

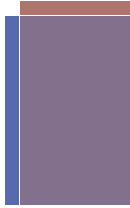
# Netherlands

Rank: #4

Netherlands is responsible for 5.54% of the world's corporate tax abuse risks.

CTHI Value: 2,454

Haven Score: 79.9



How much scope for corporate tax abuse the jurisdictions's tax and financial systems allow. 0 means no scope, 100 means unrestrained scope.

Global Scale Weight: 11%



How much of the financial activity conducted by multinational corporations around the world is hosted by the jurisdiction.

The jurisdiction's CTHI value (Corporate Tax Haven Index value) is a measure of how intensely the jurisdiction enables multinational corporations to abuse corporate tax. The jurisdiction is ranked on the index by its CTHI value.

A jurisdiction's CTHI Value is calculated by first grading its tax and financial systems with a Haven Score out of 100 where a zero means the jurisdiction's laws allow no scope for corporate tax abuse and a 100 means they allow unrestrained scope. The jurisdiction's Haven Score is then combined with its Global Scale Weight, ie the volume of financial activity conducted in the country by multinational corporations, to calculate how much corporate financial activity the jurisdiction puts at risk of corporate tax abuse.

A higher CTHI value does not mean a jurisdiction has more aggressive tax laws, but rather that the jurisdiction's laws and its position in the global economy combine to create a greater risk of corporate tax abuse by multinational corporations.

## Haven Score breakdown



79.9

### LOWEST AVAILABLE CORPORATE INCOME TAX

Haven Indicator 1: LACIT ▲



86

This indicator identifies the lowest available corporate income tax rate (LACIT) for any large for-profit company that is tax resident in a country. It takes the statutory corporate income tax rate only as a starting point to analyse legal gaps and loopholes that result in lower accessible rates. The scoring of Haven Indicator 1 is computed by scaling that LACIT rate against the spillover risk reference rate of 35% (the highest available corporate income tax rate in a democracy).

ID 505 — Statutory corporate income tax rate ▲

**Question:** Statutory-CIT-Rate: What is the statutory CIT rate reported by the OECD (or alternatively by IBFD or KPMG)?

**Answer:** 25 %

**Notes:**

- According to KPMG: "The corporate tax rate is 16.5% on taxable profit up to EUR 200,000 and 25% for taxable profits exceeding EUR 200,000" (KPMG 2020). Given that for this indicator we consider the highest amount of income and we focus on the largest businesses, the rate applied here is 25%.

**Sources:**

- [https://stats.oecd.org/Index.aspx?DataSetCode=TABLE\\_I11](https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_I11)
- <https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html>
- IBFD 2020b. [↗](#)
- KPMG 2020 [↗](#)
- OECD Stats 2020a [↗](#)

ID 506 — Corporate income tax rate: Correction for size of company ▲

**Question:** CIT-Rate-Correction-Size: What is the deviating CIT rate, if any, applicable to the largest companies in the jurisdiction?

**Answer:** Not applicable

**Notes:**

- According to KPMG: "The corporate tax rate is 16.5% on taxable profit up to EUR 200,000 and 25% for taxable profits exceeding EUR 200,000" (KPMG 2020). Given that for this indicator we consider the highest amount of income and we focus on the largest businesses, the rate applied here is 25%.

**Sources:**

- [https://stats.oecd.org/Index.aspx?DataSetCode=TABLE\\_I11](https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_I11)
- <https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html>
- IBFD 2020b. [↗](#)
- KPMG 2020 [↗](#)
- OECD Stats 2020a [↗](#)

ID 507 — Corporate income tax rate: Correction for sectoral exemptions ▲

**Question:** CIT-Rate-Correction-Sector: What is the lowest deviating CIT rate, if any, applicable to companies in jurisdictions exempting a broad range of sectors (at least four full and/or eight partial exemptions)?

**Answer:** Not applicable

ID 541 — Corporate income tax rate: Correction for subnational regions ▲

**Question:** CIT-Rate-Correction-Regions: What is the lowest deviating CIT rate, if any, applicable in the political subdivision/subnational region with the lowest CIT rate?

**Answer:** Not applicable

ID 542 — Corporate income tax rate: Adjustment for retention or distribution ▲

**Question:** CIT-Rate-Adjustment-Retention: What is the lowest deviating CIT rate, if any, applicable to distributed or retained profits?

**Answer:** Not applicable

ID 543 — Corporate income tax rate: Adjustment for specific type of company ▲

**Question:** CIT-Rate-Adjustment-Type: What is the lowest deviating CIT rate, if any, applicable to specific types of companies?

**Answer:** Not applicable

ID 544 — Corporate income tax rate: Adjustment for territorial tax base ▲

**Question:** CIT-Rate-Adjustment-Territorial: What is the lowest deviating CIT rate, if any, applicable to active business income from foreign sources?

**Answer:** Not applicable

ID 545 — Corporate Income Tax Rate: Adjustment for tax rulings ▲

**Question:** CIT-Rate-Adjustment-Rulings: What is the lowest deviating CIT rate, if any, derived from documented cross-border unilateral tax rulings issued by the authorities in the jurisdiction?

**Answer:** 5 %

**Notes:**

- The corporate tax rate determined for the purposes of the LACIT indicator has been adjusted based on the documented practice of “informal capital rulings”. Dutch government officials have asserted investors that the Netherlands tax authorities can provide “informal capital rulings” that would usually result in a corporate income tax rate between 5% and 12.5%. Although new informal capital rulings are no longer issued from 1 July 2019, the previously issued informal capital rulings have a duration of 5 years and exceptionally of up to 10 years (with a review after 5 years; see paragraph 5. Duur in Kingdom of the Netherlands 2019: 4). Thus, pre-existing “informal capital rulings” may remain in force until 2024 or even 2029.
- As for tax rulings per se, the 2019 CTHI edition indicated a LACIT of 2.44% based on EU-Commission State Aid investigation relating to Starbucks. However, that decision was annulled and there is no indication that the EU Commission will appeal, suggesting it may be a final decision. At the time of writing (November 2020) other state aid investigations by the EU-commission into the Netherlands are ongoing and have not resulted yet in other tax rates documented to be conferred via tax rulings. Therefore, we conclude a deviating tax rate of 5% in this indicator based on the “informal capital rulings” issued by the Dutch tax administration before 1 July 2019 (Vleggeert 2020a; Berkhout/Weyzig 2019).
- The subsequent paragraphs of this note explain the informal capital ruling practice in the Netherlands as well as related and ongoing risks for lowering corporate tax rates and enabling corporate tax avoidance. The latter part of the notes summarises the status of the previous findings from state aid investigations into Starbucks by the European Commission in 2015 (Case SA.38374). The rate previously established for this indicator of the corporate tax haven index (LACIT) of 2.44% relied on a calculation of the tax rate based on data and arguments included the state aid decision of the EU-commission, which the General Court of the EU has annulled in the meantime (Kingdom of the Netherlands v. The European Commission, 2019 / ECLI:EU:T:2019:669). Therefore, the underlying calculation of the rate cannot be relied on anymore as unambiguously as before.
- As for “informal capital rulings”, evidence about low CIT rates accessible for foreign investors in the Netherlands are linked to trove of official government documents published in 2017. Documents with emails amounting to 2500 pages were released on 3 April 2017 by the Ministry of Economic Affairs of the Netherlands in response to a freedom of information request by Dutch Newspaper NRC Handelsblad. These emails document the practice of conferral of lower effective tax rates through tax rulings. In some of the emails, the Ministry’s Foreign Investment Agency explained to a company seeking to invest in the Netherlands that the company could enter and negotiate an informal capital ruling with the Dutch tax authorities: “The depreciation would obviously result in a reduction of the taxable basis of the company, which is normally aimed at leading to an effective tax rate of around 5% to 12.5% (statutory rate max 25%).” (cited in: Vleggeert 2017).
- The history and availability of problematic “informal capital rulings” that provide legal certainty in the Netherlands has been extensively discussed and evaluated in a legal scholarly paper, suggesting these informal capital rulings (now possibly renamed “informal capital structures”) persist and likely constitute state aid, and should thus be investigated by the EU Commission (Vleggeert 2020a). These so-called informal rulings rely on explicit policies endorsed by the Ministry of Finance, are subject to a series of Dutch Supreme Court decisions and were repeatedly challenged in the Dutch parliament (ibid.: 6-10). As described and cited by Vleggeert (2020a), these rulings were explicitly admitted by the Dutch government to create tax avoidance opportunities for multinationals: “In his policy letter on tackling tax avoidance and tax evasion dated 27 February 2018 [...], the Under-minister for Finance has, however, recognised that informal capital structures are one of the reasons that the Netherlands is seen as a country that makes it easy for multinationals to avoid taxation.” (Vleggeert 2020a: 10). These informal capital rulings were estimated by Oxfam Novib in 2019 to result in annual tax losses amounting to EUR5bn-10bn (Berkhout/Weyzig 2019).
- The Dutch tax administration commented about our assessment of the informal capital rulings as follows: “[...] these rulings are not a result of negotiations, do never relate to the applicable rate and are only a logical conclusion from the arm’s length principle (ALP) as formulated in first instance by our supreme court. It is in our view unfair to conclude that the Dutch tax authorities negotiate the rate or the tax-base as it is in fact the other jurisdiction (where the asset is transferred from or where the service is provided) that refuses to apply the ALP and taxes profits inappropriately. It is incorrect to attribute the effect of this mismatch to the Netherlands and conclude that the Netherlands applies a low rate” (TJN-Survey 2020a). As for the alleged unfairness about the conclusion for the Netherlands to be responsible for the ruling’s outcome, we emphasize that in line with the methodology applied consistently in the Corporate Tax Haven Index, we always treat tax base and rate concessions as fully equivalent, and we attribute the consequences of such concessions to the country making them. For more information, see our documentation on the website and in the methodology about Haven Indicator 1 (LACIT).
- While no new informal capital rulings can be issued as of July 1, 2019 informal capital rulings issued before July 1, 2019 are valid for 5 years and can exceptionally be valid for 10 years (with a review after 5 years; see paragraph 5. Duur in Kingdom of the Netherlands 2019: 4). Therefore, the old informal capital rulings are effectively grandfathered and can have tax effects at least until 2024 or 2029. The Dutch tax administration commented about informal capital rulings as follows: “Given the announced changes in law for 2022 and given the validity of these rulings (usually 5 years), we are of the opinion that the conclusion that these rulings are generally available up until 2029 is unrealistic and too rigid.” (TJN-Survey 2020a). While we acknowledge that new informal capital rulings cannot be issued anymore, the existing ones can remain in force up until 2029 and are therefore considered to be relevant and applicable for the LACIT indicator. This principle of looking for the weakest link currently available (up until end of 2021) is part of our methodology and applies equally to all other countries we assess. In our strive for consistency, we therefore consider these rulings to be available - currently - up until 2029.
- There are additional elements that suggest that two other types of “informal rulings” similar in effects to “informal capital rulings” have been used in practice to reduce taxes, namely “informal capital structures” and informal rulings related to “exploitation of intangible assets”. First, while informal capital rulings are no longer available, the underlying preferential tax treatment of informal capital contributions is still available according to Dutch law under the name of “informal capital structures”. Although these so-called “informal capital structures” are functionally equivalent to informal capital rulings in their tax effects (Vleggeert 2020a: 10), they cannot provide ex ante legal certainty. Instead, a company would need to file a tax return with the tax position and would obtain a confirmation of this capital deduction in its first tax return, which effectively provides reassurance about the same tax treatment in future years, and thus also provides certainty – but only after the transaction has been completed and filed for the first time (Vleggeert 2020b).
- Second, there are indications that another type of ruling related to exploitation of intangible assets can be agreed with the Dutch tax administration. These informal rulings on intangible assets are fully functionally equivalent to the abandoned “informal capital rulings” and also provide legal certainty ex ante. Vleggeert raised this possibility in article in March 2020: “In this way, through the back door of the APA on the exploitation of the intangible assets, it seems to be possible to make agreements in advance on transactions with an entity established in a low-tax country or a country with an informal capital structure” (Vleggeert 2020b). In an answer to a written question by a member of the Dutch

parliament, the Dutch State Secretary answered about this matter as follows: "As indicated above, no certainty is given in advance regarding the valuation of the intangible assets and/or their amortization period in the event of a transaction with an entity established in a low-tax country or in the event of an informal capital structure. However, if requested, certainty will be provided in advance about the business remuneration of the positions, risks incurred and assets used in the Netherlands. However, this is only possible if the activities required for the exploitation of the intangible fixed assets are actually carried out in the Netherlands" (translation from Dutch into English by TJN; cited in: Vleggeert 2020c). Thus, the type of rulings that continue to be available comprise an agreement on the tax consequences of the exploitation of the intangible assets, and thus implicitly involve the valuation of the intangible assets and the definition of their amortisation period. In other words, the Dutch tax administration appears to continue offering functionally equivalent rulings on the taxable profits made from the exploitation of the intangible assets contributed from abroad (answers to questions 16 and 17, in: Tax Administration of the Netherlands 2019; Ministry of Finance of the Netherlands 2020b, Vleggeert 2020c).

- In relation to the issue of LACIT, but without any impact on the determination of the Netherlands' LACIT for the 2021 edition of the CTHI, there are proposed legislative changes. A legal proposal will be submitted to parliament to revise the arm's length standard in the Netherlands in the first quarter of 2021 in order to – to a certain extent - rule out downward adjustments of the Dutch tax base without a corresponding and possibly proportional upward adjustment in the other jurisdiction (p.7, chapter 2.c, in: Ministry of Finance of the Netherlands 2020a). However, it remains to be seen how exactly this rule will be formulated. The proposal will likely not rule out a unilateral downward adjustment regarding the exploitation of intangible assets in the Netherlands that were acquired from companies in tax havens that do not levy a profits tax. Doubts therefore remain how effective that proposal can be. In addition, further doubts regarding the enforceability exist in practice, given: creative accounting; the administrative challenge and lack of incentives for thoroughly checking the equivalent tax treatment in over 200 foreign tax jurisdictions; numerous low tax jurisdictions; jurisdictions with mismatches in residency rules; or jurisdictions lacking administrative capacity to respond and implement requests for upward adjustments; persistent secrecy of tax ruling details, among others.
- As for the LACIT determined for the Netherlands in the 2019 edition of the CTHI, the original decision by the EU commission argued that based on a binding agreement with the Dutch tax administration, Starbucks Manufacturing EMEA BV (SMBV) had been paying around 2.44% instead of 25% corporate income tax on its profits (in the tax year 2010/2011). For the years of the duration of the relevant ruling which were under investigation by the EU Commission (2007-2014), the corresponding inferred effective tax rate averaged 7.08% (pages 23-25 in case SA.38374; own calculations). This rate is calculated based on the Commission's conclusion that the roasting IP licensing agreements Starbucks had concluded with third parties did not have a real economic value and therefore should be ignored. Therefore, the arm's length value of the royalty paid by SMBV to Alki Limited Partnership for the roasting IP should be zero.
- As of 24 September 2019, the Commission's decision that the Netherlands provided an unfair advantage to Starbucks was annulled by the General Court of the European Union. The General Court allowed a period of two months and ten days to file an appeal following its decision, but as mentioned above, the European Commission declined to appeal the Court's decision (curia.europa.eu; mlexmarketinsight.com). Yet the choice of the EU commission not to appeal the General Court's verdict is attributed by observers largely to the Commission's changing priorities. In other words, it seems the commission's decision not to appeal was based more on the comparatively high costs for legally countering the arguments of the General Court in an appeal and on the relatively small amount of disputed tax revenue, rather than on the chances to win the case by improving the justification of the inappropriate level of royalties agreed (Hoke 2019; Kyriazis 2019).
- In their response to our primary assessment, the Ministry of Finance claimed: "Furthermore, the underlying argumentation of the Commission in the Starbucks case did not concern the level of the CIT/CIT rate in NL but taxes paid in an individual case and the Commission decision was annulled by the General Court of Justice and therefore cannot be taken into account. Lastly, the nominal corporate income tax rate has not been amended based on findings from state aid investigations." (TJN-Survey 2020a). However, as explained above, the determined LACIT for the Netherlands is no longer based on the Commission state aid decision but rather on the rates of the unilateral informal capital rulings.
- In conclusion, in the light of the documented assertion by a branch of the Dutch government that tax rates between 5% and 12.5% can be achieved through unilateral informal capital rulings, and that these types of rulings issued before 1 July 2019 continue to be in force at least until 2024; and given that the Netherlands has not argued to have abolished the system of tax rulings, and there is an official confirmation of some aspects of the rulings practice as well as case law at the Dutch Supreme Court, as well as parliamentary debate around it; and given the open Ikea and Nike state aid investigations by the European Commission (as of November 2020); and given that the Netherlands does not publish all tax rulings online in full text, it can be concluded that at least informal capital rulings issued before 1 July 2019 and which offer lower tax rates are still in force today which were promoted by government officials to result in CIT rates as low as 5%, and that other tax rulings with similar effects on the tax rate are likely to continue to be available today. These rulings artificially reduce the corporate income tax base (and consequentially, the rate) in a legally certain and foreseeable manner for individual companies. Unless proven to the contrary, we conclude therefore that large multinational companies can negotiate tax rulings with the Netherlands tax administration or other branches of its government, lowering their corporate income tax rate to 5% on otherwise taxable profits.

#### Sources:

- Kingdom of the Netherlands v. The European Commission, 2019 [🔗](#)
- Kyriazis, 2019 [🔗](#)
- Hoke, 2019 [🔗](#)
- [http://ec.europa.eu/competition/state\\_aid/cases/253201/253201\\_1762441\\_575\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/253201/253201_1762441_575_2.pdf)
- <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/antitrust/starbucks-eu-court-victory-on-tax-bill-to-go-unchallenged-vestager-says>
- Vleggeert, 2017 [🔗](#)
- <https://www.lexgo.be/en/papers/tax-law/corporate-tax/general-court-sets-framework-for-the-commission-to-enforce-arm-aos-length-transfer-pricing-under-state-aid-rules-fiat-and-starbucks,132427.html>
- <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190119en.pdf>
- <https://tpcases.com/european-commission-vs-the-netherlands-and-starbucks-september-2019-general-court-of-the-european-union-case-no-t-760-15/>
- <https://mlexmarketinsight.com/insights-center/editors-picks/antitrust/europe/starbucks-ruling-by-eu-raises-questions-about-profit-shifting>
- Vleggeert, 2020a [🔗](#)
- Vleggeert, 2020b [🔗](#)
- Vleggeert, 2020c [🔗](#)
- Browning & Newcomer, 2019 [🔗](#)
- Berkhout & Weyzig, 2019 [🔗](#)
- Ministry of Finance of the Netherlands, 2020a [🔗](#)
- Ministry of Finance of the Netherlands, 2020b [🔗](#)
- Tax Administration of the Netherlands, 2019 [🔗](#)
- Kingdom of the Netherlands. (2019). Algemene wet inzake rijksbelastingen. Vennootschapsbelasting. Dividendbelasting. Zekerheid vooraf; Rulings met een internationaal karakter (General Law on State Taxes. Corporate income tax. Dividend tax. Security in advance; Rulings with an international character). Staatscourant, 35519. <https://zoek.officielebekendmakingen.nl/stcrt-2019-35519.html> [🔗](#)
- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0822&from=EN>
- TJN-Survey 2020a [🔗](#)

ID 587 — Corporate tax residency scope ▲

**Question:** Corporate tax residency scope: Do the domestic rules for corporate tax residency include as tax resident at least all locally incorporated companies?

**Answer:** INC & MNG: Yes, all locally incorporated companies are considered tax residents, and in addition some foreign-incorporated companies are considered tax resident (e.g. those with effective management and control in the jurisdiction).

#### Notes:

- In Netherlands, companies that have their management in the country and - in principle - all companies incorporated according to the Dutch civil law are considered residents (Deloitte 2020a). This is confirmed by IBFD (2020b: 1.1.5.. and 7.1.1.). Furthermore, companies under provisions of article 4 (a) of the AWR (General Law on Taxation) are considered as Dutch residents regardless of the place where they were incorporated, if they are deemed to be "actually" situated in the country on the basis of "facts and circumstances" (IBFD 2020b; 1.1.5.). In addition, companies established in Bonaire, St. Eustatius and Saba islands are deemed to be tax residents in the Netherlands (IBFD 2020b: 1.1.4 and 1.1.5.).

## Sources:

- [IBFD 2020b](#)
- [Deloitte 2020a](#)
- <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/Netherlands-Tax-Residency.pdf>

## LOOPHOLES AND GAPS

### Haven Indicator 2: Foreign Investment Income ▲

100

This indicator assesses whether a country includes worldwide capital income in its corporate income tax base and if its domestic law grants unilateral tax credits for foreign tax paid on certain foreign capital income.

#### ID 555 — Double taxation relief, dividends, related parties ▲

**Question:** \*Legal Person, Resident, Related Party: Dividends

**Answer:** Exemption.

#### Notes:

- Dividends: participation exemption for intercompany dividends derived from EEA countries and other foreign countries as well (IBFD 2020b; 7.2.6.2.2.).

#### Sources:

- [IBFD 2020b](#)

#### ID 554 — Double taxation relief, royalties ▲

**Question:** Legal Person, Resident: Royalties

**Answer:** Deduction.

#### Notes:

- Foreign royalty tax payments are generally deductible. However, a tax credit is available for royalty payments from certain developing countries (IBFD 2020b, 7.2.6.3). Royalty and Interest: can be tax exempt if the payment is made by a non-resident intermediate financial services company, subject to certain conditions (IBFD 2020b, 7.2.1.4). Although this jurisdiction has a patent box (see ID 515), we disregard such regime from this indicator because it is compliant with OECD nexus constraints (for more details, please refer to Haven Indicator 7 methodology).

#### Sources:

- [IBFD 2020b](#)

#### ID 553 — Double taxation relief, interest ▲

**Question:** \*Legal Person, Resident: Interest

**Answer:** Deduction.

#### Notes:

- Foreign tax paid on interest income is generally deductible. However, a tax credit is available for interest payments from certain developing countries (IBFD 2020b: 7.2.6.3). Royalty and Interest: can be tax exempt if the payment is made by a non-resident intermediate financial services company, subject to certain conditions (IBFD 2020b: 7.2.1.4).

#### Sources:

- [IBFD 2020b](#)

#### ID 552 — Double taxation relief, dividends, independent parties ▲

**Question:** \*Legal Person, Resident, Independent Party: Dividends

**Answer:** Exemption.

#### Notes:

- Participation exemption is available for shareholdings of 5% or more of the issued and paid-up capital of the foreign company (IBFD 2020b: 7.2.6.2.2.). There are however several situations where shares that are held for investment (portfolio shares) are considered "qualifying" as relating to a substantial corporate shareholder. (IBFD 2020b: 6.1.3.). Thus, because the threshold for the participation exemption is 5%, and regulations allow for a very broad applicability of the exemption, we consider that the regime also applies to dividends received from an "independent party". Furthermore, investment institutions are available in the Netherlands, and these are either taxed (at 0%) or tax-exempt (IBFD 2020b: 12.2.2.). We consider that foreign dividends received by such companies are generally tax-exempt.

#### Sources:

- [IBFD 2020b](#)
- <http://taxsummaries.pwc.com/ID/Netherlands-Corporate-Income-determination>

### Haven Indicator 3: Loss Utilisation ▲

88

This indicator measures whether a jurisdiction provides loss carry backward and/or unrestricted loss carry forward for ordinary and trading losses. Capital losses fall outside the scope of this indicator.

#### ID 509 — Loss carry backward ▲

**Question:** Loss Carry Backward: Does the jurisdiction allow loss carry backward?

**Answer:** Yes

#### Notes:

- In Netherlands, loss carry-backward is allowed for the preceding financial year (IBFD 2020b: 1.8.1.).

**Sources:**

- [IBFD 2020b](#)

## ID 510 — Loss carry forward ▲

**Question:** Loss Carry Forward: Does the jurisdiction restrict loss carry forward independent of change of ownership?

**Answer:** Yes, loss carry forward is available with a time limit of more than 5 years but there is no annual ceiling.

**Notes:**

- In Netherlands, loss carry forward is available for 9 consecutive fiscal years. There is no annual ceiling. The loss carry-forward was reduced from 9 to 6 years from 2019 (IBFD 2020b: 1.8.1.). According to a new bill, the carryforward period will be unlimited as of 2022 but the amount will be limited to 50 per cent of taxable income. However, as of October 2020, this bill was not yet passed (Deloitte.com).

**Sources:**

- [IBFD 2020b](#)
- <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/tax/deloitte-nl-tax-changes-to-dutch-tax-loss-carryforward.pdf>

## Haven Indicator 4: Capital Gains Taxation ▲

100

This indicator measures the extent to which a jurisdiction taxes corporate capital gains arising from the disposal of domestic and/or foreign securities (i.e. shares and bonds). As such, it assesses the lowest available tax levied on corporate capital gains, applicable for large for-profit corporations which are tax resident in the jurisdiction, irrespective of whether the capital gains are taxed as part of corporate income tax or as part of another type of tax, such as wealth tax or an independent capital gains tax.

## ID 513 — Domestic securities capital gains taxation ▲

**Question:** Domestic Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of domestic securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

**Answer:** 0 %

**Notes:**

- Capital gains from the disposal of shares in a resident company by a substantial corporate shareholder (resident or non-resident) may be tax exempt as part of the participation exemption regime (an ownership test and a motive test must be satisfied in order to qualify for the participation exemption). Capital gains may be exempt also in cases where the shares are alienated within the framework of a merger (IBFD 2020b: 1.7.5. and 6.1.3.).

**Sources:**

- [IBFD 2020b](#)

## ID 514 — Foreign securities capital gains taxation ▲

**Question:** Foreign Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of foreign securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

**Answer:** 0 %

**Notes:**

- In general, resident companies are subject to corporate income tax on their foreign source capital gains. However, the participation exemption may apply to capital gains on the disposal of shares of a qualifying participation. A qualifying foreign participation is a participation of at least 5% of the share capital of the foreign subsidiary company. The subsidiary should be taxed at a statutory rate of at least 10%. In addition, non-resident corporate shareholders are not taxed on capital gains they derive from their portfolio investment, provided that the shares are not held through a permanent establishment in the Netherlands (IBFD 2020b: 6.1.3., 7.2.1.5. and 7.2.6.4.).

**Sources:**

- [IBFD 2020b](#)

## Haven Indicator 5: Broad Exemptions ▲

81

This indicator measures the availability of broad exemptions from corporate income tax (CIT). It covers exemptions applicable to companies engaged in specific activities or sectors.

## ID 524 — Real estate investment sector tax exemption (passive) ▲

**Question:** Real Estate Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in real estate?

**Answer:** Full: Yes, there are full tax exemptions.

**Notes:**

- Under the FBI (Fiscale BeleggingsInstelling) Regime, investment companies (including REIT) in Netherlands enjoy a CIT rate of 0% (PWC 2019). Moreover, under the article 28 of the Corporate Income Tax Law and by the Decree on Investment Institutions (Besluit beleggingsinstellingen), foreign investment institutions that investing in real estate are subject to 0% CIT rate, if they hold shares of a subsidiary that carries out real estate development activities, or in renovation or extension of real estate activities, provided the costs related to the renovation do not exceed 30% of the value of the real estate (IBFD 2020b: 12.2.1.). Also, see note in ID 525.

**Sources:**

- [IBFD 2020b; 2020d](#)
- [PWC 2019](#)
- <https://www.pwc.com/gx/en/asset-management/assets/pdf/worldwide-reit-regimes-nov-2019.pdf>

## ID 525 — Financial investment sector tax exemption (passive) ▲

**Question:** Other Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in assets other than real estate?

**Answer:** Full: Yes, there are full tax exemptions.

**Notes:**



- In the Netherlands, public companies (NV) and private limited liability companies (BV) that qualify for "Investment institution" status are taxed at a rate of 0% for income derived from investments in Netherlands. Subject to additional conditions, such exempt companies can invest in real estate. (IBFD 2020b : 12.2.1.) Other investment institutions are directly considered CIT-exempt. (IBFD 2020b : 12.2.2.)
- Some domestic and foreign dividends and capital gains qualifying for the participation exemption regime are exempt from CIT. (IBFD 2020d; 1.3.2.; 6.1.1.;2.2.; IBFD 2020b; 6.1.3)
- During 1.6.2020-1.10.2020, SMEs may receive a tax free compensation for fixed costs up to €50,000. This may vary considering revenue lost. Since this particular exemption is cost based, we disregard it from the CTHI. (IBFD 2020d; 1.3.2.)

**Sources:**

- IBFD 2020b; 2020d [↗](#)

ID 526 — Extractive sector tax exemption ▲

**Question:** Extractives (active): Are there any (partial) tax exemptions applicable to companies active in the extractives sector (oil, gas, mining)?

**Answer:** Partial: Yes, there are partial tax exemptions.

**Notes:**

- Netherlands' tonnage tax regime includes various activities not necessarily related to transportation and storage. Indeed, according to IBFD, the use of ships in connection with the exploration and exploitation of natural resources at sea qualifies for the tonnage tax regime, and profits derived therefrom are subject to the regime's regressive tax rate (IBFD 2020b : 12.1.). In 2019, the European Commission has approved following a state aid review process the inclusion of pipeline laying vessels, research vessels and crane vessels in the tonnage tax regime, as well as a reduced tonnage tax base for ship management companies and large vessels (EC 2019). The approval is conditional to commitments by the Netherlands to reform the regime by including flag requirements and caps on ancillary activities (not those related to extractives). We consider that Netherlands' tonnage tax regime is overbroad, and covers activities included in the [Extractives] sector (exploration, pipelaying, and crane vessels), and the [Business Services] sector (ship management). These two sectors are considered partially exempt.
- It is worth noting that while the European Commission decided in 2017 that tonnage taxation of non-propelled barges and oil rigs is incompatible with the internal market (Malta), in 2019, it decides that tonnage taxation of exploration, pipelaying, and crane vessels is compatible with the internal market (Netherlands). Although the two sets of activities are largely equivalent in that they allow tonnage taxation of activities constitutive of the extractives sector, the distinction by the European Commission seems to be based on the movement capacity the maritime structures: even if an oil rig and a crane vessel undertake the same function (to extract fossil fuels), only the latter is allowed because it can be propelled. Because the Maltese Maritime Law and relevant tonnage regime regulations, specifically include any "shipping activity" allowed by the European Commission pursuant to the Community Guidelines on State aid to maritime transport, we consider that Malta also allows extractive activities to be taxed under the tonnage regime (specifically, those of exploration, pipelaying, and crane vessels).

**Sources:**

- IBFD 2020b; 2020d [↗](#)
- <https://home.kpmg/us/en/home/insights/2019/09/tnf-netherlands-ec-approves-changes-to-tonnage-tax-regime.html#:~:text=The%20European%20Commission%20approved%2C%20under,regime%20until%2031%20December%202028.&text=A%2>
- [https://ec.europa.eu/competition/state\\_aid/cases/1/201932/280530\\_2088470\\_95\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/1/201932/280530_2088470_95_2.pdf)

ID 527 — Agriculture and farming sector tax exemption ▲

**Question:** Agriculture and farming (active): Are there any (partial) tax exemptions applicable to companies active in the agricultural and farming sector?

**Answer:** Full: Yes, there are full tax exemptions.

**Notes:**

- In the Netherlands, income derived from forestry activities is exempt (IBFD 2020b, 1.2.3.) Because in relation to deforestation, companies "are obligated by law to compensate deforestation by afforestation elsewhere" (FAO 2015), we consider that that the forestry exemption is included in the agriculture sector instead of the extractives sector.

**Sources:**

- IBFD 2020b; 2020d [↗](#)
- <http://www.fao.org/3/a-az287e.pdf>
- FAO 2015 [↗](#)

ID 528 — Manufacturing sector tax exemption ▲

**Question:** Manufacturing (active): Are there any (partial) tax exemptions applicable to companies active in the manufacturing sector?

**Answer:** None: No, there are no specific exemptions.

**Sources:**

- IBFD 2020b; 2020d [↗](#)

ID 529 — Construction sector tax exemption ▲

**Question:** Construction (active): Are there any (partial) tax exemptions applicable to companies active in the construction sector?

**Answer:** None: No, there are no specific exemptions.

**Sources:**

- IBFD 2020b; 2020d [↗](#)

ID 530 — Infrastructure sector tax exemption ▲

**Question:** Infrastructures (active): Are there any (partial) tax exemptions applicable to companies active in the infrastructures sector?

**Answer:** None: No, there are no specific exemptions.

**Sources:**

- IBFD 2020b; 2020d [↗](#)

ID 531 — Transportation and storage sector tax exemption ▲

**Question:** Transportation and storage (active): Are there any (partial) tax exemptions applicable to companies active in the transportation and storage sector?

**Answer:** Partial: Yes, there are partial tax exemptions.

**Notes:**

- Netherlands' tonnage tax regime includes various activities not necessarily related to transportation and storage. Indeed, according to IBFD, the use of ships in connection with the exploration and exploitation of natural resources at sea qualifies for the tonnage tax regime, and profits derived therefrom are subject to the regime's regressive tax rate (IBFD 2020b : 12.1.). In 2019, the European Commission has approved following a state aid review process the inclusion of pipeline laying vessels, research vessels and crane vessels in the tonnage tax regime, as well as a reduced tonnage tax base for ship management companies and large vessels (EC 2019). The approval is conditional to commitments by the Netherlands to reform the regime by including flag requirements and caps on ancillary activities (not those related to extractives). Over and above "transportation & storage" activities, we consider that Netherlands' tonnage tax regime is overbroad, and covers activities included in the "Extractives" sector (exploration, pipelaying, and crane vessels), and the "Business Services" sector (ship management). These three sectors are considered partially exempt.
- It is worth noting that while the European Commission decided in 2017 that tonnage taxation of non-propelled barges and oil rigs is incompatible with the internal market (Malta), in 2019, it decides that tonnage taxation of exploration, pipelaying, and crane vessels is compatible with the internal market (Netherlands). Although the two sets of activities are largely equivalent in that they allow tonnage taxation of activities constitutive of the extractives sector, the distinction by the European Commission seems to be based on the movement capacity of the maritime structures: even if an oil rig and a crane vessel undertake the same function (to extract fossil fuels), only the latter is allowed because it can be propelled. Because the Maltese Maritime Law and relevant tonnage regime regulations specifically include any "shipping activity" allowed by the European Commission pursuant to the Community Guidelines on State aid to maritime transport, we consider that Malta also allows extractive activities to be taxed under the tonnage regime (specifically, those of exploration, pipelaying, and crane vessels).
- According to the Ministry of Finance of Netherlands, the Dutch tonnage tax regime "is not a tax exemption. The tonnage regime concerns an alternative way of calculating the taxable profit of specific shipping companies with respect to specific shipping activities. The tonnage regime is in general only applicable in relation to transport of goods or persons over sea or with respect to specific activities such as towing, dredging and pipe-laying work" (TJN-Survey 2020). Although this statement does not specifically contradict our determination of activities covered under the tonnage tax regime (such as crane vessel operation, pipe-laying and ship management services), the Ministry argues that this regime "is not a tax exemption" (ibid.). In this indicator, we consider that alternative taxes that are not assessed on corporate income but on the basis of another amount (such as the tonnage of qualifying ships) are partial exemptions of corporate income tax. That is because the profits derived from activities subject to the tonnage regime do not increase at the same pace as the tonnage of relevant ships, and thus the option to pay tonnage tax instead of corporate income tax is constructively equivalent to a partial CIT exemption, in particular for the largest companies.

#### Sources:

- IBFD 2020b; IBFD 2020d; TJN-Survey 2020a [↗](#)
- <https://home.kpmg/us/en/home/insights/2019/09/tfn-netherlands-ec-approves-changes-to-tonnage-tax-regime.html#:~:text=The%20European%20Commission%20approved%2C%20under,regime%20until%2031%20December%202028.&text=A%2>
- [https://ec.europa.eu/competition/state\\_aid/cases/1/201932/280530\\_2088470\\_95\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/1/201932/280530_2088470_95_2.pdf)

#### ID 532 — Distribution sector tax exemption [▲](#)

**Question:** Distribution (active): Are there any (partial) tax exemptions applicable to companies active in the distribution sector?

**Answer:** None: No, there are no specific exemptions.

#### Sources:

- IBFD 2020b; 2020d [↗](#)

#### ID 533 — Accommodation, food and recreation sector tax exemption [▲](#)

**Question:** Accommodation, food and recreation (active): Are there any (partial) tax exemptions applicable to companies active in the accommodation, food and recreation sector?

**Answer:** None: No, there are no specific exemptions.

#### Sources:

- IBFD 2020b; 2020d [↗](#)

#### ID 534 — Information and telecom sector tax exemption [▲](#)

**Question:** Information and telecom (active): Are there any (partial) tax exemptions applicable to companies active in the information and telecom sector?

**Answer:** None: No, there are no specific exemptions.

#### Notes:

- [Disregarded] The innovation box regime grants a reduced tax rate of 7% to qualifying income derived from qualifying assets such as (i) patents; (ii) utility models, breeders' rights, orphan drugs and supplemental protection certificates; (iii) software; and (iv) non-obvious assets that are a novelty item (IBFD 2020b; 1.9.7.). According to the Ministry of Finance of the Netherlands, the innovation box "only applies to intangible assets that are self-developed by the taxpayer" (TJN-Survey 2020). Indeed, IBFD confirms that qualifying income is calculated on the basis of R&D expenditure by the corporate taxpayer, and thus, we conclude that the tax incentive is disregarded for purposes of Indicator 5. This intangibles regime is however covered under Haven Indicator 7 on Patent Boxes.

#### Sources:

- IBFD 2020b; IBFD 2020d; TJN-Survey 2020a [↗](#)

#### ID 535 — IT services sector tax exemption [▲](#)

**Question:** IT services (active): Are there any (partial) tax exemptions applicable to companies active in the IT services sector?

**Answer:** None: No, there are no specific exemptions.

#### Sources:

- IBFD 2020b; 2020d [↗](#)

#### ID 536 — Banking and insurance sector tax exemption [▲](#)

**Question:** Banking and insurance (active): Are there any (partial) tax exemptions applicable to companies active in the banking and insurance sector?

**Answer:** None: No, there are no specific exemptions.

#### Sources:

- IBFD 2020b; 2020d [↗](#)

#### ID 537 — Professional and technical services sector tax exemption [▲](#)

**Question:** Professional and technical services (active): Are there any (partial) tax exemptions applicable to companies active in the professional and technical services sector?

**Answer:** None: No, there are no specific exemptions.

**Sources:**

- IBFD 2020b; 2020d [↗](#)

ID 538 — Business services sector tax exemption [▲](#)

**Question:** Business services (active): Are there any (partial) tax exemptions applicable to companies active in the business services sector?

**Answer:** Partial: Yes, there are partial tax exemptions.

**Notes:**

- In the Netherlands, a tonnage tax regime applies to companies owning or chartering ships. Over and above shipping activities, the preferential regime covers income derived from the exploration or exploitation of natural resources at sea. (IBFD 2020b : 12.1.) Moreover, the regime covers income derived from towing services and other activities directly linked to above-mentioned activities. (Id.) Thus, because chartering, ship management, towing, and a range of other services may be covered under the tonnage regime; we consider that the tonnage regime provides for a partial exemption in relation the "business services" sector.
- Netherlands' tonnage tax regime includes various activities not necessarily related to transportation and storage. Indeed, according to IBFD, the use of ships in connection with the exploration and exploitation of natural resources at sea qualifies for the tonnage tax regime, and profits derived therefrom are subject to the regime's regressive tax rate (IBFD 2020b : 12.1.). In 2019, the European Commission has approved following a state aid review process the inclusion of pipeline laying vessels, research vessels and crane vessels in the tonnage tax regime, as well as a reduced tonnage tax base for ship management companies and large vessels (EC 2019). The approval is conditional to commitments by the Netherlands to reform the regime by including flag requirements and caps on ancillary activities (not those related to extractives). We consider that Netherlands' tonnage tax regime is overbroad, and covers activities included in the [Extractives] sector (exploration, pipelaying, and crane vessels), and the [Business Services] sector (ship management). These two sectors are considered partially exempt.
- It is worth noting that while the European Commission decided in 2017 that tonnage taxation of non-propelled barges and oil rigs is incompatible with the internal market (Malta), in 2019, it decides that tonnage taxation of exploration, pipelaying, and crane vessels is compatible with the internal market (Netherlands). Although the two sets of activities are largely equivalent in that they allow tonnage taxation of activities constitutive of the extractives sector, the distinction by the European Commission seems to be based on the movement capacity the maritime structures: even if an oil rig and a crane vessel undertake the same function (to extract fossil fuels), only the latter is allowed because it can be propelled. Because the Maltese Maritime Law and relevant tonnage regime regulations, specifically include any "shipping activity" allowed by the European Commission pursuant to the Community Guidelines on State aid to maritime transport, we consider that Malta also allows extractive activities to be taxed under the tonnage regime (specifically, those of exploration, pipelaying, and crane vessels).

**Sources:**

- IBFD 2020b : 12.1. [↗](#)
- <https://home.kpmg/us/en/home/insights/2019/09/tnf-netherlands-ec-approves-changes-to-tonnage-tax-regime.html#:~:text=The%20European%20Commission%20approved%2C%20under,regime%20until%2031%20December%202028.&text=A%2>
- [https://ec.europa.eu/competition/state\\_aid/cases1/201932/280530\\_2088470\\_95\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/201932/280530_2088470_95_2.pdf)

Haven Indicator 6: Economic Zones and Tax Holidays [▲](#)

0

This indicator measures whether and to what extent time-bound or geographically confined tax incentives are available in a country. It measures if these incentives offer partial or full exemptions from corporate income tax (CIT) and/or capital gains tax (CGT). This includes temporary tax holidays and special tax incentives (temporary or permanent) given to companies located in designated economic zones.

ID 540 — Tax holidays, non-economic zones, full exemption [▲](#)

**Question:** NonEZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

**Answer:** 0

**Notes:**

- There is no indication that the jurisdiction offers profits-based tax exemptions that are limited in time or only applicable to specific economic zones. (IBFD 2020f; 7.1.)

**Sources:**

- IBFD 2020b, 2020f [↗](#)
- IBFD 2020f [↗](#)
- <https://www.government.nl/topics/taxation-and-businesses/corporation-tax> [↗](#)
- <https://www.belastingdienst.nl/> [↗](#)

ID 539 — Tax holidays, non-economic zones, partial exemption [▲](#)

**Question:** NonEZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

**Answer:** 0

**Notes:**

- See note above [ID540].

**Sources:**

- IBFD 2020b, 2020f [↗](#)
- IBFD 2020f [↗](#)

ID 504 — Permanent, economic zones, full exemption [▲](#)

**Question:** EZ-Permanent-Full: How many permanent and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

**Answer:** 0

**Notes:**

- See note above [ID540].

**Sources:**

- IBFD 2020b, 2020f [↗](#)



- [IBFD 2020f](#)

#### ID 503 — Permanent, economic zones, partial exemption ▲

**Question:** EZ-Permanent-Partial: How many permanent and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

**Answer:** 0

**Notes:**

- See note above [ID540].

**Sources:**

- [IBFD 2020b, 2020f](#)
- [IBFD 2020f](#)

#### ID 502 — Tax holidays, economic zones, full exemption ▲

**Question:** EZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

**Answer:** 0

**Notes:**

- See note above [ID540].

**Sources:**

- [IBFD 2020b, 2020f](#)
- [IBFD 2020f](#)

#### ID 501 — Tax holidays, economic zones, partial exemption ▲

**Question:** EZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

**Answer:** 0

**Notes:**

- See note above [ID540].

**Sources:**

- [IBFD 2020b, 2020f](#)
- [IBFD 2020f](#)

### Haven Indicator 7: Patent Boxes ▲

90

This indicator measures whether a jurisdiction offers preferential tax treatment for income related to intellectual property rights (e.g. patent boxes) and whether the Organisation for Economic Co-operation and Development (OECD) nexus approach constraints are applicable to the patent box.

#### ID 515 — Patent box ▲

**Question:** Patent Box: Does the jurisdiction offer preferential tax treatment for income related to intellectual property?

**Answer:** Yes, an exemption or a lower CIT for IP-income is available with OECD nexus constraints.

**Notes:**

- The Netherlands' patent box regime, 'Innovation Box' was found as not harmful and complies with the OECD's nexus approach (EU Code of Conduct 2020; OECD HTP 2020). While the grandfathering provision enables companies that entered the regime earlier to continue benefitting from the old harmful patent box regime until 30 June 2021 (IBFD 2020b: 1.9.7., 1.9.8., EU Code of Conduct 2020: 50), given that this deadline is within the year of the index publication, we consider that the patent box complies with the nexus constraints.

**Sources:**

- [IBFD 2020b](#)
- [EU Code of Conduct 2020](#)
- [OECD HTP 2020a](#)

### Haven Indicator 8: Fictional Interest Deduction ▲

0

This indicator measures whether a jurisdiction offers fictional interest deduction to lower the corporate income tax. Because the deduction is given even though no actual interest was paid, the interest deduction is referred to as "fictional" or "nominal". Fictional interest deduction allows a company with a capital structure with high equity (i.e. mostly financed by issuing shares instead of borrowing money) to deduct a certain sum of fictitious financial costs from its tax base.

#### ID 516 — Fictional interest deduction ▲

**Question:** Fictional Interest Deduction: Does the jurisdiction offer a scheme that allows deducting from the corporate income tax base a notional return on equity?

**Answer:** No

**Sources:**

- [IBFD 2020b](#)
- [EU Code of Conduct 2019](#)

This indicator considers whether a country requires all available types of company with limited liability (except for small companies) to keep accounts according to the international standard and to file their accounts with a government authority and to make them accessible online for free or at a low cost.

#### ID 188 — Compliance with international standard on keeping accounting records ▲

**Question:** \*Is there an obligation to keep accounting data?

**Answer:** Yes

**Notes:**

- The Global Forum wrote that in Netherlands, legal entities including companies must keep reliable accounts including underlying documentation (GF 2013: 60-62). In 2019 the Global Forum mentioned that no change was made regarding the obligation to maintain underlying documentation since the last review and that: "[...] failure to keep and retain books, records or other data in accordance with the requirements of tax legislation is a criminal offence and can be penalised by a term of imprisonment of up to six months, or a fine of the third category, amounting to EUR 8 200 (GF 2019: 64-66).

**Sources:**

- GF 2011: 57-60; GF 2013: 59-65 [↗](#)
- GF 2019: 64-66 [↗](#)

#### ID 189 — Submission of annual accounts to a government authority ▲

**Question:** \*Are annual accounts submitted to a public authority?

**Answer:** Unknown

**Notes:**

- Although the Global Forum reports that accounts need to be filed (GF 2019: 64-66), Dutch Civil Code Book 2, Art. 403 denotes an exception in the disclosure requirements of multinational companies. It is not entirely clear if this exception relates to the publication of annual accounts or to the filing of accounts as well.
- The exception can be summarized as follows: In the second book of the Dutch Civil Code, disclosure requirements are specified in part 10 and onwards, from article 394 onwards. Generally, the amount of details of the financial information depends on the size of the company. The exception clause is in article 403 which says roughly that a company does not need to publish its accounts if: a) the financial figures of the legal entity are consolidated into the accounts of another legal entity (the ultimate parent or some intermediate holding) to which the EU requirements regarding financial reporting apply (that is, the consolidating company is located in the EU); b) those consolidated accounts are published in or translated into Dutch, English, French or German; c) the consolidating entity has declared full liability for any debts of the Dutch legal entity; d) the declaration of liability and the accounts of the consolidating entity or a reference to those accounts have been deposited with the chamber of commerce where the Dutch legal entity is registered (Art. 403, second book Dutch Civil Code). In practice, this may allow multinational companies to hide accounts of Dutch subsidiaries from public view.

**Sources:**

- <http://www.dutchcivillaw.com/legislation/dcctitle2299aa.htm>
- GF 2019: 64-66 [↗](#)
- GF 2011: 58 [↗](#)
- <https://www.nordeatrade.com/en/explore-new-market/netherlands/accounting>

#### ID 201 — Online availability of annual accounts / financial statements ▲

**Question:** \*Are annual accounts available on a public online record (up to 10 €/US\$/GBP)?

**Answer:** No, company accounts are not always online (up to 10 €/US\$).

**Notes:**

- Although the annual accounts of most Dutch companies are available online for a fee of 2.90€ (approximately 3.5 USD as of 18.8.2020), there is an important exception to this rule. As mentioned in the note for [ID189], the Dutch Civil Code Book 2, Article 403-1 and 403-3 provide that a legal person forming a part of a group is not subject to certain requirements of publication of financial statements in the commercial register.
- The exception clause is in article 403 which says roughly that a company does not need to publish its accounts if: a) the financial figures of the legal entity are consolidated into the accounts of another legal entity (the ultimate parent or some intermediate holding) to which the EU requirements regarding financial reporting apply (that is, the consolidating company is located in the EU); b) those consolidated accounts are published in or translated into Dutch, English, French or German; c) the consolidating entity has declared full liability for any debts of the Dutch legal entity; d) the declaration of liability and the accounts of the consolidating entity or a reference to those accounts have been deposited with the chamber of commerce where the Dutch legal entity is registered (Art. 403, second book Dutch Civil Code). In practice, this allows multinational companies to hide accounts of Dutch subsidiaries from view.

**Sources:**

- [https://server.db.kvk.nl/wwwsrvu/html/vbld\\_vris.html](https://server.db.kvk.nl/wwwsrvu/html/vbld_vris.html)
- <http://www.dutchcivillaw.com/legislation/dcctitle2299aa.htm>
- <http://www.kvk.nl/uitgebreid-zoeken/>
- Dutch Civil Code Book 2; Art. 403 [↗](#)

#### Haven Indicator 10: Public Country By Country Reporting (CBCR) ▲

This indicator measures whether the companies listed on the stock exchanges or involved in certain sectors (eg extractives) or incorporated in a given jurisdiction are required to publish publicly worldwide financial reporting data on a country-by-country reporting basis.

#### ID 318 — Public country-by-country reporting standard ▲

**Question:** \*CBCR: Are companies listed on the national stock exchange or incorporated in the jurisdiction required to comply with a worldwide country-by-country reporting standard?

**Answer:** Yes, partial disclosure for both extractives and banking sector.

**Notes:**

- Under the European Union's country-by-country reporting rules for the extractive industries and logging of primary forests, member states "shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis," according to article 42 of the European Directive (2013/34/EU). European Union member states were required to issue enforcing rules of the Directive by July 2015 and reporting began for financial years commencing on or after 1 January 2016 (Article 53, 2013/34/EU Directive).

- In the banking sector, European Union member states have been required to ensure all banks disclose annually from 1 January 2015, as specified in the Capital Requirements Directive IV (Art. 89, Directive 2013/36/EU).

#### Sources:

- <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>
- Article 42 ('Undertakings required to report on payments to governments') & 53 ('Transposition'), Directive 2013/34/EU [↗](#)
- <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>
- Art. 89 ('Country-by-country reporting'), Directive 2013/36/EU [↗](#)
- Email communication with Eurodad, 09.09.2020 [↗](#)

### Haven Indicator 11: Robust Local Filing of Country By Country Reporting (CBCR) 100

This indicator assesses whether a jurisdiction, going beyond the OECD standard, ensures its own access to the country-by-country reports of any relevant foreign multinational enterprises with domestic operations. Access is ensured if the jurisdiction requires country-by-country reports to be filed locally by the local subsidiary or branch of a foreign multinational enterprise whenever the jurisdiction does not obtain these reports through the automatic exchange of information for whatever reason.

#### ID 419 — Robust local filing of country-by-country reporting ▲

**Question:** \*CBCR: Is there a local filing requirement of a global country-by-country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?

**Answer:** OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the CbCR)

#### Notes:

- "The Netherlands has introduced local filing requirements as from the reporting period starting on or after 1 January 2016. No inconsistencies were identified with respect to the limitation on local filing obligation" (OECD CBCR 2018: 518). "No changes were identified with respect to the limitation on local filing obligation" (OECD CBCR 2019: 361). This was confirmed in 2020 (OECD CBCR 2020: 284).

#### Sources:

- OECD CBCR 2018 [↗](#)
- OECD CBCR 2019 [↗](#)
- OECD CBCR 2020 [↗](#)

### Haven Indicator 12: Unilateral Cross-Border Tax Rulings 70

This indicator measures whether and to what extent a country publishes online unilateral cross-border tax rulings; and for countries with extractive industries, whether extractive industries contracts are published.

#### ID 363 — Tax rulings availability ▲

**Question:** \*Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) available in laws or regulation, or in administrative practice?

**Answer:** Yes

#### Notes:

- According to Netherlands' Ministry of Finance, both unilateral cross-border tax ruling and bilateral / multilateral advance pricing agreements are available (TJN-Survey 2017). According to the OECD, these rulings include: "(i) preferential regimes; (ii) cross-border unilateral APAs and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles; (iii) rulings providing for unilateral downward adjustments; and (iv) permanent establishment rulings" (OECD UTR 2019: 299). Further, "APAs and advance tax rulings are co-issued by a specialised team based in Rotterdam and the competent local tax inspector. Rulings on preferential regimes are mostly co-issued by specialised teams within the Dutch tax administration and the competent local tax inspector. Certain forms of PE rulings (as well as some rulings that would fall into the APA category) are issued by local tax inspectors throughout the country" (OECD UTR 2018: 329).

#### Sources:

- TJN-Survey 2017 [↗](#)
- OECD UTR 2018: 329 [↗](#)
- IBFD 2020b [↗](#)
- OECD UTR 2019: 299 [↗](#)

#### ID 421 — Tax rulings disclosure ▲

**Question:** \*Tax Rulings: Are all unilateral crossborder tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?

**Answer:** MINIMAL (ANONYMISED AND NOT FULL TEXT): All unilateral crossborder tax rulings are published online, but in a reduced version and without the name of the taxpayer concerned.

#### Notes:

- According to the OECD latest report: "From 1 July, anonymised summaries are published for all rulings of an international nature" (OECD UTR 2020: 279). This was also confirmed by the Netherlands' Ministry of Finance, following the publication of a Decree of July 1, 2019, namely "Besluit vooroverleg rulings met een internationaal karakter", paragraph 4 (TJN-Survey 2020a). Indeed, on the government's website a summary of advance tax rulings is available ([belastingdienst.nl/wps](http://belastingdienst.nl/wps)).
- It remains to be seen whether "informal capital structures" that are issued by the Dutch tax authorities constitute a tax ruling for the purposes of this indicator (Vleggeert 2020a: 10). In the absent of further sufficient information, we ignore these structures for the purpose of this indicator.

#### Sources:

- [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard\\_functies/prive/contact/rechten\\_en\\_plichten\\_bij\\_de\\_belastingdienst/ruling](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling)
- TJN-Survey 2020 [↗](#)
- OECD UTR 2019 [↗](#)
- OECD UTR 2020: 279-284 [↗](#)
- [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard\\_functies/prive/contact/rechten\\_en\\_plichten\\_bij\\_de\\_belastingdienst/ruling](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling)
- [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard\\_functies/prive/contact/rechten\\_en\\_plichten\\_bij\\_de\\_belastingdienst/ruling\\_internationale-rulings](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/standaard_functies/prive/contact/rechten_en_plichten_bij_de_belastingdienst/ruling_internationale-rulings)
- TJN-Survey 2020a [↗](#)
- Vleggeert 2020a: 10 [↗](#)

ID 561 — Mining contracts disclosure in law ▲

**Question:** \*Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?

**Answer:** Not Applicable

**Sources:**

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020 [↗](#)
- <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=4>

ID 562 — Mining contracts disclosure in practice ▲

**Question:** \*Mining contracts in practice: Are all extractive industries mining contracts published online in practice?

**Answer:** Not applicable

**Sources:**

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020 [↗](#)
- <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=41>

ID 563 — Petroleum contracts disclosure in law ▲

**Question:** \*Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?

**Answer:** No

**Notes:**

- The Netherlands does not require petroleum contracts to be disclosed by law (NRGI Policy Tracker 2020).

**Sources:**

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 18.08.2020 [↗](#)
- <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=0>

ID 564 — Petroleum contracts disclosure in practice ▲

**Question:** \*Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice?

**Answer:** Yes, but only some contracts are available online.

**Notes:**

- According to the Natural Resource Government Institute, some agreements concerning the Groningen gas field have been "been published in letters to the House of Representatives from the Minister of Economic Affairs and Climate policy. Nevertheless parts of these agreements have been redacted" (NRGI Policy Tracker 2020).

**Sources:**

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 18.08.2020 [↗](#)
- <https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5I0XtKxVQZBWzr-ohY/edit#gid=9>

Haven Indicator 13: Reporting of Tax Avoidance Schemes ▲

80

This indicator assesses two components of mandatory reporting to tackle tax avoidance schemes: (i) the reporting of tax avoidance schemes, in which we assess whether a country requires both taxpayers and tax advisers to report tax avoidance schemes they have used; and (ii) the reporting of uncertain tax positions, in which we assess whether a country requires taxpayers and tax advisers to report uncertain tax positions for which reserves have been created in annual corporate accounts.

ID 403 — Taxpayers' mandatory reporting of tax avoidance schemes ▲

**Question:** \*Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?

**Answer:** No.

**Notes:**

- On 17 December 2019, the Dutch Parliament adopted a bill implementing legislation the Directive (EU) 2018/822, which obliges intermediaries to file information on reportable cross-border arrangements (assets.kpmg). The taxpayer, however, is only required to report the arrangement when there is no intermediary or when the intermediary fails to report (Id.).

**Sources:**

- <https://assets.kpmg/content/dam/kpmg/xx/pdf/2020/01/mdr-factsheet-the-netherlands-january-2020.pdf>

ID 404 — Tax advisers' mandatory reporting of tax avoidance schemes ▲

**Question:** \*Tax advisers reporting schemes: Are tax advisers (who help companies and individuals to prepare tax returns) required to report at least annually on certain tax avoidance schemes they have sold/marketed (if applicable)?

**Answer:** Yes, but the schemes are only reported to the tax administration (they are not published).

**Notes:**

- On 25 May 2018, the European Council adopted Directive (EU) 2018/822 (amending Directive 2011/16/EU) as regards mandatory automatic exchange of information in relation to reportable cross-border arrangements) which requires intermediaries such as tax advisers, accountants and lawyers that design and/or promote tax planning schemes to report on schemes that are considered potentially aggressive. Member states had until December 2019 to transpose the directive to internal legislation, and until July 2021 to start exchanging information (eur-lex.europa.eu). On 24 June 2020, following the challenges of COVID-19, the European Council adopted Directive (EU) 2020/876 according to which member states will have an option to defer the filing of information on reportable cross-border arrangements by up to six months. The new Directive, however, does not extend the December 2019 deadline for transposing the Directive (EU) 2018/822 into EU member states internal legislation. On 17 December 2019, the Dutch Parliament adopted a bill implementing the EU directive (assets.kpmg).

**Sources:**

- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0822>
- <https://home.kpmg/xx/en/home/insights/2020/04/european-union-tax-developments-in-response-to-covid-19.html>
- <https://assets.kpmg/content/dam/kpmg/xx/pdf/2020/01/mdr-factsheet-the-netherlands-january-2020.pdf>
- IBFD 2020b, 7.4.2.1. [↗](#)

#### ID 405 — Taxpayers' mandatory reporting of uncertain tax positions ▲

**Question:** \*Taxpayers reporting uncertain tax positions: Are taxpayers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts?

**Answer:** No.

**Sources:**

- [IBFD 2020b](#)

#### ID 406 — Tax advisers' mandatory reporting of uncertain tax positions ▲

**Question:** \*Tax advisers reporting uncertain tax positions: Are tax advisers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts of the companies they advised?

**Answer:** No.

**Sources:**

- [IBFD 2020b](#)

#### Haven Indicator 14: Tax Court Transparency ▲

100

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing the public online availability of verdicts, judgements, and sentences.

#### ID 409 — Criminal tax courts' publication of decisions ▲

**Question:** \*Is the full text of judgements / verdicts issued by criminal tax courts published online for free, or for a cost of up to 10 €/US\$/GBP??

**Answer:** No, full text of verdicts is not always online (up to 10€/US\$/GBP)?

**Notes:**

- Only selected decisions are published at the website of the Judiciary of Netherlands ([uitspraken.rechtspraak.nl](https://uitspraken.rechtspraak.nl)). This was confirmed by the European e-Justice Portal: "The anonymization guidelines prescribe that published statements must be anonymised. [...] This guideline is based on recommendation R (95) 11, 'Concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems', of the Council of Europe: the highest courts publish all cases, unless it is clear that they are not legally or socially relevant, the other courts only publish cases that are clearly legally or socially relevant. The Dutch guideline further elaborates on these terms" ([e-justice.europa.eu](https://e-justice.europa.eu)).

**Sources:**

- <https://uitspraken.rechtspraak.nl/>
- [TJN-Survey 2017](#)
- [https://e-justice.europa.eu/content\\_member\\_state\\_case\\_law-13-NL-en.do?clang=nl](https://e-justice.europa.eu/content_member_state_case_law-13-NL-en.do?clang=nl)

#### ID 410 — Civil tax courts' publication of decisions ▲

**Question:** \*Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US\$/GBP?

**Answer:** No, full text of verdicts is not always online (up to 10€/US\$/GBP)?

**Notes:**

- Only selected decisions are published at the website of the Judiciary of Netherlands ([uitspraken.rechtspraak.nl](https://uitspraken.rechtspraak.nl)). This was confirmed by the European e-Justice Portal: "The anonymization guidelines prescribe that published statements must be anonymised. [...] This guideline is based on recommendation R (95) 11, 'Concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems', of the Council of Europe: the highest courts publish all cases, unless it is clear that they are not legally or socially relevant, the other courts only publish cases that are clearly legally or socially relevant. The Dutch guideline further elaborates on these terms" ([e-justice.europa.eu](https://e-justice.europa.eu)).

**Sources:**

- <https://uitspraken.rechtspraak.nl/>
- [TJN-Survey 2017](#)
- [https://e-justice.europa.eu/content\\_member\\_state\\_case\\_law-13-NL-en.do?clang=nl](https://e-justice.europa.eu/content_member_state_case_law-13-NL-en.do?clang=nl)

## ANTI-AVOIDANCE

#### Haven Indicator 15: Deduction Limitation of Interest Payments ▲

75

This indicator assesses a country's limitations on the deduction of interest expenses from the corporate income tax base. It focuses on limits placed on interest paid to non-resident group affiliates ("intra-group interest payments"), including by means of a fixed ratio rule.

#### ID 517 — Outbound intra-group interest deduction limitation ▲

**Question:** Outbound intra-group interest deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base interest paid to non-resident group affiliates?

**Answer:** YES, RESTRICTED LAX: Deduction limitation only for payments worth 30% EBITDA or above, and/or any other interest deduction limitation method using a fixed ratio rule.

**Notes:**

- On 18 September 2018, the government introduced a draft bill proposing a 30 per cent EBITDA-based limitation rule for intra-group interest payments in line with Article 4 of the ATAD. The bill was adopted by the lower of house of the parliament on 15 November 2018 and by the higher house of the parliament on 18 December 2018 (IBFD 2018g). Besides, the Netherlands is planning to start implementing a 20.5 per cent withholding tax on interest as well as royalty payments to tax havens as of 2021 (IBFD 2018g). The new EBITDA rule has come into force as of 1 January 2019 (IBFD 2020b: 10.3).

**Sources:**

- [IBFD 2020b](#)
- [IBFD 2018g](#)



- [IBFD 2018b](#)

#### ID 518 — Group ratio rule (as part of fixed ratio interest deduction limitation) ▲

**Question:** Group ratio rule: Does the jurisdiction apply a group ratio rule opt-in alongside fixed ratio limitations on interest deduction?

**Answer:** NO, group ratio rule opt-in is not applied.

**Notes:**

- Netherlands does not opt-in a group ratio rule (IBFD 2020b: 10.3; deloitte.com).

**Sources:**

- [IBFD 2020b](#)
- <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-netherlandshighlights-2020.pdf>

#### ID 519 — Financial undertaking exclusion (as part of fixed ratio interest deduction limitation) ▲

**Question:** Financial undertaking exclusion: Does the jurisdiction apply a financial undertaking exclusion alongside fixed ratio limitations on interest deduction?

**Answer:** NO, financial undertaking exclusion is not applied.

**Notes:**

- Netherlands does not exempt financial undertakings from the scope of the EBITDA rule (IBFD 2020b: 10.3).

**Sources:**

- [IBFD 2020b](#)
- <https://www.crowe-peak.nl/en/consequences-of-the-new-earnings-stripping-rule-for-dutch-companies/>

### Haven Indicator 16: Deduction Limitation of Royalty Payments ▲ 100

This indicator measures whether or to what extent a jurisdiction disallows or restricts the deduction of royalties paid to non-resident group affiliates ("intra-group royalty payments") from the corporate income tax base.

#### ID 520 — Outbound intra-group royalty deduction limitation ▲

**Question:** Outbound intra-group royalty deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base royalties paid to non-resident group affiliates?

**Answer:** NO: No deduction limitation for intra-group royalty payments.

**Notes:**

- In Netherlands, there is no deduction limitation for intra-group royalty payments beyond the arm's length principle (IBFD 2020b). However, "(t)he Netherlands enacted a new tax law in December 2019 to implement a withholding tax on Dutch source interest and royalties to related entities in low-tax jurisdictions and in abusive structures, as of January 1, 2021" (<https://news.bloombergtax.com/>; for the text of the law, see, [parlementairemonitor.nl](http://parlementairemonitor.nl))

**Sources:**

- [IBFD 2020b](#)
- <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/v14sft5d3qz7>
- <https://news.bloombergtax.com/daily-tax-report-international/the-netherlands-introduces-withholding-tax-on-interest-and-royalties>

### Haven Indicator 17: Deduction Limitation of Service Payments ▲ 100

This indicator measures whether or to what extent a jurisdiction restricts or disallows the deduction of intra-group services payments (management fees, technical fees, consulting services fees) paid to non-resident group affiliates from the corporate income tax base.

#### ID 521 — Outbound intra-group services deduction limitation ▲

**Question:** Outbound intra-group services deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base payments for management, technical, legal or accounting services paid to non-resident group affiliates?

**Answer:** No, there is no deduction restriction beyond transfer pricing rules, the arm's length principle or other generic rules.

**Notes:**

- In Netherlands, there is no deduction limitation for intra-group service payments beyond the arm's length principle (IBFD 2020b: 1.4.7; 10.2).

**Sources:**

- [IBFD 2020b](#)

### Haven Indicator 18: Withholding Taxes on Dividend Payments ▲ 100

This indicator measures the extent to which a jurisdiction levies withholding taxes on outbound dividends. It assesses the lowest available unilateral withholding tax rate on outbound dividend payments.

#### ID 508 — Dividend-related party payment ▲

**Question:** Dividend-Related Party Payment: What is the (lowest) applicable unilateral cross-border withholding tax rate for outgoing dividend payments to a related party?

**Answer:** 0 %

**Notes:**

- The Netherlands exempts dividend payments to qualifying recipients resident in the EU Member States from withholding tax under the conditions laid down in the Parent-Subsidiary Directive (2011/96/EU). Under the treaties between the European Union and Iceland, Liechtenstein, Norway and Switzerland, dividend payments to companies resident in those countries are also exempt from dividend withholding tax (IBFD 2020b: 7.3.4.1).

#### Sources:

- [IBFD 2020b](#)

#### Haven Indicator 19: Controlled Foreign Company Rules

75

This indicator assesses whether countries apply robust non-transactional controlled foreign company (CFC) rules. CFC rules are a type of specific anti-avoidance rules that target particular taxpayers or transactions. Like other types of specific anti-avoidance rules, CFC rules are more effective than general anti-avoidance rules in capturing the specific type of tax avoidance on which they focus.

#### ID 522 — Controlled Foreign Company (CFC) rules

**Question:** CFC-Rules: Does the jurisdiction apply robust non-transactional CFC rules?

**Answer:** NO, TRANSACTIONAL: While there are CFC rules, these are only transactional type of rules which allow attribution of profit to the CFC according to the arm's length principle, e.g. OECD Transfer Pricing Guidelines.

#### Notes:

- The Netherlands applies both model A as well as model B of CFC rules (TJN-Survey 2020a). According to the Dutch authorities: "Model B was already applicable due to the Dutch transfer pricing rules, while model A was introduced as implementation of ATAD1 and applies as of 1 January 2019 in relation to CFC's in low tax and non-cooperative jurisdictions. In line with ATAD and EU case law, an exception is available for companies engaged in substantive economic activities." (ibid.). Given that model B is still applied alongside model A, according to the weakest link principle, we consider that the Netherlands applies transactional CFC rules.
- Furthermore, the Netherlands' model A law waters down the strength of its non-transactional rules by abusing the substance escape provision at the ATAD, Article 7 (2) (a) sentence 2. The ATAD has introduced this exception to comply with the requirements set out in the Cadbury Schweppes ruling of the European Court of Justice (Moser& Hentschel: 617-618). According to this exception, the 'passive income' CFC approach ('Model A') rules shall not be applied where the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances. However, the Netherlands set the substantive economic activity requirement very low by stating "the CFC should be considered to carry on genuine economic activity in the foreign jurisdiction if it: (i) meets the Dutch minimum substance requirements in its country of residence; (ii) has at least €100,000 of (internally or externally rendered) labor costs; and (iii) owns or rents an office space that is used to perform its activities for at least 24 months." (taxinsights.ey.com).
- While a relevant legislative change applied as of 1 January 2020 and determines that the minimum substance requirements in the CFC rules no longer apply as safe harbor, i.e. (the CFC rules can still be applicable under certain circumstances also in case the substance requirements are met) (TJN-Survey 2020a), it seems that the burden may still be imposed on the tax inspector to deny application of the escape provision in case the substance requirements are only met with the main goal or one of the main goals to avoid the CFC regime.

#### Sources:

- [IBFD 2018b](#)
- [IBFD 2020b](#)
- <https://zoek.officielebekendmakingen.nl/kst-35030-1.html>
- [https://www.ey.com/en\\_gl/tax-alerts/netherlands-enacts-new-cfc-legislation--impact-on-multinational-enterprises](https://www.ey.com/en_gl/tax-alerts/netherlands-enacts-new-cfc-legislation--impact-on-multinational-enterprises)
- <https://taxinsights.ey.com/archive/news/the-netherlands-publishes-2019-budget-proposals.aspx>
- Moser& Hentschel: 617-618
- TJN-Survey 2020a

## DOUBLE TAX TREATY AGGRESSIVENESS

#### Haven Indicator 20: Treaty Aggressiveness

75

This indicator analyses the aggressiveness of a jurisdiction in their double tax agreements with other countries, as revealed by the withholding tax rates that apply to the payment of dividends, interests and royalties.

#### ID 571 — Aggregate tax treaty aggressiveness

**Question:** Aggregate-Aggressiveness: What is the scaled value of all negative differentials between the assessed jurisdiction's treaty withholding rates on all three payment types (dividend, interest and royalty) and those of its treaty partner jurisdiction.

**Answer:** 75.0741788979321

## Global Scale Weight breakdown

11%

### Inward foreign direct investment (US\$)

\$ 4,706,461,035,375

### Outward foreign direct investment (US\$)

\$ 5,798,908,098,043

### Sum of inward and outward foreign direct investment (US\$)

\$ 10,505,369,133,418

### Global total of sum of inward and outward foreign direct investment (US\$)

\$ 94,690,323,833,261

### Global scale weight (share of jurisdiction's inward and outward foreign direct investment on the global total)

11.1%