment, seminars, excursions etc., are not deductible. The company can opt for a fixed amount of NLG 3,306 (EUR 1,500) for each person with a substantial interest working for the company to be treated as non-deductible.

The Corporation Tax Act provides a comprehensive list of deductible and non-deductible expenses. The following expenses are always deductible:

- profit shares paid to directors and other staff as remuneration for employment;
- profit shares paid to creditors other than founders, shareholders or other persons entitled to shares in the company;
- profit shares paid in connection with licenses, patents, etc., to persons other than founders, shareholders or persons otherwise entitled to shares in the company;
- profit shares paid by an insurance company to its policyholders;
- the costs of incorporation and modifications to the capital.

There are no thin capitalization rules in the Netherlands. Limitations on the deductibility of intercompany interest charges were introduced in the Corporate Income Tax Act in January 1997. The interest and other charges on intercompany loans are not deductible in basically two types of situations:

- charges arising from indebtedness in the shareholder/subsidiary relationship, e.g. in connection with dividends, reduction of capital and capital contributions. However, if the taxpayer can demonstrate that both the transaction and the loan were entered into for sound business reasons, then charges remain deductible;
- charges related to artificial conversion of equity into debt within the group. However, expenses related to these schemes remain deductible if the tax payer can demonstrate that either both the transaction and the loan were entered into for sound business reasons, or that the interest paid is effectively subject to a reasonable level of profits tax for the account of the recipient.

The following costs are never deductible:

- profit distributions other than those specifically designated as deductible in the Corporation Tax Act (see above);
- corporation tax, dividend tax and tax on games of chance.

### 3.2.7 Reserves

Certain reserves may be formed by making a deduction from the profits. In order to qualify for this deduction the business must keep regular annual accounts. Three reserves are legally permitted. They are: the cost equalization reserve, the replacement reserve and since January 1997 the reserve for financial risks for multinational companies.

The cost equalization reserve enables recurrent costs to be spread uniformly over a period of time.

A replacement reserve may be created if fixed assets are lost, damaged, or sold, when the payment received exceeds the book value. To be eligible for this reserve, a company must draw up plans for reinvesting the proceeds. The reserve should generally be terminated in the third year following the year in which it was formed.

Under certain conditions, a reserve may be formed for the special risks involved in operating as an international group. These are risks from concern financing and holding activities. One of the main conditions for qualifying is that financing activities must comprise financing of group companies in at least four countries or on two continents. In principle, the entity that forms the reserve may charge 80% of its income derived from financing activities before tax to this reserve. After a taxpayer files a request stating

relevant actual circumstances, the Tax Inspector will allow the taxpayer to build up a reserve for 10 years. The Dutch Tax Inspector may impose additional conditions.

### 3.2.8 Investment allowance

This scheme allows a certain percentage of the sum invested in fixed assets in a particular year to be deducted when calculating the taxable profits. Investments are divided into nine tranches, where the percentage of the allowance decreases with increases in investment. In 2001, the lowest tranche is applicable to investments between NLG 3,967 (EUR 1,800) and NLG 66,111 (EUR 30,000), and the highest tranche is applicable to investments between NLG 511,261 (EUR 232,000) and NLG 575,168 (EUR 261,000). The corresponding percentages are 28% and 3% respectively. Certain fixed assets are excluded from the investment allowance. If fixed assets for which an investment allowance was obtained in the past are sold within five years of purchase, the investment allowance is withdrawn either wholly or in part.

Furthermore, there is an investment allowance with regard to investments in energy-saving business assets, placed on an Energy list. For investments between NLG 3,967 (EUR 1,800) and NLG 66,111 (EUR 30,000) the allowance is 55%. The percentage of the allowance declines as the amount of the investment increases. The maximum allowance is 40% of NLG 208 million (EUR 94.39 million).

### 3.2.9 Education allowance

This scheme allows an additional percentage of the costs of employees' education to be deducted when calculating the taxable profits. The percentage of the allowance varies between 20% and 90%.

### 3.2.10 Tax-deductible donations

Within certain limits, donations to religious, ideological, charitable, cultural or academic institutions or other bodies serving the public good are tax-deductible. Donations must total more than NLG 500 (EUR 227). The maximum deduction is 6% of the profits.

### 3.2.11 Offsetting losses

A loss may be offset against the taxable income of the three preceding years (carry back) and against taxable income of all years to come (carry forward). Losses incurred by an investment company or a company that wholly dis-

continues its business may only be compensated with future profits if at least 70% of its shares continue to be held by the same natural persons. If a company reduces its business by more than 70%, and less than 70% of its shares continue to be held by the same natural persons, losses that have not been offset may only be compensated with future profits arising from the original business activities.

### 3.3 Participation exemption

#### 3.3.1 General

The Corporation Tax Act has always provided for a participation exemption, which is applicable to both domestic and foreign shareholdings. This exemption is one of the main pillars of the Dutch Corporation Tax Act. It is motivated by the desire to prevent double taxation when the profits of a subsidiary are distributed to its parent company, which is also liable to corporation tax. The main features of this scheme are as follows: all gains from shareholdings are exempted, the costs associated with a shareholding are not deductible, and losses arising from liquidation of the company are deductible only under certain conditions. The company distributing dividends does not have to pay dividend tax if the distribution of profits falls under the participation exemption enjoyed by the company receiving the dividend.

The most important elements are as follows.

#### 3.3.2 Shareholdings

The participation exemption is applicable to both domestic and foreign shareholdings. A shareholding is deemed to exist if the taxpayer:

- 1 holds at least 5% of the nominal paid-up capital (a shareholding includes the related possession of 'jouissance' rights); or
- 2 holds less than 5%, but ownership of the shares is part of the normal business conducted by the taxpayer, or the acquisition of the shares served a general interest; or
- 3 is a member of a cooperative; or
- 4 holds at least 5% of the share certificates in a mutual fund based in the Netherlands.

The participation exemption is not applicable if the taxpayer or subsidiary company is a fiscal investment institution. The concept of an investment institution is explained in section 3.6. The participation exemption is not applicable when the shares are held as stock.

The participation exemption does not apply internationally when shares in the foreign company are held as a portfolio (passive) investment. A further requirement for granting exemption is that the foreign company in which the shares are held is subject to a tax on profits levied by the central government in the country in which it is established (see 3.3.7). Moreover, the participation exemption is not applicable for participations in foreign 'passive' finance companies.

In principle, a Dutch company cannot credit any foreign withholding tax on dividends received from foreign subsidiaries to which the participation exemption is applicable. However, the Dutch dividend tax which has to be transferred by the Dutch company in the event of the redistribution of foreign dividends received can be partly reduced, subject to certain conditions. The reduction amounts to a maximum of 3% of the foreign dividends received.

#### 3.3.3 Gains

Gains from shareholdings are ignored when calculating the profits. In principle the term 'gains' includes both profits and losses. Profits, of course, include both official and disguised dividends received. Exempted gains also include profits made by the sale of a participation (including exchange rate differences). An option was introduced in January 1997 making it possible to choose to apply the participation exemption to currency results arising from financial instruments which are used to hedge the conversion risks on investments in foreign subsidiaries. Accordingly, losses from sales are not deductible. If the participation declines in value as a result of losses suffered, then a write-off by the parent company is in principle non-deductible. An important exception to the rule is losses resulting from liquidation (see 3.3.6).

However, since January 1997 a company may claim a tax deduction for start-up losses of a subsidiary, in which it holds at least 25% of the share capital. The rules allow the parent company to depreciate the book value of the subsidiary in the first 5 years after the acquisition if and to the extent the value of the subsidiary has declined below cost price. When the subsidiary

becomes profitable, a taxable appreciation has to be made up to the amount of the cost of the investment. The balance will then have to be reversed in the next 5 years in equal steps, to the degree that depreciation was not reversed during the first 5 years.

If the depreciated debts of a subsidiary to a parent company are converted into share capital, there is a special provision for claiming this tax. In such cases an amount equal to the depreciation of the debt is, in principle, again counted as part of the profits of the parent company. This is also applicable when the debt is sold to an affiliated company or if it is discharged.

#### **3.3.4 Costs**

Shareholdings may give rise to costs as well as gains. In principle such costs are not deductible. However, an exception is made when these are indirectly conducive to making profits taxed in the Netherlands. With foreign shareholdings this may occur if the foreign subsidiary has a permanent establishment in the Netherlands. In practice, the main non-deductible costs are the costs of financing the participation. The taxpayer must also show that the costs are conducive to making domestic taxable profits.

#### **3.3.5 Converting a permanent establishment into a subsidiary**

As losses incurred by foreign subsidiaries cannot be offset against profits made by the Dutch parent company, foreign activities from which profits are not directly expected are often undertaken through a permanent establishment. Foreign losses can then be directly deducted from the profits of the Dutch company. To prevent losses being deducted from the profits in the Netherlands whilst later profits in this country are not taxed, it is stipulated that when a permanent establishment is converted into a subsidiary the profit made by the subsidiary (up to the amount of the losses deducted from the Dutch profit) is not exempted from taxation. This obligation to compensate profits made by a subsidiary with earlier losses incurred by the permanent establishment is applicable to the eight years preceding the conversion, and is subject to the condition that the losses have not been offset against other foreign profits.

#### **3.3.6 Losses resulting from liquidation**

In principle, losses from participations cannot be taken into account by the parent company. An exception to the rule is those losses resulting from liquidation. The liquidated subsidiary cannot be compensated for these losses in the future. For this reason these losses may be taken into account by the parent company, under certain conditions, in the year in which the liquida-

tion of the subsidiary is completed. The loss resulting from liquidation is the difference between the liquidation payments and the sum paid to acquire the participation (the 'sacrificed amount') Special rules apply if a tax deduction has been claimed for this participation (see 3.3.3).

There are additional requirements for taking account of the losses resulting from the liquidation of foreign participations. One of them is that the holding must have no less than a 25% stake and that it must have been held during the five years preceding the discontinuation of the subsidiary's business, the year of discontinuation itself, and during subsequent years in which liquidation payments are received. In addition, no loss resulting from liquidation can be taken into account if the participation is obtained from a foreign associated company when the operations concerned are discontinued within three years.

#### **3.3.7 Directive on parent companies and subsidiaries**

In 1992, Dutch legislation was amended in line with the EU directive on parent companies and subsidiaries. The relevant Act has a retroactive effect from 1 January 1992. The participation exemption has been extended in several respects. For example, an investment in a company established in another EU Member State can be regarded as a participation covered by the participation exemption. For this purpose a shareholding of at least 25% is required. Possessing at least 25% of the voting rights in a company can also be regarded as a participation under certain conditions, even if the shareholding is less than 5%. Under this Act, dividend tax is not levied on dividend paid to a company established in another Member State when the company has a stake of at least 25% in the company paying the dividend.

This act was further amended in 1994 in order to give the exemption of dividend tax a wider application than the EU directive. If certain conditions are met, exemption now applies when the shareholder has an interest of at least 10% in the company's capital, or holds at least 10% of the voting shares.

### *3.4 Fiscal unity; consolidation for tax purposes*

Under certain conditions a parent company may form a fiscal unity with one or more subsidiaries. For corporation tax purposes this means that the subsidiaries are deemed to have been absorbed by the parent company. The main advantages of fiscal unity are that the losses of one company can be set off against profits from another company, and that fixed assets can be transferred at book value from one company to another.

This type of tax consolidation can only be between a parent company and its complete owned subsidiaries (in practice 99% is sufficient) when all the companies involved in the consolidation are established in the Netherlands. Other conditions are that the parent company and the subsidiaries have the same financial year, and are subject to the same taxes. A request to form a fiscal unity must be submitted to the Tax Inspector on behalf of all the companies involved. The standard conditions drawn up by the Minister of Finance must be met. These conditions cover a large number of technical aspects involved in consolidation. The fiscal unity can be terminated upon request, or will be terminated automatically if any of the conditions are not met.

New regulations were introduced in January 1997 on leveraged acquisitions, in case a leveraged Dutch acquisition vehicle is used to acquire a Dutch operating company. The aim of these regulations is to prevent the acquisition vehicle from forming a fiscal unity with the target company in order to offset its interest charges against the profits of the operating (target) company. In principle, in accordance with new fiscal unity rules these interest charges may not be offset against the profits of the target company (for a period of eight years).

### 3.5 *Mergers*

There are three types of merger: a stock merger, a legal merger, and a business merger. In a stock merger a company's shareholders transfer their shares to another company. This will not generally result in a levy of corporation tax, since the participation exemption is applicable. In a legal merger the capital of one or more legal entities is transferred to another legal entity. The legal entity making the transfer thereby ceases to exist.

In a business merger a company takes over the operations (or an independent part thereof) of another company, with a view to combining the operations of the two companies into a permanent financial and economic whole. The transfer takes place in return for the issue of shares by the other company. Under certain conditions, the transfer profits of a legal merger and a business merger will not be taxed.

Basically, the following conditions have to be met:

- the transfer takes place as part of a merger;
- in case of a business merger the shares acquired by the company making the transfer are not sold for three years;
- in case of a legal merger the merger has to be based on sound business practices;
- later taxation of the profit obtained from the transfer is guaranteed. To this end, the transferred operations must be included in the book value at the time of the transfer by the company taking over these operations;
- neither company may have any tax-deductible losses;
- taxable profits of both companies are assessed in the same manner.

The company transferring its operations may be any company that pays tax.

In some situations in which the above conditions are not met, the transfer profits may still be exempted from tax provided approval has been obtained from the Minister of Finance. This includes situations in which:

- the transfer takes place outside the framework of a merger;
- one of the companies involved is entitled to compensation of losses; or
- the taxable profits are not assessed in the same manner for the two companies involved in the merger.

As is the case with fiscal unity (see 3.4) standard conditions have been drawn up for these situations. These must be accepted before the merger can proceed.

Under certain conditions, de-merging without taxation is also possible. The conditions are similar to the above conditions for legal mergers and business mergers.

### 3.6 *Investment institutions*

#### 3.6.1 **General**

Subject to certain conditions, Dutch-based public companies, private companies and mutual funds may apply for recognition as investment institutions for taxation purposes. An investment institution can request to pay corporation tax at 0%. The purpose of this system is to ensure that persons investing in an investment institution shall not receive less favourable treatment than persons who invest directly. This would not be the case without a special scheme.

As stated in section 3.3.2 an investment institution does not qualify for the participation exemption, whether it is a parent company or a subsidiary.

### 3.6.2 Conditions

Several conditions must be met before an organization may be regarded as a fiscal investment institution. These conditions include the way in which the investments are financed, the distribution of the investment returns, and the ownership of shares in the investment institution. The main conditions are:

- up to 60% of the book value of the immovable property may be financed with borrowed capital. For other investments the limit is 20% of the book value;
- the profits must be distributed within eight months of the end of the financial year;
- when the investment institution is listed on the Amsterdam Stock Exchange, less than 45% of the shares may be held by a company liable to corporation tax or several associated companies (parent, subsidiary, or associated companies with interests of a third or more in each Parent), unless the company is another listed investment institution;
- when the investment institution is not listed on the Amsterdam Stock Exchange then at least 75% of the shares must be owned by individuals, companies not liable to profits tax, or listed investment institutions which meet the above condition;
- less than 25% of the shares in the investment institution may be held indirectly by Dutch shareholders via foreign-based companies;
- less than 25% of the shares in the investment institution may be held directly by a single foreign shareholder;
- if the investment institution is listed on the Amsterdam Stock Exchange, less than 25% of the shares may be held by a single natural person;
- if the investment institution is not listed on the Amsterdam Stock Exchange, the shareholders are not allowed to have a 'substantial holding' (see paragraph 4) in the institutions.

### 3.6.3 Reserves

Institutions are allowed to form two special fiscal reserves, the reinvestment reserve and the rounding-off reserve. The reinvestment reserve is formed by non-distribution of capital gains. The level of the annual contribution to the reserve and its absolute size are both subject to restrictions. If, when establishing the amount of the profit to be distributed, an amount remains due to sums being rounded off then this amount may be added to

the rounding-off reserve. The rounding-off reserve may not exceed 1% of the paid-up capital.

### 3.6.4 Allowance for foreign withholding tax

Under Dutch law and Dutch tax conventions withholding tax levied abroad may generally be set off against income or corporation tax payable by the taxpayer in the Netherlands. Since an investment institution is liable for corporation tax at a rate of 0% it cannot make use of this facility. To ensure that persons who invest directly and persons who invest via an investment institute receive equal tax treatment, special arrangements are made for investment institutions allowing the former to offset foreign withholding taxes against income from securities and claims. Under these arrangements an investment institution may obtain an allowance from the Dutch tax authorities which amounts to no more than the withholding tax levied abroad. If not all the shareholders in the investment institution are resident or established in the Netherlands, the allowance is calculated according to the number of shareholders resident or established in the Netherlands.

## 3.7 Administrative aspects

### 3.7.1 Tax returns and assessments

Taxpayers are obliged to file a tax return every year, within six months of the end of the year concerned. The tax return should be accompanied by all the information required to determine the taxable profits. This includes the balance sheet and the profit and loss account, and all other information requested by the Tax Inspector. If these obligations are not met, a proper tax return has not been filed, and the Tax Inspector may issue an estimated assessment. Failure to fulfil these obligations may also have implications for the burden of proof in any appeals procedure.

The Tax Inspector determines the final assessment based on the tax return. The final assessment may be issued no later than three years after the tax year concerned. Provisional assessments may be issued which are offset against the final assessment. If a Tax Inspector discovers that a final assessment was too low, or that his decision not to issue an assessment was incorrect, then he may issue a revised tax assessment, provided that new information has come to light which he was hitherto unaware of and could not reasonably have been expected to be aware of at the time the original assessment was made. A revised tax assessment can also be issued if the tax return was intentionally incorrect.

The right to issue revised assessments expires five years, in some cases twelve years, after the end of the tax year concerned. When permission has been granted to defer the tax return, this assessment period is extended by the period of deferment.

### **3.7.2 Appeals against assessments**

A taxpayer disagreeing with a provisional or a final assessment may lodge an appeal with the Tax Inspector. This must be in writing, stating the reasons, within six weeks of the date of the assessment. The Tax Inspector then issues a reply to the appeal in which he gives the reasons for his decision. If the taxpayer disagrees with the Tax Inspector's decision, he can lodge a further appeal to the Court of Appeal within six weeks of the date of the announcement of the decision. This appeal must also be made in writing, stating the reasons. A final appeal against the Court of Appeal's decision may be lodged with the Supreme Court of the Netherlands within six weeks of the Court of Appeal's decision. The Supreme Court passes judgment on matters of law only. It does not re-examine the facts of the case.

### **3.7.3 Information that must be supplied to the Tax Inspector and administrative obligations**

At the Tax Inspector's request, a taxpayer must supply all the information needed to determine his or her tax liability. Persons liable to pay tax are required to keep accounts so that information crucial to the levy of taxes is shown clearly at all times. This administration must be kept for a period of 7 years. If so requested, the taxpayer is also obliged to give the Tax Inspector access to these accounts and documents.

In early 1991, a statutory provision came into force which allows the Tax Inspector to request that a company provide information on a shareholder if the company's shares are held by a foreign majority shareholder. Shareholders who jointly hold a majority of the shares based on a cooperation agreement, such as a joint venture, are also subject to this provision. This provision is also applicable to information held by foreign associate companies of a Dutch company. If the same shareholder has a majority holding, either directly or indirectly, in both a Dutch company and a foreign company then the latter is regarded as an associate company.

This provision is not applicable if the foreign shareholder or foreign associate company is resident or established in an EU Member State, the Netherlands Antilles or Aruba, or in a country with which the Netherlands has signed a tax convention containing provisions relating to the exchange of information.

## 4 Income tax

### 4.1 Taxpayers: residents and non-residents

Under the present Income Tax Act residents are liable for income tax on their world-wide income. Non-residents residing in an EU Member State or in a country with which the Netherlands has concluded a double taxation convention providing for the exchange of information may opt for enforcement of the sections of the Income Tax Act for residents. Non-residents are taxed only on the income from a limited number of sources in the Netherlands. The Netherlands has concluded many double taxation conventions to prevent the double taxation of world-wide income. If no convention is applicable, tax relief may be obtained on the basis of the Unilateral Decree for the prevention of double taxation. (If certain requirements are met, foreign employees temporarily posted to the Netherlands may request the application of a special tax arrangement known as the 30% rule, see 4.4)

The legal definition stipulates that someone's place of residence is determined 'according to circumstances'. Several factors are of relevance when deciding whether someone maintains personal and economic ties with the Netherlands. These include a family home, employment, or registration in a municipal register. Nationality is not a determining factor, but it may be relevant in some cases. The law also provides for a number of special cases. The crews of ships and aircraft with a home harbour or airport in the Netherlands are deemed to be residents of the Netherlands unless they have established residence abroad. Dutch diplomats and other civil servants serving abroad remain residents of the Netherlands. Foreign diplomats and the staff of certain international institutions are exempt from Dutch income tax.

People pay tax individually as far as possible. Therefore partners pay tax on their own income and can only use their own deductible items. However, some income and deductible items are joint. Joint income and deductible items can be divided randomly between both partners as long as 100% of the income and deductible items is declared. The choice applies, among other things, to the notional rental value for owner-occupiers and the deductible items from the owner-occupied dwelling, childcare expenses and items that come under the personal deduction.

If partners are married or have registered their partnership at the Records Office, they are automatically each other's partners (unless they are permanently separated). Partners living together have to meet certain conditions in order to be considered fiscally as partners.

### 4.2 Tax base and rates

#### 4.2.1 Taxable income

From 1 January 2001, there are three types of tax for taxable income.

These types of income are brought together in three so-called boxes:

Box 1: taxable income from work and home;

Box 2: taxable income from substantial interest;

Box 3: taxable income from savings and investments.

Residents and non-residents are taxed on their taxable income. The taxable income is the income less the deductible losses. For residents the income may have previously been reduced by certain payments that are not related to the acquisition of income (personal deduction). The personal deduction is first subtracted from income from work and home (box 1). The income in box 1 must not result in a negative amount as a result of the deduction. Any remainder can be deducted from the income in box 3. Likewise, it must not result in a negative amount. If there is still a portion left, it can be deducted from the income from a substantial interest (box 2). If the personal deduction can not be subtracted from the total income in boxes 1, 2 and 3, the remainder can be carried over to the following year.

#### 4.2.2 Tax rates and tax credits

The amount of tax owed is calculated by applying the tax rates to the taxable income. The result is reduced by one or more tax credits. Everyone has the right to a general credit on the tax owed: the general tax credit. Additional credits over and above are available. Which additional credits apply depends on someone's personal circumstances. The general credit is NLG 3,473 (EUR 1,576). For individuals with income from current employment the credit is increased by a maximum of NLG 2,027 (EUR 920). For taxpayers with children under 27 living at home the credit is NLG 2,779 (EUR 1,261). For single parents in paid employment with children under 12 living at home said amount is increased by a maximum of NLG 2,779 (EUR 1,261). For people aged 65 and over, the credit is increased by NLG 520 (EUR 236) unless their income in boxes 1, 2 and 3 exceeds NLG 61,052

(EUR 27,704). Single people who have the right to the old-age tax credit and receive occupational disability insurance payments are eligible for a supplementary old-age tax credit of NLG 547 (EUR 248).

**Tax rate for income from work and home (box 1)**

The tax rate is a rising scale with four brackets. The rates are:

32.35%	on the first	NLG 32,769 (EUR 14,870)
37.60%	on the next	NLG 26,751 (EUR 12,139)
42%	on the next	NLG 42,532 (EUR 19,300)
52%	on the remainder	

The 32.35% rate consists of 2.95% tax and 29.40% social security contributions, the second rate consists of 8.20% tax and 29.40% social security contributions, whilst the 42% and 52% rates consist solely of tax. A rate of 14.45% (first rate) and 19.70% (second rate) is applicable to people aged 65 and over, as they are no longer liable for several social security contributions.

**Tax rate for income from substantial interest (box 2)**

There is a fixed rate of 25%.

**Tax rate for income from savings and investment (box 3)**

There is a fixed rate of 30%.

**4.2.3 Income from work and home: Box 1**

The categories which comprise the income from work and home are:

- I profits from business or professional activities;
- II income from employment;
- III result from other activities;
- IV income in the form of periodic payments;
- V income from home;
- VI expenses for income provisions;
- VII negative expenses for income provisions;
- VIII negative personal deduction;
- IX childcare expenses;
- X personal deduction.

**I Profits from business or professional activities**

For income tax purposes the definition of ‘profits’ is the same as that for the assessment of the corporation tax which is to be levied. However, in assessing profits for corporation tax purposes a number of special factors are taken into consideration, notably those reflecting the difference between the liability to pay income tax and the liability to pay corporation tax. This means that for income tax purposes only sections 3.2.1, 3.2.3 to 3.2.8 and 3.2.11 are applicable.

The following additional rules apply to persons carrying on a business who are liable for income tax.

- **Accelerated depreciation when starting a business**  
Effective from 1 January 1996, accelerated depreciation of fixed assets is permitted for persons who have recently started a business, subject to certain restrictions.
- **Transfer of a business to a business associate**  
If a person carrying on a business transfers the business or part thereof to his or her long-established business associate, the transfer may, on request, be exempted from income tax. The successor then takes the place of the person concerned. A similar tax-free transfer also takes place following the death of the person carrying on the business and the dissolution of the community of property.
- **Discontinuation of a business liable for income tax when it is to be continued as a business liable for corporation tax**  
If a person carrying on business who is liable for income tax wishes to continue business activities in the form of a registered company subject to corporation tax, e.g. a private limited company, he or she may request exemption from income tax when this conversion is made. The company then takes the place of the person concerned. The Ministry of Finance has published standard conditions for such situations.
- **Old-age reserve for the self-employed**  
Persons who derive income from business profits or from self-employment are allowed to offset a certain percentage of their profit towards the provision of a pension scheme. The annual contribution to this reserve may be no more than NLG 21,753 (EUR 9,871), and no offset is allowed if the reserve exceeds the book value of the business’s assets.

This reserve may be converted into an annuity when the business is terminated.

- **Deduction for the self-employed**

Self-employed people under 65 who spend at least 1,225 hours carrying on business are allowed to offset a deduction for the self-employed against their profit. The amount of this deduction is inversely proportional to the size of the company's profits. A fixed deduction of NLG 13,207 (EUR 5,993) is allowed on profits of less than NLG 25,883 (EUR 11,745). The allowance gradually declines to NLG 6,375 (EUR 2,893) on profits of NLG 110,329 (EUR 50,065) or more. Persons who have recently started a business may deduct an additional sum of NLG 3,909 (EUR 1,774) for the first three years.

- **Deduction for assistance in the business**

A deduction for assistance is allowed for persons carrying on business whose partner works for the business concerned while not on the payroll. The deduction is made from the profits at a rate that is dependent on the number of hours the partner works for the business. The rate increases to a maximum 4% when the partner works for 1,750 hours or more in the business in the given financial year.

- **Deduction for profits derived from the liquidation of a business**

Persons carrying on business are allowed to offset a deduction up to a maximum of NLG 8,000 (EUR 3,630) against the profits derived from the liquidation of a business.

## **II Income from employment**

This income consists of all income received in cash or in kind from present and former employment. Income from current employment includes wages and salaries, payments, gratuities, tips and certain periodic payments received under social security legislation (in cash), and the free use of a private car and free housing paid for by the employer (in kind). Income from past employment includes pensions and invalidity, disablement and unemployment benefits.

Salaries, wages and certain periodic payments received under social security legislation are subject to wage tax. Wage tax is withheld by the employer, and is essentially an advance levy on someone's final income tax assessment (see 4.5.1).

Under certain conditions fixed amounts can be deducted for commuting to and from work. No other employment expenses are deductible with the exception of a sea days deduction for seafarers. Employers are allowed to pay untaxed reimbursements within certain limits.

## **III Result from other activities**

The result from other activities includes income from activities not contributing to either profits or the payroll. To be regarded as income there must be a reasonable expectation that these activities will yield income. Examples are the provision of boarding for lodgers, fees for services and copyrights, and securing returns from assets.

In most cases income from savings and investments is taxed in box 3. However, securing returns from assets may lead to taxation in box 1.

This concerns the following situations:

- assets placed at the disposal of the taxpayer's partner who uses the assets to secure profits from business or result from other activities;
- securing returns from assets in a way that exceeds normal, active asset management. For example, the sale of building complexes in single units;
- assets placed at the disposal of a private limited company in which the taxpayer holds a substantial interest solely, or with his or her partner.

## **IV Income in the form of periodic payments**

Periodic payments forming a separate source of income can be divided into different categories. Examples are:

- payments from the state, such as certain public scholarships and government subsidies;
- periodic payments under family law, such as maintenance payments, unless received from relatives once or twice removed;
- other periodic payments, claimable in court, unless received from close relatives, foster parents or members of the same household, such as maintenance payments to a former partner;
- terms of life annuity, the premiums of which were deductible.

#### *v Income from home*

A special provision applies to owner-occupied property. Property is taxed at a notional rental value, which represents the balance of revenue and expenses connected with the use of a dwelling. This rental value, which is a positive amount, is assessed using statutory tables. The notional rental value for owner-occupiers only applies to the main residence. Second homes and other property come under box 3. As normal expenses are included in the notional rental value, no expenses other than (mortgage) interest and ground rent may be deducted. These costs can be deducted for a maximum of 30 years.

To finance the purchase of an owner-occupied dwelling, a mortgage is often taken out that is linked to an endowment insurance policy. The final lump sum of such insurance is meant to pay off the mortgage debt. Endowment insurance is taxed in box 1. If the payment is no higher than NLG 276,566 (EUR 125,500) per person, this payment is not taxed under certain conditions. There is a transitional agreement for existing endowment insurance.

#### *vi Expenses for income provisions*

A deduction of life annuity premiums up to NLG 2,283 (EUR 1,036) is available for everyone. This basic deduction applies to premiums towards (temporary) old-age annuities, a survivor's annuity and an interim annuity. A higher amount can be deducted if a pension shortfall can be proven.

Contributions for occupational disability insurance, contributions under the Act governing the Invalidity Insurance for the Self-Employed (WAZ) and annuity premiums for long-term disabled children or grandchildren are not linked to a maximum deductible amount.

#### *vii Negative expenses for income provisions*

This category refers to the surrender of life annuities. In the event that a taxpayer emigrates, an insurance policy is deemed to be commuted into a lump sum.

#### *viii Negative personal deduction*

Amounts received as refund or subsequent payment for the expense that previously came under the personal deduction are considered as negative personal deduction.

#### *ix Childcare expenses*

Expenses for the care of children under 13 can be deducted. The following conditions apply here:

- the taxpayer must have paid work for which he or she receives more than NLG 8,676 (EUR 3,937). In the event that the taxpayer has a partner, both of them have to meet this condition;
- the childcare arrangement has to meet a number of legal requirements;
- a maximum of NLG 19,393 (EUR 8,800) is deductible per child;
- deduction is only possible above a certain income-related threshold.

#### *x Personal deduction*

Only residents are entitled to the personal deduction. A threshold or a fixed deductible amount has been established for certain deductible items. The following items come under the personal deduction:

- expenses for maintenance obligations (alimony);
- remission of money loans to starting entrepreneurs;
- living expenses for children up to 27;
- medical expenses and other extraordinary expenses;
- expenses for weekend visits by handicapped children aged 27 and over;
- educational expenses. Studying as a hobby does not qualify;
- expenses for protected or listed buildings;
- donations to domestic religious, ideological, charitable, cultural, and academic institutions or ones serving the public good. Donations to foreign institutions of the kinds indicated above are deductible if the Ministry of Finance has designated these institutions.

#### **4.2.4 Income from substantial interest: Box 2**

Income from a substantial interest in a company, including capital gains or losses, is subject to income tax and is taxed at a rate of 25%.

A taxpayer is regarded as having a substantial interest in a company if he or she, either solely or with his or her partner, holds 5% of the issued capital, directly or indirectly. If the company has issued different classes of shares, a substantial interest also exists if the taxpayer, either alone or with his or her partner, holds more than 5% of the issued capital of a particular class of shares. If the taxpayer holds a substantial interest in a company, profit-sharing bonds issued by that company and held directly or indirectly by him or her, either solely or with his or her partner, are regarded as forming part of the substantial interest.

Dividends and capital gains derived from the alienation of shares are taxed at a proportional rate of 25% in the income tax. In the event of capital loss, 25% of that loss may be offset against the tax which would otherwise be due. For this purpose an arrangement similar to that for offsetting losses is applicable (see 3.2.11). If the taxpayer emigrates, the substantial interest is deemed to be alienated. However, the tax due will not be collected as long as the substantial interest is not disposed of. After the elapse of 10 years, the remainder of the tax levied because of the deemed alienation at the time of emigration is pardoned.

For non-residents the income from substantial interests is only subject to tax in case of a substantial interest in a company resident in the Netherlands. With respect to non-residents a company is also deemed to be a resident of the Netherlands if it was resident in the Netherlands for at least five years during the last ten years. With respect to non-residents the substantial interest is deemed to have been alienated in case of the transfer of the place of effective management of the company from the Netherlands to elsewhere.

#### 4.2.5 Income from savings and investments: Box 3

Taxation on income from savings and investments is based on the assumption that people will have a taxable return of 4% on their net capital. The actual level of return (for example interest, dividend, capital gains or losses) is not relevant. Net capital (the value of the assets minus any liability) is determined as the average net capital during the calendar year and will therefore be measured twice a year, on January 1 and December 31. Only capital available for savings and investment is taken into account. Consequently, the owner-occupied dwelling as well as the endowment insurance linked to it and capital invested in someone's own company or in a substantial interest are not taxed in box 3.

Examples of assets taxed under box 3 are:

- bank and savings accounts;
- a second home;
- stocks and other shares;
- endowment insurance policy which is not linked to an owner-occupied dwelling.

There is a threshold for liabilities: the first NLG 5,509 (EUR 2,500) cannot be deducted. Except for tax liabilities and liabilities related to capital generat-

ing income from work, home or a substantial interest, all liabilities can be deducted from the assets.

Certain assets are exempted. The most important are:

- movable property for personal use (household items, like a car);
- investments in forests and nature;
- objects of artistic or scientific nature unless these serve as an investment;
- annuity insurance, the premiums of which are deductible in box 1;
- social investments up to NLG 103,539 (EUR 46,984) including green investments (environmentally friendly investments) and social or ethical investments;
- direct or indirect investments in starting companies up to NLG 103,539 (EUR 46,984). Cultural investments are also included.

Non-residents are taxed on income from savings and investments only if they own certain assets in the Netherlands, which are:

- immovable property (including immovable rights) situated in the Netherlands;
- profit-sharing rights based on the net profits (not the turnover) of a company managed in the Netherlands, excepting profit-sharing bonds, etc., and employees' entitlement to bonuses.

The assets mentioned are reduced only by liabilities directly related to them (such as debts secured by a mortgage on immovable property situated in the Netherlands).

Each person is entitled to a tax-free capital threshold of NLG 38,785 (EUR 17,600). For each child under 18, the threshold is raised by NLG 5,177 (EUR 2,349). Depending on their income and amount of capital, people aged 65 and over are entitled to an extra threshold of 50% of their net capital up to a maximum of NLG 51,338 (EUR 23,296).

#### 4.3 Employee savings and profit-sharing schemes

Employers and employees may agree to set up employee savings schemes in which a certain maximum amount of the salary is exempt from tax and social security contributions. Employers in the private sector can set up profit-sharing schemes to provide tax benefits for both employers and employees.

#### 4.3.1 Employee savings schemes

Since 1 January 1994, new rules apply which exempt employers from paying tax and social security contributions on each employee's pay to a maximum of NLG 2,894 (EUR 1,313). This is applicable to pay based on:

- premium savings schemes; or
- payroll savings schemes (including blocked profit-sharing schemes and share option schemes in the private sector).

In premium savings schemes, the employer withholds an agreed amount from the employee's net pay and deposits this in a premium savings account. The employer can then award the employee a savings premium of up to 100% of the amount withheld, to a maximum of NLG 1,158 (EUR 525). Under certain conditions no tax and social security contributions need to be paid on this savings premium.

In payroll savings schemes, the employer withholds an agreed amount not exceeding NLG 1,736 (EUR 788) of the employee's gross pay and deposits this in a savings account blocked for at least four years. When the sum is paid out it is not liable to tax or social security contributions.

However, the employer is required to pay 15% payroll tax on the exempted amount.

#### 4.3.2 Profit-sharing schemes

Employers in the private sector can give their employees a share in the fiscal or commercial profits of the business or of one or more businesses associated with the business. If the profit payment is blocked in a payroll savings account, the rules for payroll savings schemes are applicable (the maximum amount exempted from tax or social security contributions is NLG 1,736 (EUR 788)).

If the profit payment is not blocked, but is paid directly in cash or securities, the employer pays 10% payroll tax on a maximum amount of NLG 1,736 (EUR 788). This amount is not liable to social security contributions. Any payroll savings received must be deducted from this amount. Insofar as the profit payment together with the payroll savings exceeds NLG 1,736 (EUR 788), the normal rate of tax and social security contributions must be paid.

#### 4.4 Foreign employees: the 30% rule

A special allowance is granted to certain foreign employees who are assigned to a post with a domestic employer (i.e. an employer established in the Netherlands, or an employer not established in the Netherlands who is obliged to withhold payroll tax on the pay the employee receives).

If certain requirements are met, the employer may grant a special tax-exempt allowance of 30%, which is paid in addition to employees' pay and has to be seen as reimbursement of the extra costs of living outside the homeland. The allowance is calculated based on the level of pay in accordance with the provisions of the Payroll Tax Act. To obtain the basis for calculating the 30% allowance the salary is multiplied by a factor of  $\frac{100}{70}$ . Employer reimbursements of school fees for children attending international primary or secondary schools are also exempt from tax. In addition to the 30% rule, expenses incurred in connection with employment are reimbursed tax-free.

Foreign employees have to be recruited by or seconded to a domestic employer in the Netherlands. The employer and his employee must first agree, in writing, that the 30% rule will be applied. Their joint request for the application of this rule must then be submitted to the Private Individuals Tax Unit (Non-resident Taxpayers) in Heerlen. Once the application has been approved, the 30% rule is applied from the outset. The 30% rule is applicable for a maximum period of 120 months. This period is reduced by any previous period of employment with a domestic employer in the Netherlands, or by any time previously spent by the employee in the Netherlands, unless more than ten years have elapsed since the end of such employment, or time spent in the Netherlands.

At the joint request of the domestic employer and the foreign employee, the foreign employee is regarded as a fictitious foreign taxpayer with regard to the levy of payroll tax and income tax (with a few exceptions).

#### 4.5 *Tax returns and assessments*

For income tax purposes the tax year coincides with the calendar year. If the financial year of a business does not coincide with a calendar year, the results of such a year are attributed to a calendar year.

##### 4.5.1 **Wage tax as an advance levy**

People on the payroll are subject to tax on the pay they receive. Employers withhold the tax directly from the payroll and pay this on a regular basis to the Tax Department. The rates, deductions, and any exemptions are consistent with those applicable to income tax. This means that in many cases collecting wage tax is sufficient and no income tax return needs to be filed. This means that for many employees the wage tax is not an advance levy in respect of income tax, but is in effect the final levy.

##### 4.5.2 **Income tax returns and assessments**

No income tax assessments will be made unless:

- 1 the tax due exceeds NLG 432 (EUR 196), taking into account the wage tax or dividend tax withheld
- 2 a preliminary refund has been decreed ahead of or in the course of the calendar year, or
- 3 the taxpayer has filed an income tax return.

As is the case with corporation tax (see 3.7.1), provisional assessments and advance levies are credited against the final income tax assessment.

Taxpayers are obliged to file an annual tax return within three months of the end of the relevant financial year. Sections 3.7.1 and 3.7.2 are also applicable to income tax. At the request of the Tax Inspector the taxpayer is obliged to supply all relevant information needed to determine his or her tax liability. The obligation to keep accounts as explained in section 3.7.3 above is occasionally applicable to natural persons.

## 5 **Avoiding double taxation with respect to taxes on income and profits**

### 5.1 *General*

There are two kinds of specific arrangements for avoiding double taxation for taxes on income and profits, and for inheritance and gift tax. The Netherlands has concluded conventions on avoiding double taxation with a large number of countries (see 5.3). If no convention has been entered into, the unilateral provisions as laid down in the 2001 Double Taxation (Avoidance) Decree of the Netherlands are applicable (see 5.4). The double taxation conventions apply for residents of the Netherlands, and for residents of the treaty countries. The above-mentioned Decree applies only for residents of the Netherlands.

### 5.2 *Methods*

The Dutch tax system provides three different methods for avoiding double taxation on income from foreign sources. Double taxation is avoided by means of exemption with the progression method, the credit method, or by deducting foreign taxes as costs. These methods are used under the Decree and, with only a few exceptions, under the double taxation conventions.

#### 5.2.1 **Exemption with the progression method**

Exemption with the progression method is usually used for income tax and corporation tax. In principle, positive and negative items of income from foreign sources are exempted, on a country-by-country basis. The exemption method involves reducing the Dutch tax on total income. The reduction is calculated as follows: foreign income x total Dutch tax due on total taxable income is total income.

If income from foreign sources exceeds the total income, foreign taxes in the year concerned will not be fully exempted. In such cases, exemption may be granted in the subsequent years.

Foreign losses reduce the Dutch tax base in the year they occur because they are offset against domestic income. However, any losses from abroad which are incurred in the preceding years are deducted from foreign income before exemption is granted.

### 5.2.2 The credit method

The credit set off against tax method, or credit method, is usually used for foreign withholding taxes on investment income such as dividends, interest and royalties, mostly on an overall basis<sup>1</sup>. The tax reduction amounts to the lower of the foreign withholding tax or the Dutch tax that is attributable to foreign dividends, interest and royalties.

Because foreign withholding taxes on which credit is allowed are usually levied on a gross basis, whilst Dutch income tax is levied on a net basis, it is quite likely that the Dutch tax attributable to the relevant items of income will not be sufficient to provide full credit for the tax levied by the source country. In such cases the excess foreign taxes may be carried forward to subsequent years.

Since 1 January 1999, the credit method has also been applicable in a few conventions on avoiding double taxation for income from passive investments derived through a permanent establishment (see 5.3). Furthermore, in a number of conventions and under the Decree the credit method applies to income of artists and sportsmen and women.

### 5.2.3 Deduction as costs

In situations not allowing exemption or credit, any foreign taxes paid may be deducted as costs related to the relevant income. In situations in which a tax credit would normally be used, the taxpayer may opt for non-recognition of the tax credit. This option applies to the year in which the income is received and to the total amount of all dividends, royalties and interest received in that year. Regarding the deduction of costs in the income tax, the taxpayer can opt for box 1 and for box 2 separately.

ad 1 According to a ministerial order, under the double taxation conventions there can be chosen between the credit method on a country-by-country basis and the credit method on an overall basis.

## 5.3 Conventions on avoiding double taxation

Policy in the Netherlands governing the conclusion of conventions on avoiding double taxation is largely in line with the principles laid down in the OECD Model Double Taxation Convention.

When concluding tax conventions the Netherlands strives to meet several objectives. The Netherlands has a small domestic market but a large foreign market. Consequently a relatively large number of industrial and commercial companies operate primarily on an international basis. The country has an open economy, and its policy on tax conventions reflects this situation in its relations with EU Member States and other countries. Dutch policy aims at doing all it can to remove obstacles to the international flow of goods and capital. To achieve this objective, withholding taxes on non-portfolio dividends, interest and royalties should be as low as possible and preferably 0%. Dutch legislation does not provide for withholding taxes on interest and royalties in line with this policy.

The Netherlands also strives to ensure capital import neutrality of investments. Therefore, Dutch investors are able to invest in foreign markets on the same conditions as other foreign or domestic investors. For this purpose, all profits earned by a Dutch parent company from a foreign subsidiary, as well as profits obtained by Dutch companies whose permanent establishment is situated abroad, are exempted from tax in the Netherlands. This ensures that such profits are taxed only in the source country.

In the tax conventions, the right to levy taxes is attributed to the signatory states, ensuring that income is taxed by only one state.

The Netherlands has signed many conventions on avoiding double taxation with respect to taxes on income, and in a number of cases on wealth as well. These conventions have been entered into with the following countries:

Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Canada, People's Republic of China, Czechoslovakia (this convention is applicable to both the Czech and Slovak Republics), Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Latvia, Luxembourg, Macedonia, Malawi, Malaysia, Malta, Mexico, Morocco, New Zealand,

Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Singapore, Soviet Union (Convention is applicable to the former Member States of the Soviet Union with the exception of Armenia, Azerbaijan, Georgia and Moldova, and with the exception of those former Member States of the Soviet Union to which a new convention is now applicable), South Africa, South Korea, Spain, Sri Lanka, Surinam, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Venezuela, Vietnam, Yugoslavia (this convention is applicable to Bosnia-Herzegovina, Croatia, Federal Republic Yugoslavia (Serbia and Montenegro) and Slovenia), Zambia and Zimbabwe. Conventions have also been concluded with Croatia, Lithuania and Moldova, but these have not yet come into force.

The fiscal relations between the Netherlands, the Netherlands Antilles and Aruba are settled in the Tax Regulations for the Kingdom of the Netherlands.

Agreements with more limited scope covering only profits derived from shipping (s) and/or aircraft activities (A) are in force with Argentina (s, a), Egypt (A), Greece (s, A), Oman (A), Panama (s, A), Saudi Arabia (A), the United Arab Emirates (A) and Venezuela (s, A). An agreement with Hong Kong (s) has been concluded but has not yet been put into effect. Agreements on international air and maritime transport may also include provisions for avoiding double taxation.

Conventions on avoiding double taxation with respect to taxes on estates and inheritances are in force with Finland, Israel, Sweden, Switzerland, United Kingdom, and the United States of America.

#### 5.4 *Unilateral measures for avoiding double taxation*

Dutch legislation provides for unilateral measures for avoiding double taxation in situations where exemptions do not apply. These are laid down in the 2001 Double Taxation (Avoidance) Decree of the Netherlands.

The Decree provides for avoiding double taxation on income from foreign sources for residents of the Netherlands, including both corporations and individuals. The Decree is applicable to taxes on income, wages and salaries, inheritances, gifts and lottery prizes. Double taxation is avoided by three

methods: exemption with the progression method, the credit method and by deducting taxes as costs. For an explanation of these methods, see 5.2. As regards income tax, these methods are applied separately for each box of income.

##### 5.4.1 **Exemption with the progression method**

The Decree provides exemption from Dutch income tax for the following sources of income from abroad:

- profits from a permanent establishment located abroad;
- income from employment within the territory of another country;
- income from immovable property located within the territory of another country;
- entitlement to a share in the profits of a business of which the effective management is located within the territory of another country, provided that this entitlement is not derived from securities or employment;
- income from entitlement to periodic payments by or on behalf of a public authority located within the territory of another country.

Exemption is granted if the income is subject, or is deemed to be subject, to a tax on income levied on behalf of the country in which the income is derived. Income is deemed to be subject to tax if:

- the income is not actually taxed because of basic allowances etc.;
- private employment lasts for at least three months, provided that the employer is established in the Netherlands. However, if employment lasts for less than 30 days the income is not deemed to be subject to tax in another country, unless there is proof that the tax has been levied on the income.

##### 5.4.2 **The credit method**

The Decree also provides exemption from tax on dividends, interest and royalties. It takes the form of a credit set off against tax, and is calculated on an overall basis. The credit is on an overall basis, and is granted only if the income is derived from developing countries listed in the Decree.

Since 1 January 1999, the credit method also applies to income from passive investments derived through a permanent establishment.

The credit cannot exceed the amount of tax that is actually levied by the source country, or the amount of Dutch tax that is attributable to the dividends, interest or royalties. A third limitation applies to dividends, namely

that the credit cannot be more than 25% of the dividends received. In box 3 (income from savings) on income tax, the limit on the amount of Dutch tax attributable to the dividends, interest or royalties does not apply. The limit of 25% applies to dividends, interest and royalties. The Decree also provides a tax credit on income of artists and sportsmen and women.

## 6 Value added tax and excise duty

### 6.1 Value added tax (VAT)

Value added tax (VAT, in Dutch 'BTW') is levied in the Netherlands at each stage in the chain of production and distribution of goods and services. The tax base is the total amount charged for the transaction excluding VAT, with certain exceptions. Because of deductions in previous stages of the chain, VAT is not cumulative. Every taxable person is liable for VAT on his or her turnover (the output tax), from which the VAT charged on expenses and investments (the input tax) may be deducted. If the balance is positive, tax must be paid to the tax authorities. If the balance is negative, a refund is received. The tax paid by the ultimate consumers of the goods or services is not tax-deductible. The tax is based on the VAT rate applicable to the price of the goods or services received, exclusive VAT.

#### 6.1.1 Taxable persons

Taxable persons are persons conducting a business, who are defined as those who conduct independent business, including natural persons, corporate bodies, partnerships, associations etc. Combinations of bodies forming a single financial, organizational, and economic entity can be considered as a fiscal unit for VAT purposes. In such cases, the supply of goods and services within the unit is not subject to VAT. A public body can also act as a taxable person if its activities do not involve public duties.

#### 6.1.2 Tax base

There are four taxable activities:

- I supplying goods;
- II rendering services;
- III acquisition of goods by businesses (since 1 January 1993);
- IV importing goods.

#### *Supplying goods and services*

The term 'supplying goods' (goods are all physical objects, but also include electricity, heating, cooling, etc.) is interpreted in its broadest sense. For example, for VAT purposes the following activities are considered as supplying goods:

- the transfer of ownership of goods under an agreement;

- the transfer of goods on the basis of a hire purchase agreement;
- the delivery of goods by a manufacturer who has manufactured the goods from materials provided by the consumer;
- the private use of goods by a business;
- the self-supply of goods, if the goods are involved in exemption transactions for which prepaid tax cannot be deducted, or is only partly deductible.

Services are defined as all activities performed for remuneration that are not classed as supplying goods.

#### *Location of deliveries and services*

Although the difference between supplying goods and rendering services is usually a purely theoretical one, there is a valid reason for distinguishing between them concerning location. Transactions are subject to the conditions and rates applicable at the location concerned. The location at which the goods are supplied is defined as the location of the goods at the time of supply. An exception is made for goods transported in connection with the supply. In such cases, the location of supply is the location at which the transportation began. Another exception is made for a series of supplies of imported goods. In such cases, the location of all the supplies is the Netherlands.

The location at which services are rendered is generally deemed the place of residence or establishment of the person rendering the services. However, there is a separate regulation for certain services. A few examples include services involving copyrights and advertising, advice, information, banking, insurance and the services of employment agencies etc. The location where the services are rendered is the place of establishment of the person to whom the services are rendered. Services involving immovable property are rendered at the location of the property.

#### **6.1.3 Exemptions**

Several types of transactions are exempt from VAT. An exemption means that tax for the transactions should not be charged, and that prepaid VAT attributable to those transactions cannot be deducted. Exemptions apply to transactions such as:

- the transfer or rental of immovable property, with certain exceptions. For example, when a newly-built property is supplied, for a period of two years after it is first used, and property when the supplier and recip-

ient have opted for taxable delivery are taxable; however the possibility to opt for taxation is restricted to situations in which the property is used for (almost) wholly taxable purposes;

- medical services;
- services provided by educational establishments;
- sociocultural services;
- most services performed by banks;
- insurance transactions;
- non-commercial activities by public radio and television broadcasting organizations;
- postal services;
- burials/cremations;
- sports (not entrance fees);
- the services of composers, writers and journalists.

#### **6.1.4 Special arrangements for sole traders and the agricultural sector**

Sole traders enjoy a tax reduction. If the VAT to be paid after the deduction of prepaid VAT is less than NLG 4,150 (EUR 1,883), a reduction is granted of  $(NLG\ 4,150 \text{ minus the VAT due}) \times 2.5$ . If a sole trader consequently does not have to pay any VAT to the authorities, he or she may request to be relieved of the obligation to keep accounts.

A special provision applies to the agricultural sector, i.e. arable farming, cattle breeding, and horticulture, which is designed to exclude the agricultural sector from the VAT system entirely. Farmers do not charge VAT and do not have the right to deduct prepaid VAT. Buyers of agricultural products from these farmers receive a fixed prepaid VAT deduction of 5.1%. If the tax prepaid by the farmer were more than 5.1% of the value of his sales, this special provision would put him or his customers at a disadvantage. In such cases the farmer may then opt for the usual statutory regulation.

#### **6.1.5 Tax rates**

The general rate is 19%. A reduced rate of 6% is applicable to the supply, import, and acquisition of goods and services mentioned in Annex 1 to the VAT Act. The reduced rate is mainly applicable to foodstuffs and medicines. Other goods and services subject to the lower rate include water, art, books, newspapers and magazines, materials required by the visually handicapped, artificial limbs, certain goods and services for agricultural use, passenger transport, hotel accommodation and entrance fees for museums, cinemas, sports events, amusement parks, zoos and circuses and some

labour-intensive services. The zero rate is intended primarily for exported goods, seagoing vessels and aircraft used for international transport, gold destined for central banks, and any activities which may take place within bonded warehouses or their equivalent. There is also a zero rate for goods that are transported to another EU Member State on which VAT is levied because of the acquisition in that Member State.

#### 6.1.6 The VAT system in the single European market

The single European market became effective from 1 January 1993. From this date onwards, goods, persons, services and capital may move freely within the EU. The transitional arrangements that apply after this date, for which the 1968 Turnover Tax Act of the Netherlands was amended, contain the following main points.

- I Private persons buying goods in another Member State pay VAT in the country in which the goods are bought (based on the country of origin principle). Exemption on exports from the Member State and the obligation to pay VAT on goods upon arrival in the Netherlands do not apply.
- II VAT is levied in the Member State to which the goods are transported for trade in goods between businesses in Member States (based on the country of destination principle) at the rates and under the conditions of that Member State. The business supplying the goods applies the zero rate. The business receiving the goods submits a tax return with regard to the goods purchased in another Member State. (This transitional arrangement applies up to the date on which transactions become subject to the country of origin principle).
- III The country of destination principle also applies to intra-Community deliveries to exempted parties, farmers falling under a lump-sum compensation scheme, and legal entities not liable for taxation (authorities), unless the total value of the goods purchased exceeds the threshold of NLG 23,000 (EUR 10,437).
- IV A similar provision to the one referred to in point III applies for mail order transactions or teleshopping involving private persons, exempted businesses, legal entities not liable for taxation, and farmers entitled to a lump-sum compensation scheme. The threshold is NLG 230,000 (EUR 104,369).
- V The country of destination principle always applies to the purchase of new, or almost new, motor cars by private persons or businesses in another Member State.
- VI Every business making intra-Community deliveries to another Member State must submit regular reports regarding deliveries subject to taxation in that Member State (known as the listing requirement). The business will be required to supply further details if this is necessary for intra-Community checks on imposing VAT.
- VII Because border controls for tax purposes have been discontinued within the EU, VAT levies on imports and the zero rate for exports apply only to goods outside the EU.

#### Imports

Imports are confined to bringing goods from countries outside the EU into free circulation in the Netherlands. The rates to be applied are the same as those applicable to supplies of goods in the Netherlands. VAT will be levied either in the same way as import duties or, after the appropriate license has been granted, in accordance with the deferred payment system.

The customs procedure applies to the first situation. This means that the declarant must pay the tax due when submitting an import declaration, or else provide security for this purpose. In the second situation, the tax due is collected from the business that is the destination of the goods. The time of payment is then deferred until the time at which the business must submit a periodic domestic VAT tax return. In such cases, the time of payment coincides with the right to deduct the same tax.

There are exemptions on imports, but these do not affect the right to deduct VAT on input.

#### 6.1.7 Tax returns and assessments

Tax returns may be for monthly periods, quarterly periods, or annually, depending on the amount of VAT due. Almost all VAT returns are prepared and dispatched through a computerized system. The system checks that the forms are returned and the amounts in question are paid in good time. The return must be submitted within one month from the end of the period to which it relates. The tax owed must also be paid within this period. When no tax is due, or a refund is requested, returns should be submitted within one month.

A significant percentage of retrospective assessments is caused by returns being submitted too late, or the relevant payment not being made in good time. As mentioned above, these are monitored by a computer system, which automatically prepares a retrospective assessment if a payment is not made, or a return is not submitted in good time. The system uses information from returns relating to previous periods to determine the amount of the assessment for the period in question.

In addition to assessments resulting from failure to file a return or pay the tax owed in good time, retrospective assessments are also issued if checks reveal that insufficient VAT has been paid. Taxpayers can object and lodge an appeal against retrospective assessments. However, this does not suspend the obligation to pay the tax deemed to be payable.

## 6.2 Excise duty

Excise duty is levied on the ultimate use or consumption of mineral oils, beer, wine, other alcoholic products and tobacco products. The largest contribution to the treasury comes from the excise duty levied on mineral oils such as petrol, diesel oil for road vehicles, heating oil, and heavy fuel oil. The tax revenue from the excise duty on mineral oils was approximately NLG 10.9 billion (EUR 4.95 billion) in 1998. The total revenue from excise duty amounted to NLG 15.9 billion (EUR 7.22 billion) in 1998, equivalent to about 8.8% of the total tax revenue in the Netherlands in that year.

### 6.2.1 Taxable persons

The number of taxable persons liable for excise duty is restricted by the requirement that excise duty be levied at the time the products concerned are released for consumption. This means that the manufacturers and the wholesalers mainly pay the duty. Under the present system, a taxable person is required to keep accounts that permit a true and fair view of all transactions, manufacturing processes, and movements of goods subject to excise duty concerning the business. These accounts must be suitable for presentation to the tax authorities at any time. Physical checks by the authorities can only complement this audit-based control system.

A special arrangement applies to tobacco products. The excise duty is paid by manufacturers or traders in tobacco products through purchasing excise stamps from the authorities.

### 6.2.2 Harmonizing excise duty in the EU

Excise duty legislation in the Netherlands is fully in accordance with the EU Council Directives on harmonizing excise duties in the internal market of the European Union. A prominent feature of harmonizing excise duty in the EU is that excise duty is charged on goods acquired by private persons for their own use in the Member State where the goods are acquired. Excise goods brought into the Netherlands from another Member State under these conditions have therefore not been subject to Dutch excise duty from 31 December 1992 onwards. The harmonized excise duty system of the EU also involves general conditions for the storage, movement and monitoring of excise goods in the Member States, tax suspension arrangements for the movement of excise products between tax warehouses, comprehensive definitions of excise goods, and regulations concerning excise duty rates and exemptions.

Since the EU excise duty system came into force in the Netherlands on 1 January 1993, indirect taxes on products other than mineral oils, tobacco and alcohol as defined in the relevant EU Council directives are admissible only insofar as they do not give rise to border formalities in trade between Member States. In this context, consumer taxes on non-alcoholic beverages, and tobacco products for non-smoking purposes (snuff and chewing tobacco) still exist in the Netherlands.

## 7 Environmental taxes

### 7.1 Fuel tax

Fuel tax is levied on mineral oils, coal, natural gas, blast furnace gas, coke oven gas and coal gas. Mineral oils are petrol, diesel fuel, heating gas oil and heavy fuel oil. The tax revenue is estimated at approximately NLG 1,381 million (EUR 626.67 million) in 2001.

#### Taxable persons

The fuel tax on mineral oils is levied together with excise duty on mineral oils. Fuel tax on the other fuels mentioned above is levied on persons who extract, produce or import these fuels, and subsequently use them as fuels or transfer them to others for use as fuels. The number of taxable persons liable to fuel tax is restricted as the tax is levied primarily on the manufacturers and importers of fuel.

#### Tax rates

The rates for the most common fuels on 1 January 2001 are as follows:

Petrol		per 1000 l	NLG 26.54 (EUR 12.04)
Medium oils		per 1000 l	NLG 29.07 (EUR 13.19)
Diesel oil and the like		per 1000 l	NLG 29.28 (EUR 13.29)
Heavy fuel oil		per 1000 kg	NLG 34.17 (EUR 15.51)
Coal		per 1000 kg	NLG 24.72 (EUR 11.22)
LPG		per 1000 kg	NLG 34.96 (EUR 15.86)
Natural gas	0 - 10 M m <sup>3</sup>	per 1000 m <sup>3</sup>	NLG 22.80 (EUR 10.35)
	> 10 M m <sup>3</sup>	per 1000 m <sup>3</sup>	NLG 14.90 (EUR 6.76)
Exemptions	All usage other than as fuel is exempt.		

### 7.2 Tax on groundwater

Groundwater tax is levied on the extraction of fresh groundwater. This tax has been levied since 1 January 1995. The tax revenue is estimated at approximately NLG 375 million (EUR 170.17 million) for 2001.

#### Taxable persons

The tax is levied on the proprietors of the establishments extracting groundwater. These are, for example, the manufacturers of drinking water, farmers, and industries that use groundwater.

#### Rates

The rate is NLG 0.3594 (EUR 0.16) per m<sup>3</sup>. Rebates are applied for infiltrated water.

#### Exemptions

Exemptions are applicable under certain conditions, for example in case of extraction of groundwater for draining a building site, as well as test extraction, extraction for use for sprinkling and irrigating land and extraction needed to clean groundwater.

### 7.3 Tax on tap water

The tax on tap water is levied on the supply of tap water to a maximum of 300 cubic meters per year. The tax revenue is estimated at NLG 220 million (EUR 99.83 million) for 2001.

#### Taxable persons

The tax is levied on the tap water companies.

#### Rates

The rate is NLG 0.290 (EUR 0.13) per m<sup>3</sup>.

### 7.4 Tax on waste

This tax is levied on the disposal of waste to establishments operating dumps and incinerators. The tax came into force on 1 January 1995. The tax revenue is estimated at approximately NLG 527 million (EUR 239.14 million) for 2001.

#### Taxable persons

This tax is levied from the proprietor of the establishment where waste is delivered for processing. These are establishments which operate a landfill site, or incinerate waste.

### Rates

The rate for landfill waste is NLG 27,78 (EUR 12.61) per 1000 kg. Incinerable waste accepted for landfilling at a dump is charged at a rate of NLG 144.21 (EUR 65.44) per 1,000 kg. Asbestos is zero-rated, provided it is offered separately to the establishment operating the dump. A zero rate applies to waste that is incinerated.

### Exemptions

Exemptions do apply, for instance, to non-purifiable polluted dredging sludge and soil.

## 7.5 Regulatory energy tax

The regulatory energy tax is levied on the consumption of natural gas, electricity and mineral oil products when used as substitutes for gas by domestic users or commercial establishments. The tax revenue is estimated at NLG 5,474 million (EUR 2,484 million) for 2001. The revenues are returned to domestic users and businesses through reductions in other taxes.

### Taxable persons

The tax is levied on the energy distribution companies and manufacturers and wholesalers of mineral oils. These companies pass on the tax to their customers.

### Rates

Natural gas is taxed to a maximum of 1,000,000 cubic meters per year. Electricity is taxed to a maximum of 10,000,000 kWh per year. Each consumer gets a rebate of NLG 312 (EUR 142) per 12 months.

fuel	unit	cents per unit
natural gas	cubic metre	26.50
electricity	kWh	12.85
light fuel oil	litre	27.875
heating gas oil	litre	28.11
LPG	kg	33.25

A zero rate applies for fuels used for transport purposes.

### Exemptions

Exemptions apply to all usage other than as fuel and for natural gas used to produce electricity.

## 7.6 Administrative aspects

Persons liable to environmental taxes are required to keep accounts which give a true and fair view of all transactions, manufacturing processes, and movements on all products concerned (for fuel tax and regulatory energy tax), on all withdrawal and infiltration of groundwater (for the tax on groundwater) and of the sort, the quantity and the origin of the waste delivered to them (for the tax on waste). These accounts must be suitable for presentation to the tax authorities at any time.

## 8 Customs

### 8.1 *Import duties and taxes and the role of the Dutch customs authorities*

In the Netherlands, as in all other Member States of the EU, the import duties of the European Community have to be paid when goods are brought into free circulation within the customs territory of the European Community. The term 'import duties' also covers other import charges such as anti-dumping duties. The Dutch customs authorities are responsible for levying these import duties, and they are charged with the enforcement of a considerable number of prohibitions, restrictions and control measures.

#### 8.1.1 **Taxable persons**

Bringing goods into free circulation is one of a number of customs procedures options. This specific procedure confers the status of Community goods on the goods, which entitles them to circulate freely within the internal market of the European Community. The import duties have to be paid by the declarant submitting the customs declaration for free circulation. In many cases importers prefer to use the professional skills and credit facilities of customs brokers, who take care of all the statutory obligations on importing goods.

#### 8.1.2 **Tax base**

Import duties are calculated based on:

- the classification of the goods concerned in the Common Customs Tariff;
- the origin or provenance of the goods;
- in most cases, the value of the goods.

#### 8.1.3 **Tax rates**

The rates of European import duties vary considerably, according to the type of goods imported. For example, lower customs duties are usually charged on raw materials than on finished products.

### 8.2 *Customs procedures in the Netherlands*

The final destination of goods brought into the European Community is not always known. Sometimes the goods will be re-exported. Based on European customs legislation, customs procedures have been created which provide for storage of goods under customs supervision without import duties being charged. Examples of these procedures are transport under customs supervision, warehousing, temporary importation and inward processing. Obviously, import duties have to be paid once the conditions for these procedures cease to be met.

The Dutch customs authorities attempt to use the options provided by the European regulations to the fullest possible extent to facilitate the movement of goods, whilst still maintaining an adequate level of customs control. An integrated approach is made whenever possible. Examples of this overall approach are given in the following.

- **A comprehensive use of simplified procedures**  
There are simplified procedures for all the customs procedures listed above. The Dutch customs authorities are willing to accept approved business accounts maintained for commercial purposes as the basis for their control. This is, of course, combined with a physical examination of goods when necessary. This system has proved to be effective in practice.
- **Combinations of simplified procedures**  
It is possible to take further steps than the example mentioned above. Sufficiently well-organized companies with automated commercial accounts may apply for combinations of simplified procedures (for example, warehousing based on the commercial administration combined with simplified procedures for transport to and from the warehouse concerned).
- **Agreement to Memoranda of Understanding (M.o.U.s)**  
To a large extent, the Dutch customs authorities base their controls on risk-analysis, which is most effective when companies are prepared to provide them with all available commercial documentation required for assessing the risks involved with goods in the Dutch customs territory. For this purpose, the authorities are prepared to agree to M.o.U.s with such companies. In effect they facilitate their customs treatment. The M.o.U.s oblige the authorities to regularly review the customs arrangements with a view to the further facilitation of the treatment of the companies involved.

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