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Tax and Energy Series : Netherlands

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Energy Overview

Whilst being a relatively small country, the Netherlands has a multitude of natural resources, both on- and offshore. Mainly natural gas fields in the North of country have played a major role in the country´s energy supply and production during the past decades and export potential. For multiple reasons, the focus has shifted towards renewable energy production; through solar, wind and hydrogen. Exploitation of the onshore gas production in the North was reduced over the last couple of years and is about to be abandoned, this was mainly triggered by the increased number of earthquakes in the area.

As an EU member-state the Netherlands has pledged to adhere to the EU Green Deal; a plan to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels, and no net emissions by 2050. As part of this deal the EU implemented a tax on carbon usage by businesses. These carbon credits can be traded.

This deal enforced the decommissioning of existing energy structures and reusing materials for the transition towards more electricity use. Old offshore infrastructure is being reused for renewable sources of energy.

One of the challenges for the Netherlands in this transition is a highly congested grid. A lot of effort is being put into initiatives helping to reduce this congestion. Without these efforts, the Netherlands will not be able to provide for the increasing future demand of renewable energy for the use in cars, heating and businesses. Albeit having a big focus on renewables the Netherlands will, for this reason, allow exploitation of the smaller offshore oil and gas blocks.

Also, to secure energy security there are again plans to invest in two to four small sized nuclear plants. This obviously requires planning, for which reason it is not expected these plans will be executed soon.

Tax overview

The Netherlands levies a tax on business profits from worldwide activities of entities that are resident in the Netherlands. It also taxes foreign entities carrying on business in the Netherlands, on Dutch source income (e.g. from permanent establishment). The Netherlands also have taxing rights on the Dutch part of the continental shelf.

Furthermore, the Netherlands levies a VAT in line with the EU VAT Directive, and taxes on dividends, interest and royalties paid by residents to non-residents.

Since 2024 the Netherlands implemented the global minimum tax on multinationals; an EU-initiative. Companies with more than €750mln in revenues are subject to a 15% worldwide tax. Furthermore, it adheres to the Pillar 1 legislation on digital taxation.

Individuals are subject to personal income tax. Wage tax, being levied as payroll tax, serves as pre-levy for the income tax.

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Taxation of Energy Projects

As energy projects are capital intensive and investors typically require a form of limited liability, Dutch energy projects are carried out through joint ventures in the form of corporations or partnerships. A corporation is subject to taxation whereas the JV partners are taxed on the distributed dividends. Partnerships generally qualify as transparent for tax purposes. Partners are taxed for profits at their level, which allow the partners more flexibility to manage their own tax position.

Energy projects are generally capital intensive and can be done through debt or equity financing. Principally, interest paid on debts is deductible from the taxable base. Dividends paid to shareholders are not deductible and generally subject to a withholding tax, albeit exemptions are available. The Netherlands has implemented several limitations on interest deductions; amongst others relating to intra group financing transactions. Next to this the Netherlands has implemented a general limitation on interest deductions. This limits the deductibility of the net of *any* interest a company pays to 20% (to be increased to 25%) of EBITDA or €1mln, whichever is bigger. Furthermore, the Netherlands has an abuse of law doctrine limiting deductions in case of abusive constructions. This doctrine is not anchored into law but has an extensive history of case law. It limits interest deductions in cases where the motif of the construction is to evade taxation and the norm of the law should be considered.

In certain situations where the distinction between equity and debt is not clear the deduction of interest can also be limited. This is the case when the provided debt has characteristics of equity. Interest paid on these loans is not deductible.

Losses from previous and later years can be set off against profits in later years. This is limited to €1mln per later year or, if there are more losses to forward, 50% of the profits. Losses can be carried forward indefinitely.

Furthermore, there are possible adjustments of the taxable base in case payments are not ‘picked up’ in another country or when certain payments or costs have already been deducted at the level of another group company. This legislation aims to prevent hybrid mismatches.

Certain asset classes, such as buildings, machinery, and equipment, are generally depreciable property. When assets are sold, profits do not have to be added to the taxable base in case re-investment takes place (roll-over facility). The re-investment lowers the book value of a newly acquired asset, limiting the future depreciation of this new asset.

On the provision of energy to end-users, the Netherlands levies a digressive energy tax depending on the amount of energy provided, varying from €0.58301-€0.04886 per m3 natural gas and €0.1088-€0.00254 per kWh electricity. It does under certain conditions, however, not apply to self-produced renewable energy.

On revenues made from the exploitation of natural resources in Dutch territories the government levies a 45%-50% tax; a state profit share. A credit is applicable on this profit share for the corporate income tax. A provision can be formed for future decommissioning costs. The provision considers the expected production and is spread out over its lifetime.

Other Tax Issues To Be Considered

To help and advance investments in new technologies the Netherlands implemented a regime to reduce taxation on profits from certain R&D activities; the "innovation box". Profits resulting from R&D investments are effectively taxed at a lower rate compared to profits from other activities. The tax rate drops from 25,5% to 9%.

For certain investments in energy saving assets taxpayers can claim an extra deduction of the costs, above the yearly depreciation. The government provides a list of investments that apply for the deductions annually. Under the energy investment deduction (EIA) companies can deduct 40% of the cost of the investment, on top of yearly depreciation. Under the environment investment deduction (MIA and VAMIL) companies can deduct up to 45% of the costs, depending on the asset.

The Netherlands has a consolidation regime (fiscal unity) for entities liable to corporate income taxation. Payments between companies in this fiscal unity are denied for tax purposes. The regime requires a 95% investment.

Next to the fiscal unity the Netherlands has a participation exemption on profits following from subsidiaries. Dividends and capital gains are not taxed at the level of the shareholder. To apply for this exemption a company should own a minimum of 5% in the equity and voting rights of another company.

Furthermore, Dutch taxpayers can ask the DTA for Advance Tax and Advance Pricing Agreements to get certainty on tax positions. The DTA is known for the transparent and cooperative attitude.

Transfer pricing also plays an important role in determining the taxable base of a taxpayer. The Dutch government follows the OECD guidelines in its determination of arm's length prices. For transfer pricing purposes taxpayers with revenues exceeding €50mln are required to have a Local File and Master File in their administration. The Netherlands also implemented Country-by-Country reporting.

The Netherlands has an extensive network of double tax treaties with other countries. These treaties are under constant inspection and being re-negotiated to keep up with developments. The Netherlands does not tax technical service fees as royalties. Therefore, these services are usually not included as such in tax treaties.

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Other Tax Issues To Be Considered

For non-resident entities with activities in the Netherlands the question arises when their activities and presence constitutes a permanent establishment. For energy producers active in Dutch territorial seas on the continental shelf, activities conducted for a period of 30 consecutive days constitute a PE. When starting activities abroad there are several foreign jurisdictions that claim the existence of a virtual permanent establishment. This generally is not in line with Dutch standards.

Suppliers of offshore activities through seafaring vessels can apply for a different profit determination. A “tonnage tax” applies and relies on the weight being transported.

In some cases of EPC contracts, it can be beneficial to split the contracts in “onshore” and “offshore” activities. This ensures other countries’ taxation rights are limited to the local activities. The splitting of the contracts support and should be in line with the transfer pricing qualification.

Relevant Experience

Taxand Netherlands has worked on an extensive record of energy projects. These include, but are not limited to, the following projects:

- Reorganisation of an oil major in the Netherlands where the US activities were reorganised to gain synergy effects with the Dutch operations.
- Several solar rooftop projects, applying for the exemption on energy tax after fitting solar panels to office buildings.
- Investments by a major oil company in multiple foreign downstream operations.
- Projects including local initiatives to produce renewable energy locally and applying for the exemption on energy tax.
- Participation of an oil major in R&D joint ventures. This includes research in renewable energy and the development of e-fuels.
- Assisting Dutch oil & gas company with their regular tax audits and tax compliance for the state profit share and corporate income tax.
- Assisting oil major setting up treasury function in the Netherlands including group financing, cash pool and hedging.

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JIMMIE
VAN DER ZWAAN
Partner
Taxand Netherlands
Taxand Netherlands
Jimmie.vanderzwaan@Taxand.nl
+31 6 127 44 342

Key Contact:

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