

Fisconti

Budget 2016

**CHANGES IN
DUTCH TAXATION
FOR 2016**

www.fisconti.com



Table of contents

Changes in Dutch payroll and income tax

Tax credits and rates in 2016	-----	3
Emigration of substantial interest holder	-----	4
Revision of taxation on investment income	-----	5
R&D tax facilities in (corporate) income tax and wage tax are combined	-----	6
Tax benefit for employing low salaried persons	-----	7

Changes in Dutch corporate income tax and dividend withholding tax

Implementation of amendments to Parent-Subsidiary Directive 2015	-----	7
Anti abuse provisions re share investments in Dutch companies	-----	8
Dividend withholding tax for Dutch cooperatives	-----	9
Introduction of country-by-country reporting for large multinationals	-----	9
New transfer pricing documentation rules for medium-sized multinationals	-----	9
Step-up in case of cross-border legal merger and legal split-off	-----	10



Changes in Dutch payroll and income tax

Tax credits and rates in 2016

The tax rate in the second and third tax brackets (currently 42%) will go down to 40.15%. Furthermore the third bracket is extended, meaning that the top rate of 52% will become applicable on income exceeding EUR 66,421

(currently this 52%-rate applies as from EUR 57,585).

For persons that have not reached the official retirement age (65 years and a few months) the tax rates for 2016 will become as follows:

Taxable income from labour and own house more than	But not more than	Income tax	General Social Security levies	Combined rate of income tax and social security levies
-	19.922	8,40%	28,15%	36,55%
19.922	33.715	12,00%	28,15%	40,15%
33.715	66.421	40,15%	-	40,15%
66.421	-	52%	-	52%

The flipside of the rate reduction can be found in the field of the tax credits. The general tax credit is phased-out at steeper pace and in full (the minimum tax credit amount is abolished).

“Also the labour credit is phased-out completely for higher incomes”

At an income level of approximately EUR 66,000 (end of third tax bracket) the general tax credit is phased-out completely, hence no tax credit left for persons in the 52% tax bracket.

The changes in the tax credit for actively earned income (labour credit) are more diverse. The maximum amount of this credit is increased but the phase-out phase of this credit starts earlier. Also the labour credit is phased-out completely for higher incomes. In this case this means that the labour credit is nil for persons with an income above EUR 111.600. Overall the measures regarding the labour tax credit are positive, especially for persons earning an income between 20,000 and 50,000 euro and only persons with an income above 105,000 will incur a modest tax increase (maximum disadvantage for this group of 184 euro per year).

	2015	2016
General Tax Credit		
Maximum general tax credit below state pension age	€ 2,203	€ 2,230
Maximum general tax credit above state pension age	€ 1,123	€ 1,139
Phase-out percentage general tax credit	2,32%	4,796%
Minimal general tax credit below state pension age	€ 1,342	€ 0
Minimal general tax credit above state pension age	€ 685	€ 0
Income level where the general tax credit is fully phased-out	€ 57,000	€ 66,421
Labour Credit		
Accrual percentage labour credit	19,679%	27,698%
Maximum amount of labour credit	€ 2220	€ 3103
Income level where phase-out of labour credit starts	€ 49.700	€ 34.000
Phase-out percentage of labour credit	4%	4%
Minimum amount of labour credit	€ 184	€ 0
Income level where the labour credit is fully phased-out	€ 100.700	€ 111.600
Other tax credits		
Maximum work bonus	€ 1119	€ 1119
Maximum income-related combination tax credit	€ 2152	€ 2769
Young disabled person's tax credit	€ 715	€ 719
Elderly person's tax credit	€ 1042 / € 152	€ 1187 / € 70
Single elderly person's tax credit	€ 433	€ 436

The income-related accrual of the labour credit will also be incorporated in the wage tax table for exceptional remunerations to achieve that

the wage tax better aligns with the personal income tax.

Emigration of substantial interest holder

If a Dutch resident holds a so-called substantial interest in a company (e.g. a share interest in a company exceeding 5%) moves his residence abroad the accrued value increase of that shareholding is subject to Dutch tax (exit taxation). This levy is calculated, in principle,

as 25% of the difference between the fair market value of the shares at the time of emigration and the original acquisition price.

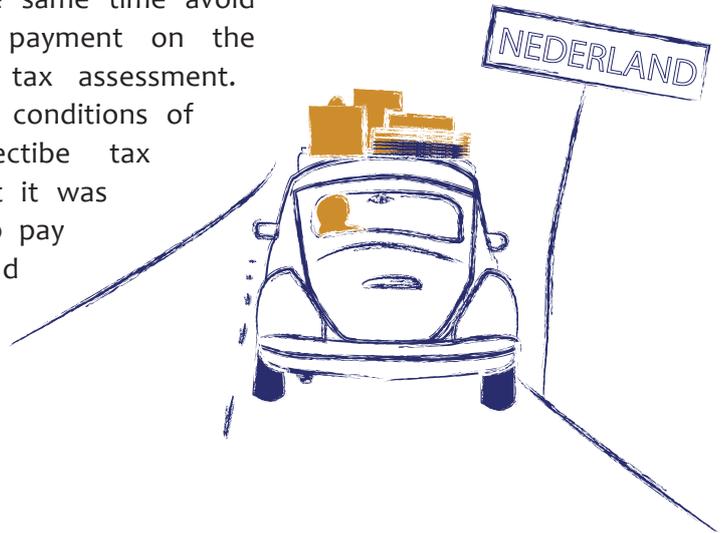
This tax is not payable immediately since an extension of payment is granted for this assessment.

This assessment is therefore referred to as protective tax assessment. Under the rules applicable until last Tuesday, the protective assessment was waived after ten years if the substantial shareholder remained his shareholding during that entire period.

This possibility to annul the tax assessment with some patience (waiting for ten years) will be fully abolished with immediate effect. The Dutch tax authorities will retain their power to collect the tax calculated at the event of the emigration even after the ten-year period has expired. The legislation will have retroactive effect until the moment of publication of the bill, i.e. till 15 September 2015, 15:15hr. The old rules will remain applicable for substantial interest holders who emigrated before this moment.

Furthermore the proposal eliminate the possibility for emigrated substantial shareholders to convert their shareholding in cash but at the same time avoid triggering payment on the protective tax assessment. Under the conditions of the protectibe tax assessment it was possible to pay d i v i d e n d

distributions up to 90% of the value of the company without triggering collection of the protective assessment. This possibility is now eliminated.



Revision of taxation on investment income

Investment income is taxable in the Netherlands on basis of a deemed or fictitious income (4% of the value of the investments at the beginning of the tax year) at a fixed rate of 30%. The structure of the so-called box 3 taxation has been subject to much debate lately. The deemed yield on investments of 4% felt out-dated in a world where banks pay less than 1% interest on normal savings accounts. Nonetheless, the current box 3 regime will maintain in force also in 2016.

It is proposed to change the calculation of the deemed

investment yield as from 2017 based on real market data and the type of investments that the taxpayer holds. The yield on savings will be lower than the yield on other types of investments like shares, bonds and real estate. In the bill it is explained that the average income from savings was 1.63 during the last 5 year period whereas the average yield on other investments averaged 5.5% in that same 5-year period.

However, the proposed rules do not take into account what asset mix a taxpayer actually applies

in his investment portfolio. Instead, the legislator opts to apply yet another fiction. Persons with investments up to EUR 100,000 are deemed to hold their investments dominantly in savings accounts whereas persons with investments exceeding EUR 1 million are deemed to invest that part of their investment fully in shares, bonds and real estate. For persons with investments between 100,000 and 1,000,000 euro the asset mix is deemed to be 21% in savings accounts and 79% in other investments.

The proposal is to apply the following table to calculate the deemed income from investments.

Tax base (after deduction of € 25.000 tax-free investments)	Deemed yield 2017
€ 0 – € 75,000	2.9%
€ 75,000 – € 975,000	4.7%
> € 975,000	5.5%

The average yield on savings is calculated over a five-year period (for 2017 the reference period will be 2011-2015). The calculation of the average yield on investments is based on the same period, with the last year being taken into account for one-fifteenth part. An explanation for this way of calculating the average yield is not provided.

The yields are recalculated every year. The above table contains, therefore, the provisional rates. During the year 2016, the final

percentages for 2017 will be settled on basis of the most recent data available.

The tax rate remains unchanged at 30%. Although this is unsaid the new box 3 regime effectively results in a progressive taxation on investment income. Currently the effective tax rate is now 1.2% of the investment value (i.e. 30% of 4%) for all taxpayers. As from 2017 this will change into 0.87% for persons for small investors, 1.41% for persons with a somewhat

larger wealth and 1.65% for millionaires.

Interestingly this new box 3 regime will also apply to non-resident taxpayers. Such persons will be taxable in the Netherlands exclusively on income from Dutch immovable property. Despite the fact that they invest only in one asset class, their deemed income that is taxable in the Netherlands will be calculated as if they hold a mix of all types of investments.

R&D tax facilities in (corporate) income tax and wage tax are combined

The R&D allowance applied in the income tax and corporate income tax and the R&D tax credit applied in the wage tax will be combined. The R&D allowance in the income tax and corporate income tax will be cancelled and incorporated in the R&D tax credit applied in the wage tax.

The combined R&D facility (in the wage tax) will not only take into account personnel costs but also other costs and expenditures.

The current rates will be amended resulting in the following table.

	2015	2016
Rate in first bracket	35%	32%
Rate in first bracket for start-ups	50%	40%
End of first bracket	€ 250,000	€ 350,000
Rate in second bracket	14%	16%
Maximum amount on which facility is applied	€ 14 mio.	-

Tax benefit for employing low salaried persons

The Dutch government wants to encourage labour force participation at the bottom of the labour market. To make it attractive to employ persons who earn between 100% and 120% of the minimum wage it is now proposed that employers receive an allowance for wage costs for such employees. This allowance will be up to EUR 2,000 per year per employee for

employees earning between 100% and 110% of the minimum wage. For employees who earn between 110% and 120% of the minimum wage this benefit will be up to EUR 1,000 per year per employee. This allowance will result in a reduction of the labour costs of such employees.



Changes in Dutch corporate income tax and dividend withholding tax

Implementation of amendments to Parent-Subsidiary Directive 2015

The Dutch government announced proposals to implement the amendments to the Parent Subsidiary Directive that were agreed last year in Dutch tax law. Originally the Parent-Subsidiary Directive aimed to prevent double taxation on the profits of subsidiaries through the obligation of the Member States to apply an exemption or to provide a tax credit for the taxes already paid by the foreign subsidiary.

As a result of the OECD's

BEPS project not only the avoidance of double taxation is considered relevant but also the avoidance of double non-taxation. As a result the Dutch participation exemption will be amended as from 2016.

The first amendment regards situations where the subsidiary makes a payment to the Dutch parent company and whereby (1) the payment is deductible in the country of the subsidiary, while (2) in the Netherlands the corresponding income falls under the participation

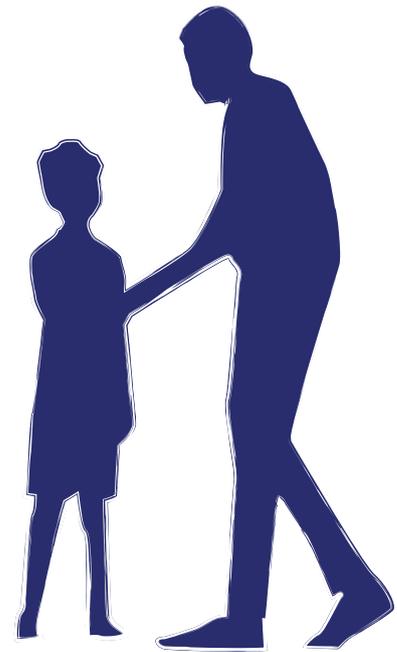
exemption. This happens, for example, when the debtor's country qualifies the payment as an interest expense and at the same time the income qualifies for Dutch tax purposes as a dividend that is eligible for the participation exemption (i.e. a so-called hybrid loan with features of both equity and loan capital).

It is good to consider that the amendment is not limited to only hybrid loans but will affect all cases where the payment to the Dutch parent company is

deducted from the subsidiary's profit. Also a cumulative preference dividend that is deductible in the country of the subsidiary will be affected.

The amendment of the participation exemption rules means that the Dutch participation exemption no longer applies insofar as the payment can be deducted for profit tax purposes "by right or in fact, directly or indirectly" at the level of the entity in which the participation is held.

The proposal goes beyond the requirements of the amended Parent-Subsidiary Directive since the additional requirement will be applied unilaterally and not only to subsidiaries located in EU or EEA countries. This worldwide application of the new condition is in line with results of the BEPS project and also applied by the UK, Belgium, France and Germany.



Anti abuse provisions re share investments in Dutch companies

Another amendment resulting from the changed Parent-Subsidiary Directive is the introduction of a general anti-abuse regulation (GAAR). The implementation of the GAAR only regards the (withholding) tax on profit distributions and has no effect on the participation exemption in the corporate income tax.

The Dutch government opted to fulfil the obligations set forth by the Parent-Subsidiary Directive by means of (1) amendment of the rules for non-resident tax liability for corporate income tax purposes for entities with a shareholding of at least 5% in a company established in the Netherlands (substantial interest) and (2) the introduction of an anti-abusive provision for cooperatives in the dividend withholding tax.

Foreign resident entities that hold a substantial interest in a Dutch company (e.g. a share interest of 5% or more) will be taxable in the Netherlands if the main objective, or one of the main objectives, of the structure is to avoid taxation and the structure can be considered artificial. The Dutch taxation will not only apply

to dividends but also to capital gains.

Under the new rules of the substantial interest regime in the corporate income tax it is no longer relevant whether the shareholding in the Dutch company is held as a portfolio investment or as part of the foreign company's business assets. This is an important change since only portfolio investments were subject to the rules of the substantial interest regime.

As from 2016 it will be necessary to verify whether there are satisfactory business reasons for the shareholding structure applied. The explanatory note states that there will be adequate business reasons if the foreign shareholder is engaged in a genuine business activity and the shareholding in the Dutch company has a function in that business. Also a top holding company can be considered to fulfil this test if the holding company is actively involved in the management and financial affairs and thereby performs a material role within the group. The key word with regard to the foreign shareholder is thus 'substance'.

Dividend withholding tax for Dutch cooperatives

A Dutch cooperative is not subject, in principle, to dividend withholding tax on profit distributions. In 2012 rules were introduced by virtue of which cooperatives could be brought within the scope of Dutch withholding tax. This rule aims to prevent that the cooperative is used to avoid dividend withholding tax otherwise payable.

This anti abuse provision is now limited to situations where the member of the cooperative does not hold this investment as a business asset and where the cooperative

itself does not have a material economic relevance. Like the changes in the substantial interest regime in the corporate income tax the condition that ‘the investment is not held as a business asset’ is abolished, hence all participations in a cooperative will become subject to the same anti abuse test. As a result the cooperative must withhold Dutch dividend withholding tax if the main objective, or one of the main objectives, of the structure is to avoid taxation and the structure lacks adequate business reasons that reflect the economic reality.

Introduction of country-by-country reporting for large multinationals

As from 2016, Dutch tax law will contain a new documentation obligation for multinationals with consolidated revenues of EUR 750 million or more. With this proposal one of the OECD’s proposals as part of the BEPS project will be implemented.

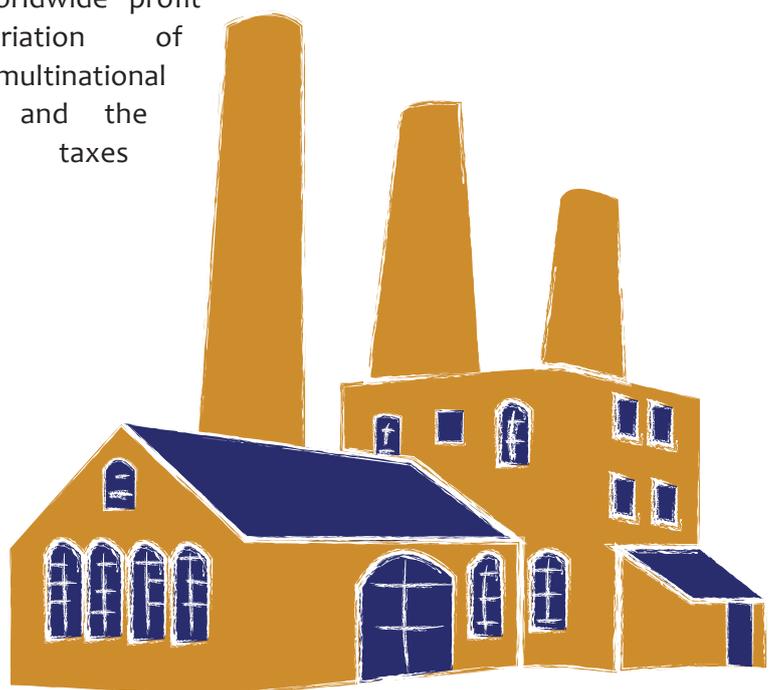
The new regulation obliges qualifying multinationals to

prepare a country report every year and file this report with the Dutch Revenue within 12 months after the end of the financial year. The country report must include both the worldwide profit appropriation of the multinational group and the profit taxes

paid (including withholding taxes) in countries in which the multinational group operates.

New transfer pricing documentation rules for medium-sized multinationals

Also for multinationals with consolidated revenues of EUR 50 million or more the transfer documentation requirements are increased. Such multinationals must prepare a group file and a local file and



have these files available for inspection in their accounting records.

The group file must include a description of the business of the multinational group, including the nature of its business operations, its complete transfer price policy

as well as its worldwide allocation of income and economic activities. The local file must contain information relevant for the transfer pricing analysis regarding transactions between the Dutch company and affiliated entities other countries. Furthermore this local file must provide support

for the profit allocation to the company's foreign branches.

Both files must be prepared in the Dutch or English language and must be available ultimately at the moment that the corporate income tax return is filed.

Step-up in case of cross-border legal merger and legal split-off

In the Dutch Dividend Withholding Tax Act a step-up will be introduced for cross-border legal mergers and split-offs. A similar rule already applies to cross-border exchanges of shares. Under the new rules the fair value of the assets transferred as part of the merger or split-off, is considered to be capital paid up on the shares issued at the time of merger or

split-off. An exception is made for the value of shares in a Dutch company that are acquired in the merger or split-off.

The new rules prevent that the legal merger or split-off creates a tax claim the Netherlands on existing foreign profit reserves.



Fisconti

tax consulting

President Kennedylaan 19
2517 JK The Hague
P.O. Box 17111
2502 CC The Hague
The Netherlands

+31 70 365 66 17
info@fisconti.nl

www.fisconti.nl

member of **Corporate Tax Alliance**
