Film financing and television programming:

A taxation guide

For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2024 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys involved with the commercial side of production.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in production financing, the Guide includes a robust discussion of relevant tax incentive programs in each country.

Each chapter focuses on a single country and provides a description of commonly used financing structures, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

Introduction

A thumbnail description of the country's industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts

At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures

Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

Tax and Financial Incentives

Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax

Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax

Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Streaming Tax Considerations

Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

KPMG and Member Firm Contacts

References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

We look forward to helping you with your film and television production ambitions.

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The Netherlands

Introduction

The Netherlands has long been considered the most favored location for the establishment of holding, financing, and licensing companies. It continues to hold substantial advantages over its competitors due to advantageous local tax legislation and an extensive and expanding tax treaty network.

Key Tax Facts

Highest corporate income tax rate	25.8%
Highest personal income tax rate	49.5%
VAT rates	0%, 9%, 21%
Annual VAT registration threshold	EUR 1,800 (optional SME scheme if revenue is EUR 20,000 max).
Regular nontreaty withholding tax rates:	
Dividends	15%[1]
Interest	0%[2]
Royalties	0%[3]
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	December 31

Film Financing

Financing Structures

Co-production

A Dutch resident investor may enter into a co-production joint venture (JV) with a non- resident investor to finance and produce a film in the Netherlands. The exploitation rights may be divided worldwide among the JV members or each investor may retain exclusive media rights in its own jurisdiction with an appropriate income share to be derived from the remaining jurisdictions. Alternatively, the JV partners could allocate specific jurisdictions to specific investors.

[1] As of 1 January 2024, a separate conditional withholding tax on dividend can be levied. This withholding tax is primarily aimed at direct payments to affiliated entities established in a low-tax jurisdiction, but also applies in certain situations where there are hybrid entities and in abuse situations.
[2] As of 1 January 2021, a conditional withholding tax on interest can be levied. This withholding tax is primarily aimed at direct payments to affiliated entities established in a low-tax jurisdiction, but also applies in certain situations where there are hybrid entities and in abuse situations.
[3] As of 1 January 2021, a conditional withholding tax on royalties can be levied. This withholding tax is primarily aimed at direct payments to affiliated entities established in a low-tax jurisdiction, but also applies in certain situations where there are hybrid entities and in abuse situations.

Who is a Tax Resident?

An arrangement as such should typically not make the investors subject to tax in the Netherlands. However, the Dutch tax position of each investor must be determined separately. In the absence of specific film rules, this determination must be based upon generally accepted tax principles.

A foreign investor may, inter alia, be subject to corporate income tax (CIT) in the Netherlands if non-Dutch-resident taxpayer owns an interest in a Dutch resident entity that is covered by the substantial interest rules (SIT rules), or if they are engaged in a trade or business in the Netherlands and if they conduct this trade or business through a Permanent Establishment (PE).

SIT rules

Under the SIT rules, foreign (corporate and individual) shareholders with a substantial interest in a Dutch-resident company may be subject to CIT. A substantial interest exists if a shareholder directly or indirectly, and as the case may be together with a partner:

1. owns shares representing at least 5% of the issued capital, or a separate class of shares, of a Dutch resident company; or
2. owns a right to acquire at least 5% of the shares in a Dutch resident company; or
3. is entitled to at least 5% of the votes in the general meeting of members of a Dutch cooperative; or
4. owns a profit-sharing certificate that gives an entitlement to at least 5% of the profits or liquidation proceeds of a Dutch resident company.
5. owns an interest in a reverse hybrid entity that entitles the shareholder to an interest of at least 5% in its profits.

If a corporate shareholder owns a substantial interest, then the foreign SIT rules apply if (cumulatively) the following anti-abuse rules apply:

A. the primary objective, or one of the primary objectives, for holding the substantial interest is to avoid Dutch personal income tax of another party (‘motive test’); and
B. there is an artificial arrangement or series of arrangements, whereby an arrangement can consist of multiple steps and an arrangement or series of arrangements is considered artificial to the extent these have not been set up based on valid business reasons reflecting economic reality (‘business test’).

Whether the motive test and business test are met depends, among other factors, on whether the structure is established based on valid commercial reasons that reflect economic reality. This evaluation should be based on a case-by-case approach, taken into account all relevant facts and circumstances.

When the SIT rules apply to a corporate shareholder, this would generally mean that income from the substantial interest is subject to Dutch CIT against the statutory rate of 25.8% (first EUR 200,000 of taxable amount is taxed at 19%; both 2024 rates). This income generally consists of dividends and capital gains related to the Dutch company in which the substantial interest is held. It is important to note that the SIT taxation may be partly or fully mitigated under an applicable double tax treaty (discussed further below).

Trade or business in the Netherlands

Generally, to be engaged in a trade or business requires active participation in an economic activity in order to obtain a profit in excess of an ordinary return on passive investments. In other words, if the foreign investor only invests cash in order to obtain a normal return on capital, they will not generally be regarded as being engaged in a trade or business. If, on the other hand, they actively take part in the economic activity, i.e., production, in order to increase their investment income, they will be considered to be engaged in a trade or business. A loan to an active enterprise, i.e., apparently earning passive income, can under specific circumstances be reclassified as an equity investment. The fact that the investor's ultimate return is not fixed but depends on the successful exploitation of the film rights, is a strong indication that they are engaged in a trade or business.

When drafting a JV agreement, attention should be given to the qualification "passive investor" versus "entrepreneur."

If the activities of the foreign investment company become more active, the company also risks being regarded as a Dutch tax resident as it then meets the "management and control" criteria. The foreign company would therefore be subject to tax in the Netherlands on its worldwide income, if its management and control is performed from the Netherlands. Subject to conditions of the specific tax treaty provision, the entity could be able to claim treaty relief to avoid double taxation.

Once it has been established that the investor is involved in a trade or business, it must be determined whether their film exploitation activity is attributable to a Dutch PE.

Whether there is a PE to be recognized for Dutch CIT purposes ultimately depends on the tax treaty definition of PE in the Tax Treaty that the Netherlands has concluded with the 'other state'. In this regard it is relevant that on June 7, 2017, the Netherlands has signed, together with many other jurisdictions, the Multilateral Convention ("Multilateral Instrument" or "MLI") to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) and improve dispute resolution mechanisms. These measures include those on hybrid mismatches (Action 2), treaty abuse (Action 6), permanent establishments (Action 7) and dispute resolution mechanisms (Action 14) and affect existing bilateral tax treaties. The MLI does not amend the language of existing treaties, but rather works alongside covered tax treaties and modifies their application. The PE definition of a tax treaty could thus be affected by the MLI position of the Netherlands and of its corresponding tax treaty partner with regard to permanent establishments (i.e., BEPS action 7).

Provided that the exploitation can be kept separate from the production, and the film exploitation activities are exercised outside the Netherlands, non-resident investors should not be subject to Dutch tax on their income.

If a link can be established between the exploitation of a film and the actual production activities performed through a Dutch PE, the income will be subject to Dutch personal income tax (PIT) or CIT. If the JV is set up as a BV, NV, or a similar foreign entity, a passive investment, e.g., a loan, may be reclassified as equity. The consequences of this are set out below.

PIT and CIT on business profits are imposed on net profits determined at arm's length based on the accrual method of accounting. This method provides the necessary flexibility in establishing the appropriate allocation of the JV's net income to all participants.

Since all Dutch treaties allow tax liability in the Netherlands if trading or business income is allocable to a Dutch PE (as defined under the tax treaty), any relief for double taxation should be obtained abroad under the applicable tax treaty. In this case, Dutch income should either be exempt in the foreign investor's state of residence or Dutch income tax on such income should be creditable in that state.

If the JV's film production activities are performed as a company, e.g., a BV or NV, the dividend distributions (return on equity investment) are, in the absence of tax treaties, subject to 15 percent dividend withholding tax. In other words, with respect to passive income, such as dividends, a reduction of withholding tax has to be applied for in the Netherlands, whereas double tax relief for active income allocable to a Dutch PE and subject to PIT or CIT must be obtained in the foreign investor's state of residence. Dividends may, subject to conditions, be exempt from dividend withholding tax, for example if paid to a corporate taxpayer with an interest of at least 5% that is tax resident in an EU/EEA jurisdiction or a jurisdiction that has concluded a tax treaty with the Netherlands that includes an article on dividends.

In addition, the Netherlands imposes a conditional withholding tax, based on the Dutch withholding tax act at a rate of 25.8% on intragroup interest, royalty (both as of 2021) and dividend (as of 2024) payments if the payment is made by a withholding agent established in the Netherlands that is affiliated with the recipient. The conditional withholding tax is primarily aimed at direct payments to affiliated entities (i.e., typically if an entity, directly or indirectly, holds more than 50% of the voting rights) established in a low tax jurisdiction, but also applies in certain situations where there are hybrid entities and in abuse situations. Recipients subject to tax are those that are either are resident in a "low-tax jurisdiction", or the payment is allocated to a PE in such jurisdiction; are a group entity that is not established in a low-tax jurisdiction but acts as an intermediary/conduit between the Netherlands and a group entity established in a low-tax jurisdiction; or involve certain specific hybrid situations. The right to levy the conditional withholding tax may be limited under an applicable tax treaty.

For financial years commencing on or after January 1, 2024, the following states have been classified as low tax jurisdictions: American Samoa, American Virgin Islands, Anguilla, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Fiji, Guam, Guernsey, Isle of Man, Jersey, Palau, Panama, Russian Federation, Samoa, Seychelles, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, and Vanuatu.

Partnership

Foreign investors and foreign producers may set up a Dutch partnership to finance and produce a film. If the type of partnership (see below) allows a distinction between limited and general partners, the passive investors are generally limited partners and the active producers are the general partners. The partnership may receive royalties under distribution agreements from parties in both treaty and non-treaty territories, proceeds from the sale of any rights remaining after exploitation, and a further payment from the distributors to recoup any shortfall in the limited partners' investment. Such proceeds may initially be used to repay the limited partners, perhaps with a premium, e.g., a fixed percentage of the "super profits."

There are two types of partnerships in the Netherlands: general partnerships and limited partnerships. A general partnership does not have limited partners and is fully transparent, i.e., a proportionate share of all income and expenses is directly allocated to each partner. In addition, all partners are fully liable for all obligations of the entity. A limited partnership (CV) is a partnership with limited partners and general partners. The general partners are fully liable. Limited partners are only liable to the extent of their capital investment. However, limited partners are not allowed to carry on the business of the CV in which they participate. If they do, they lose limited partnership status and are regarded as general partners and therefore fully liable.

Under current Dutch tax law (2024), there are two types of limited partnerships: the open limited partnership (non-transparent) and the closed limited partnership (transparent). The basic difference is the transferability of the limited partnership interest. Strict rules apply to the transfer of interests in a closed limited partnership, whereas an interest in an open limited partnership is more freely transferable. From a tax perspective it should be noted that only the open CV is a taxable entity subject to normal CIT rates.

Limited partners in an open limited partnership are more or less treated as shareholders, i.e., profit distributions to the limited partners are treated as dividends and therefore subject to dividend withholding tax (unless the above-mentioned withholding tax exemption applies).

Limited partners in a closed limited partnership and general partners are taxed directly on the net income attributable to them. For nonresident limited partners, it needs to be established whether the income so attributable is trading income, and if so, whether it can be allocated to a Dutch PE.

However, as of 1 January 2025, the open limited partnership will broadly cease to exist. As a result of this, the independent tax liability (for, among other things, corporate income tax) of the open limited partnership is terminated, and the fiction that the interest of the limited partner in the open limited partnership is regarded as a share. This has consequences for the assessment of similar foreign limited partnerships, i.e., that they also become transparent by definition. The transparency of the limited partnership has consequences for both personal and corporate income tax. In addition to the general partners, with effect from 2025 the limited partners will also be directly subject to personal or corporate income tax for their share in the results of the limited partnership. At the same time, the open limited partnership will be deemed to have stopped receiving taxable profit in the Netherlands. Certain transitional rules are provided that may allow any Dutch tax claims to be deferred.

As noted earlier, trading income is only taxable in the Netherlands if it is attributable to a Dutch PE. The Supreme Court ruled that if:

- A closed limited partnership is engaged in trade or business in the Netherlands through a PE
- The non-resident limited partner's participation is attributable to their trade or business in their state of residence
- The non-resident limited partner is entitled to profits, but not necessarily liquidation proceeds, of the closed limited partnership, then the non-resident limited partner is deemed to be engaged in a trade or business in the Netherlands through a PE.

As indicated above, a passive investor generally participates as a limited partner, i.e., receiving income from capital. If the JV is a partnership, but not a taxable entity, the foreign investor (limited partner) is not subject to Dutch tax, unless they actually receive trading income allocable to a (deemed) PE in the Netherlands. Double tax relief has to be obtained in the state of residence (see above).

If the JV is a taxable entity under Dutch law, tax may be payable twice: CIT on worldwide net income at the JV level, subject to an exemption for income allocable to foreign PE of the JV. Thereafter distributions are subject to 15 percent dividend withholding tax (or possibly 25.8% conditional dividend withholding tax), again subject to relief (see above). A Dutch resident limited partner in a foreign transparent limited partnership is taxed on its worldwide income, including their share of the partnership's worldwide business profits.

Dutch tax law only provides for an exemption to Dutch residents subject to corporation tax or a tax relief to Dutch residents subject to Dutch income tax for profits directly attributable to the PE of the foreign partnership outside the Dutch tax jurisdiction.

Equity Tracking Shares

Equity tracking shares (ETS) have the same rights as ordinary shares but provide for profit- linked dividend distributions as well as preferential rights to assets on liquidation of the company.

ETS can legally be structured as preference shares, or by creating separate classes of ordinary shares. Additional profit rights, etc., may be granted to one or more separate classes of shares.

Any dividend paid on the ETS is nondeductible for Dutch CIT purposes.

From a Dutch tax perspective, no distinction is made between ordinary shares and ETS. A 15 percent withholding tax is due on dividend payments in respect of ETS unless the above-mentioned withholding tax exemption applies or treaty relief is available. A Dutch resident investor receiving foreign dividends on ETS is to be granted tax relief under the appropriate tax treaties. Although Dutch resident individuals are generally granted a tax credit for foreign withholding tax under the appropriate tax treaty, no such credit is available to most corporate investors resident in the Netherlands. This is due to the fact that Dutch companies that are resident in the Netherlands normally benefit from the participation exemption by virtue of which qualifying foreign dividends are not taxable, the result being that no relief is granted for foreign withholding taxes suffered.

Profit shares in a Dutch film production company (Dutch Company), or a film produced by such a company may also be granted without being linked to shares. In principle, any payments made by the Dutch Company to the owners of such profit-sharing rights would be treated as a dividend, e.g., the payment would not be tax deductible for CIT and would be subject to a 15 percent dividend withholding tax, although the withholding tax exemption might apply (see above) or a lower rate may apply on the basis of a tax treaty.

Yield Adjusted Debt

A film production company may sometimes issue a debt security to investors. Its yield may be linked to revenues from specific films. The principal would be repaid on maturity, and there may be a low, or even zero, rate of interest stated on the debt instrument. However, at each interest payment date, a supplemental, and perhaps increasing, interest payment may be due if a predetermined target is reached or exceeded, such as revenues or net cash proceeds.

As a rule, profit-linked interest payments are, insofar the profit linked interest payment is at arm’s length, fully tax deductible for the Dutch Company, and no dividend withholding tax would be due if the creditor does not hold any shares or similar interests in the Dutch Company. In this respect, it should be noted that even without a formal shareholder relationship between a creditor and the borrowing Dutch Company, the conditions of the loan may be such that the loan is reclassified as equity.

The general rule is that the Dutch civil law form of financing is decisive for the tax consequences. If there is capital according to Dutch civil law standards, then that is also the case for tax purposes. If that is not the case, the decisive factor is whether there is a civil law repayment obligation, in cash, regardless of whether this repayment obligation is conditional or uncertain . In that case, there is a debt with interest that is, in principle, deductible. There are three exceptions to this general rule:

- the loan is a sham;
- it is clear from the outset that the loan will not be repaid in full;
- the loan gives the holder an effective interest in the business of the borrower (so-called ‘’participating loan’’).

The conditions under which a loan qualifies as a participating loan are as follows:

- The interest on the loan depends on profits; and
- The loan is subordinated; and
- The loan has no fixed term (or a term longer than 50 years), but becomes repayable only in the event of bankruptcy, suspension of payment, or liquidation.

Under these conditions, certain loans, which are treated as loans under civil law, may be treated as equity for Dutch tax purposes. Such reclassification may sometimes be invalid for tax treaty purposes but in principle if a loan is reclassified as equity for Dutch CIT purposes, the payments are treated as dividends and are subject to 15 percent withholding tax (unless exempt under national law or reduced by a tax treaty).

Assuming that none of these conditions are met, it is likely that the investors are treated as receiving ordinary interest payments and no Dutch withholding tax is imposed, unless the conditional withholding tax applies (discussed elsewhere in this document). In principle, at arm's length interest payments are deductible for Dutch CIT purposes but interest deduction limitation rules are to be considered (below).

1. Earnings stripping measures

A generic interest deduction limitation (earnings stripping measure) applies as part of the implementation of the EU Anti-Tax Avoidance Directive 1 ("ATAD1"). The earnings stripping measure result in the net interest payable only to be deductible up to

- 20% of the taxpayer's EBITDA (in short: the gross operating result), or
- EUR 1 million,

Whichever is higher.

The non-deductible interest can be carried forward without limitation to subsequent years.

The net interest is the difference between the interest expense and the interest income in respect of loans and comparable agreements (such as, but not limited to, financial lease and hire purchase). The interest definition also covers exchange results on the principal and the interest instalments on and results from instruments used to hedge interest and exchange risks on loans. The costs incurred on loans and on instruments to hedge interest and exchange risks on loans will be treated as interest expenses.

2. Anti-base erosion rules

Section 10a Corporate Income Tax Act 1969 (CITA) in principle limits the deduction of interest, costs and exchange results on debt that is, in law or in fact, directly or indirectly payable to a related entity or a related individual (hereinafter: group loan) insofar as these are related to a tainted transaction. Article 10a CITA provides that the interest expenses on debt from a related entity are not deductible if the debt is by fact or by law, directly or indirectly, connected with one of the following 'tainted' transactions:

I. a profit distribution or a repayment of paid-in capital by the taxpayer, or by an entity related to it that is subject to Dutch corporate income tax, to a related entity or related individual;

II. a capital injection by the taxpayer, by an entity related to it that is subject to Dutch corporate income tax or by an individual residing in the Netherlands who is related to the taxpayer, to a related entity;

III. acquisition or expansion of an interest in an entity by the taxpayer, an entity related to it that is subject to Dutch corporate income tax or an individual residing in the Netherlands who is related to the taxpayer, which, after this acquisition or expansion, is a related entity.

There is however a rebuttal provision on the basis of which the interest (including costs and foreign exchange results) may nevertheless be tax deductible. The rebuttal provision offers the taxpayer the opportunity to convincingly demonstrate that the debt and associated transaction are primarily business motivated, or that the creditor is sufficiently taxed on the interest income.

3. Anti-hybrid rules (ATAD2)

Anti-hybrid rules (ATAD2) ATAD2 tackles tax avoidance via hybrid mismatches in affiliated relationships. Hybrid mismatches concern situations in which differences between tax systems are used with regard to the qualification of entities, instruments or permanent establishments. Hybrid mismatches may result in a tax deduction whereby the corresponding income is not taxed anywhere, or whereby the same payment is deducted several times.

In line with ATAD2, the consequences of these hybrid mismatches will be neutralized. Depending on the mismatch and the treatment outside the Netherlands, this occurs by refusing the deduction or taxing the income. The neutralization will only take place to the extent necessary to neutralize the mismatch (pro rata).

In the case of mismatches that result in a deduction without the corresponding payment being subject to tax (deduction no inclusion), the payment will not, primarily, be allowed to be deducted (primary rule). If the primary rule is not applied, the payment must be taxed at the recipient (secondary rule).

In the case of mismatches that trigger a double deduction, neutralization will take place by refusing the deduction in one of the countries. The deduction must primarily take place in the payor's country. It will be refused in the other country. If the primary rule does not offer a solution, then the payor's country must refuse the deduction.

The Netherlands also introduced a documentation obligation related to the hybrid mismatch measures. Under this obligation, a taxpayer that states in its tax return that the hybrid mismatch rules do not apply to it, must include information in its accounts and records showing this is the case.

Other Tax-Effective Structures

From a tax perspective, a Dutch resident investor company may favor an equity participation in the production entity, since debt financing is, generally speaking, only beneficial if the production entity has sufficient profits to absorb the deductible interest expense.

In doing so, the investor company would convert taxable interest on excess cash into non- taxable dividend receipts, provided that the participation exemption regime applies.

Another possibility is the use of a partnership, as this would allow the investor to make an immediate deduction for start-up losses.

Tax and Financial Incentives

Investment credit

Investments in certain types of assets can qualify for a special credit when calculating taxable profits. This credit is in addition to the normal depreciation claimed and is calculated as a percentage of the qualifying expenditure.

The investment credit falls into the following three categories:

Small-scale investment allowance (Kleinschaligheidsinvesteringsaftrek; KIA)

This credit is available for investments in operating assets from EUR 2,600 up to EUR 353,973 per calendar year. The deduction is 28% for investments from EUR 2,600 up to EUR 63,716. The maximum deduction is EUR 17,841 for investments from EUR 63,716 up to EUR 117,991, after which the deduction decreases by 7.56% until it reaches nil for investments of more than EUR 353,973. Operating assets for which the invested amount is less than EUR 450 are excluded.

Energy investment allowance (Energie-investeringsaftrek; EIA)

This credit is available for investments in qualifying new energy-saving assets. The total maximum investment qualifying for relief is EUR 136 million. The relief amounts to 45.5% of the investment if it exceeds EUR 2,500 per operating asset. As of 2024, the deduction percentage for the EIA will decrease to 40%.

Environmental investment allowance (Milieu-investeringsaftrek; MIA)

This credit is available for investments in qualifying new assets that contribute to the protection of the environment. The relief granted is either 45%, 36%, or 27%, depending upon the type of asset and if the investment exceeds EUR 2,500 per operating asset. This relief is not available to the extent that the energy investment deduction has been claimed for the same investment.

Innovation box: potential for 9% effective corporate income tax

Taxpayers may exercise an option in their tax returns to apply the Innovation Box. The Innovation Box is an incentive that applies to income from self-developed qualifying intangible assets. It is largely designed to encourage R&D activity in the Netherlands. Under this regime, qualifying profit is subject to an effective tax rate of 9%.

'Small' businesses can, in principle, apply the Innovation Box if intangible assets arise from R&D activities for which a WBSO (Wet Bevordering Speur- en Ontwikkelingswerk) tax credit was obtained. In short, a 'small' business refers to taxpayers that in a particular year together with the preceding four years received less than EUR 37.5 million in gross benefits from R&D assets (gross benefits criterion) and in that year together with the preceding four years realized net turnover of less than EUR 250 million (net turnover criterion). The net turnover criterion is assessed at the group level. The WBSO tax credit entitles employers to a remittance reduction on payroll taxes as a result of R&D activities performed by employees, and costs and investments for which the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland; RVO) has issued an R&D declaration. Other larger businesses do not only have to comply with this 'WBSO requirement', but must also possess one or more of the protection rights referred to in the Act, e.g., a patent or plant variety right, or it must concern software. Some licenses may also be eligible.

The Innovation Box regime can, for example, apply to software, production methods, product development or product improvement. The Innovation Box does not apply to intangible assets for marketing purposes, such as trademarks and logos. Under certain conditions, assets that were partly created with the help of outsourced R&D are also eligible for the Innovation Box. If such R&D work is outsourced to group companies, this could mean that a smaller amount is eligible for the lower effective rate than would be the case if there was no outsourcing.

The Innovation Box applies to benefits attributable to qualifying assets, including capital gains. In the case of patents, the Innovation Box not only applies to royalties from licenses but also to income derived from the sale of products or services based on these innovations.

Payroll tax

As mentioned above, another specific tax incentive provides for a reduction of payroll tax due by companies engaged in qualifying research and development activities. The tax deducted from the employee's salary is not affected, and payroll tax is treated as having been paid in full. The reduction amounts to 32% (in certain cases 40%) of the relevant payroll costs and other costs and expenditure for R&D, up to a maximum of EUR 350,000, and 16% for any excess.

Pillar 2

Pillar Two, an initiative by the OECD/G20 Inclusive Framework, introduced a minimum level of taxation for multinationals with an annual consolidated revenue of at least EUR 750 million, referred to as Pillar 2 GloBE Model Rules ("GloBE Rules"). As a result, in scope multinationals will at all times pay a minimum effective tax rate of 15% on their worldwide profits, whereby their tax base is determined by reference to financial accounts income after certain tax adjustments have been applied.

The European Council adopted a directive along the lines of the OECD Pillar Two measure. All EU Member States were obliged to implement the Pillar Two directive in their national laws by December 31, 2023.

The Netherlands has implemented the EU Pillar 2 directive with effect as of 2024.

Producers

Several quasigovernmental agencies, private trusts, and institutions, for example Het Nederlands Filmfonds http://www.filmfonds.nl, provide a number of subsidies, although the provision thereof is subject to certain conditions. The factors most commonly taken into account in establishing the applicant's entitlement to grants/subsidies are the length of the film, the type of content (artistic, entertainment, etc.), the number of actors involved, location, budget, duration of shooting, etc.

Actor and artists

Generally speaking, an artist is treated as any other employee. See below under "Personal Income Tax."

Other Financing Considerations

Tax costs of share or bond issues

There is no capital tax in the Netherlands.

Corporate Income Tax

Recognition of Income

Film production company – production fee income

Dutch resident companies as defined above and nonresident companies with a Dutch PE producing a film in the Netherlands without obtaining any rights in that film, i.e., “a camera-for-hire” company, are required to report an arm’s length profit on the production. The tax authorities can question the level of taxable income reported if they consider that it does not reflect an arm’s length situation; however, prior agreement can be reached in order to prevent this issue from arising.

Whether or not a nonresident company has a PE in the Netherlands is determined based on all the facts and circumstances of the particular case (see above).

Film distribution company

Dutch resident companies and Dutch PE of nonresident companies are required to report income on an accrual basis.

As such, lump sum payments for the acquisition of intangibles are amortized over time, whereas royalties are generally deductible in the period to which they are attributable. In the absence of a distinction between regular income and capital gains, both amortized payments and deductible royalties reduce trading income.

If the distribution company also exploits the licenses in another jurisdiction and does so through a PE, part of the expenses may be allocable to the foreign branch and therefore reduce the double taxation relief.

A distribution company must act in accordance with arm’s length principles. The taxpayer is required to maintain and make available documentation that demonstrates how the transfer prices were set, and whether the prices conform to the arm’s length principle. The choice of method for setting transfer prices lies with the taxpayer as long as it can be justified that an appropriate method has been applied.

Arm's length principle

The arm's length principle is explicitly incorporated into Dutch tax law (Section 8b CITA 1969). Under this principle, associated parties must deal with one another as if they were unassociated third parties with regard to prices (transfer pricing) and other conditions that they use for mutual transactions. The detailed working of the principle is based on the OECD transfer pricing guidelines and − specifically from a Dutch perspective – a number of policy statements on transfer pricing that illustrate and in some respect expand on the OECD guidelines.

Pursuant to the arm's length principle, taxable profits from domestic or cross-border transactions between associated parties may be adjusted in order to bring the allocation of these profits in conformity with attribution between independent parties. Such an adjustment of profits may then lead to secondary adjustments, such as deemed dividends or capital contributions. If there is a deemed dividend, dividend withholding tax may apply.

The most recent transfer pricing decree is dated June 14, 2022 (Government Gazette 2022, 16685).

Documentation requirements

The taxpayer is required to possess documentation showing how the transfer prices were set and whether the prices conform to the arm's length principle. The choice of method for setting transfer prices lies with the taxpayer as long as it can be justified that an appropriate method has been applied.

In principle, transfer pricing documentation based on Section 8b CITA does not have to adhere to a specific format. However, since January 1, 2016, multinational enterprises with consolidated group income exceeding EUR 50 million in the preceding reporting year must also prepare a Master File and a Local File. What must be included in these files has been laid down by ministerial regulation (based on the OECD models).

Rates

The top corporate income tax rate is 25.8 percent, levied on taxable profits, including capital gains, in excess of EUR 200,000. The tax rate applicable to the first EUR 200,000 of taxable profits is 19 percent (rates for fiscal year 2024).

Amortization of Expenditures

Production expenditures

If the production of a film results in the creation of a capital asset, and possibly involves additional substantial expenditures in respect of such an asset, the overall expenditures can be written down in accordance with the principle of sound business practice.

The development costs for intangible fixed assets can be depreciated immediately in the calendar year in which the costs were incurred.

The principle of sound business practice allows amortization in conformity with the expected revenue flow, i.e., if a substantial amount of income is expected to be received in the year after the creation of the fixed asset, a substantial part of the overall write-down could be allocated to that year.

Factors taken into account in determining the actual annual amortization include the expected economic life of the film, the continuity of the film production process, and the existence of contracts to guarantee minimum payment by third parties, including government subsidies.

Other expenditures

With respect to the deductibility of expenses, film distribution companies and film production companies have no special status under Dutch tax law. Consequently, they are subject to the same rules as other companies. All non-capital business expenditures can be set off against current income, whereas capital assets can normally be depreciated over their economic lives. Since land is unlikely to depreciate as a result of being used by a company in the performance of its business activities, no depreciation is generally available for the purchase price of land.

Losses

Since no distinction is made between capital gains, trading profits, and other income, all such income is aggregated. This means that unrelieved losses incurred in the production or exploitation of one specific film can be set off against other income. The loss carry-back period for corporate income tax purposes is a maximum of one year. As of financial years commencing on or after January 1, 2022 an unlimited loss carry-forward will apply. Losses will then only be fully available for loss carry-forward and carry-back up to

an amount of EUR 1 million of taxable profit per year. Losses in excess of that amount can only be set off against 50% of the taxable profit for that year (after the profit has been reduced by EUR 1 million).

Foreign Tax Relief

Producers

Dutch resident producers are taxed on their worldwide income. However, income that can be allocated to a foreign PE may be exempt for Dutch corporate income tax purposes.

Nonresident producers who derive income from a Dutch PE are taxed in the Netherlands on their Dutch source income and have to claim relief abroad.

Distributors

Unless a treaty provides otherwise, withholding tax imposed by developed countries can only be taken into account as a deductible expense. However, many of the tax treaties concluded by the Netherlands substantially reduce foreign withholding taxes. In addition, the withholding tax imposed on passive income (dividends, royalties, and interest) received from less developed countries or countries with which the Netherlands has concluded a tax treaty, are generally creditable against the recipient's Dutch income tax liability. Moreover, a few tax treaties concluded by the Netherlands provide for tax-sparing credits, i.e., a tax credit for foreign withholding taxes even if no actual withholding tax is imposed in order to promote inward investment in these countries.

Indirect Taxation

Value Added Tax (VAT)

Introduction VAT

In the Netherlands, like in all European Union Member States, supplies of goods and services against remuneration are in scope for VAT taxation. Supplies of goods and services can also be in scope for VAT taxation while there is no remuneration received (e.g., promotional goods, gifts or granting benefits to personnel including company cars). In some cases, it is not entirely clear if supplies are being rendered that are in scope for Dutch VAT (e.g., in case of profit sharing agreements that are not uncommon in the film and television industry), which should thus be reviewed on a case-by-case basis.

Any VAT due is as a starting point charged and remitted by the supplier of the goods or the service supplier. The charged VAT can be recovered by the entrepreneur that has incurred the costs if and insofar it uses the purchased goods/services for its VAT taxed activities. This has to do with the fact that VAT aims to tax consumption. For certain supplies, VAT is self-assessed by the customer and is reported and recovered (to the extent a recovery right exists) in the same VAT return.

The terminology, definitions and qualifications for Dutch VAT can deviate from other taxes such as Corporate Income Tax. Moreover, the Dutch VAT Act is based on the EU VAT Directive, which is implemented by all EU countries.

VAT registration obligation

The obligation to register for Dutch VAT arises if goods and services are supplied that are VAT taxable within the Netherlands. This can also be the case if only VAT exempt activities are conducted (e.g., granting interest-bearing loans). Moreover, a Dutch VAT registration obligation may arise because of certain purchases (e.g., intra-EU acquisitions of goods on which self-assessed 21% Dutch VAT must be remitted) or moving own goods (e.g., cameras, equipment, etc.) from another EU country to the Netherlands or vice

versa. When the VAT registration is completed, a unique Dutch VAT number is obtained that can be communicated with vendors/customers and that is used for Dutch VAT compliance filings.

The potential obligation to register for Dutch VAT is not limited to legal entities, but can also apply to for example private individuals (e.g., self-employed artists), Joint Ventures or partnerships. Moreover, the nationality is not relevant in determining if a Dutch VAT registration obligation arises. For example, a foreign non-Dutch company may have to register for Dutch VAT because it conducts activities that are in scope for Dutch VAT taxation or because it has a sufficient degree of permanence and a suitable structure of human and technical resources in the Netherlands that would qualify as Dutch VAT fixed establishment (e.g. a branch or sales office).

Dutch entities that are registered with the Dutch Chamber of Commerce are usually automatically registered for Dutch VAT. Sometimes this is not automatically done, for example because it does not follow from the description of the companies' activities provided to the Dutch Chamber of Commerce that these are relevant for Dutch VAT. In such cases, a written request to register for Dutch VAT should be sent to the Dutch tax authorities if a VAT registration is required. This also applies to foreign companies and persons that need to register for Dutch VAT, in which case the request should be sent to the Dutch tax authorities' office for foreign taxpayers.

Once no longer relevant activities for Dutch VAT are conducted and envisaged to be conducted in the near future, a Dutch VAT deregistration request can be sent to the Dutch tax authorities to cease the Dutch VAT compliance obligations.

Country of VAT taxation

The Dutch VAT Act includes so-called 'place of supply' rules on which basis it is determined if supplies of goods and services are VAT taxable in the Netherlands or elsewhere. In summary, the following applies:

- B2B supplies of services are in principle VAT taxable in the country where the recipient is established. Certain exceptions apply on which basis the service is VAT taxable in the country where the service takes place (e.g., services regarding real estate such as office rent, granting access to certain events, etc.). Special attention is required for events taking place in the Netherlands such as film festivals and concerts, since these may as per the aforementioned special place of supply rules be in scope for Dutch VAT taxation.
- B2C services are in principle VAT taxable in the country where the service supplier is established. Certain exceptions apply on which basis the service is VAT taxable in the country where the customer resides (e.g., electronical services and events such as festivals and concerts both physical and online (at least as of 2025)). Special attention is required for e.g., streaming services, downloads, web-broadcasting, video and audio on demand and other electronic and/or online services rendered to B2C customers that are based in the Netherlands. In such cases, Dutch VAT might have to be remitted. Similarly, special attention is required for radio- and television-related services rendered to Dutch broadcasters that do not qualify as VAT taxable person. If VAT is due in another country than the country of establishment, it may be reportable in a special VAT return, the One-Stop-Shop return that facilitates the compliance process in certain circumstances.
- Supplies of goods (e.g., film rolls) are in principle VAT taxable in the country where goods are being supplied, or in case goods are being transported, in the country where the transport has started. As such, goods supplied from or within the Netherlands are in scope for Dutch VAT taxation. The same applies to goods that are imported into the Netherlands and subsequently supplied. Special rules apply for cross-border supplies. Often, VAT is due by the customer with regard to the acquisition of such goods.

VAT liability and VAT rates

In general, the supplier should determine the VAT treatment of its supplied goods and services that are in scope for Dutch VAT taxation (e.g., charge VAT or apply a zero rate), unless a reverse-charge mechanism is applicable on which basis the VAT liability is shifted to the recipient.

Three VAT rates apply in the Netherlands. The standard Dutch VAT rate is 21 percent and applies if no exception is applicable (this rate e.g., applies to supplies of completed films, royalty payments, patents, licenses, trademarks and distribution rights). The reduced Dutch VAT rate is 9 percent and applies to a limited group of goods and services, such as granting access to cinemas, hotel accommodation, food and non-alcoholic beverages.

There are various zero VAT rates that apply. For example, to exported goods (to a non-EU country) and B2B intra-EU supplies of goods (from the Netherlands to another EU country). Usually, certain conditions must be met to be allowed to apply a zero VAT rate (e.g., having transport documents available for cross-border transport of goods). In respect of B2B intra-EU supplies of goods one important condition is to avail of the customer's valid non-Dutch EU VAT number to be able to apply the zero VAT rate. If the conditions are not fulfilled, the Dutch tax authorities may challenge application of the zero rate and impose a VAT assessment. Moreover, supplies of goods/services can be VAT exempt (e.g., certain financial services and certain broadcasting services by non-profit broadcasters), or subject to a reverse-charge mechanism on which basis the VAT liability is shifted to the recipient (this applies to e.g., B2B intra-EU services).

VAT recovery

Dutch VAT on costs (either charged by the supplier or self-assessed) can be recovered if and insofar the costs are attributable to VAT taxed output of the person that wants to recover the Dutch VAT.

To be able to recover Dutch VAT, it is important to avail of the invoice that is issued by the vendor. This invoice must be addressed to the person that wants to recover the Dutch VAT. This means that Dutch VAT on costs cannot be recovered if an invoice is issued to for example an employee or another group entity. In some cases, Dutch VAT can be recovered if the invoice or receipt is unaddressed. In case of expense claims by personnel, we recommend to carefully review if Dutch VAT can be recovered and to implement a policy that ensures being able to recover Dutch VAT on the costs incurred.

In determining if Dutch VAT can be recovered, a distinction should be made between direct and general costs. Direct costs are directly attributable to one activity (e.g., a supply of goods), whereas general costs are not directly attributable to one activity but rather to the activities as a whole (e.g., office rent or bookkeeping services). Dutch VAT on direct costs can be fully recovered if the activity for which the costs are incurred gives rise to VAT recovery, or cannot be recovered if the activity for which the costs are incurred does not give rise to VAT recovery (e.g., VAT exempt output within the EU). To recover Dutch VAT on general costs, the VAT recovery right on general costs should be calculated. Non-economic activities (e.g., 'passive' shareholding activities) and VAT exempt activities (e.g., granting interest-bearing loans within the EU) might limit the VAT recovery right on general costs.

Special VAT recovery rules apply on which basis Dutch VAT on certain costs cannot be recovered. This for example applies to Dutch VAT on food and drinks consumed in hotels and restaurants. Moreover, special Dutch VAT recovery rules apply to goods and services that are purchased for the private purposes of personnel (e.g., Christmas boxes or personnel events).

Tax point, invoicing and VAT compliance

Dutch VAT is generally due at the moment an invoice is issued, when an invoice should have been issued, or at the moment the consideration is received if this has been received prior to the invoice date. An invoice should be issued before the 15th day following the month in which the goods or services were supplied.

Relevant transactions must be reported in the periodical Dutch VAT return, which is normally filed on a quarterly basis. These relevant transactions do not only include sales and purchases on which Dutch VAT is charged, but also certain sales and purchases that are subject to a zero VAT rate or reverse-charge mechanism. Dutch VAT returns can result in a receivable, payable or NIL amount.

B2B transactions are generally reported in the Dutch VAT return based on their invoice date. The booking or account date is thus not relevant. Moreover, it is for Dutch VAT reporting in principle not relevant if a transaction has already been paid (i.e., also if an invoice has not yet been paid, the transaction should still be reported based on the invoice date).

In addition to Dutch VAT returns, other VAT-related filings may have to be filed, such as:

- EU Sales Listings: in these filings B2B supplies of goods (including transfers of own goods) and services from the Netherlands to other EU countries are reported.
- Intrastat declarations: in these filings usually B2B intra-EU supplies and acquisitions of goods are reported. Sometimes services or non-EU sales have to be reported. Intrastat declarations are filed for statistical purposes and the Dutch Central Bureau of Statics randomly selects companies that have the obligation to file Intrastat declarations.
- One Stop Shop return: via this return it is possible to report and remit VAT from other EU countries charged on certain B2C supplies of goods and services. This is a simplification to prevent having to register for VAT in all the other respective EU countries. This way, the foreign EU VAT can be reported and remitted in the Netherlands.

Actual use and enjoyment rules

A Dutch entity or person that is not registered for Dutch VAT (e.g., a passive holding company) may have to remit VAT if it purchases services of a qualifying nature from service suppliers established outside the EU (e.g., the USA). This for example concerns licensing, copy rights, and consultancy services. If such services are from a Dutch VAT perspective used and enjoyed in the Netherlands, 21% self-assessed Dutch VAT must be remitted over the amount paid for the services. This self-assessed 21% Dutch VAT cannot be recovered and thus forms a cost. The self-assessed 21% Dutch VAT must be remitted by sending a letter to the Dutch tax authorities. This can be done on an annual basis.

Custom Duties

Various taxes apply to imports of goods from outside the EU: VAT, import duty, excise duty, agricultural levy, anti-dumping duties and other duties, depending on the type of imported products.

The following customs duties apply:

Type of goods	Customs duty rate
Cinematographic film, exposed and developed, whether or not incorporating a soundtrack or consisting only of soundtrack, of a width of 35 mm or more consisting only of soundtrack; negatives; intermediate positives 37.06.102000	0%
Cinematographic film, exposed and developed, whether or not incorporating a soundtrack or consisting only of soundtrack, of a width of 35 mm or more other positives 37.06.109900	6.5%, with a maximum of EUR 5 per 100 meters
Discs, tapes, solid-state nonvolatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37 Other (For example video masters) 85.23.293900	0%
(Soundtrack film produced solely by processes other than photo electric, e.g., by mechanical engraving or magnetic recording is excluded)	
Other printed matter, including printed pictures and photographs Trade advertising material, commercial catalogues and the like 49.11.109000 Pictures, designs and photographs 49.11.910090	0%
Temporary imports may be exempt from import duty and VAT for 24 months. Generally, a deposit and a license are required, apart from other applicable conditions.	

It is important to note that the customs duty rates above may differ depending on the countries of origin.

Dutch VAT is also due on importations of goods. The VAT taxable amount is the amount paid for the goods, including import duties and ancillary costs such as packaging and insurance of the goods

Personal Income Tax

Nonresident Artists

In the Netherlands, payroll tax is levied on artists in various ways. Artists may be employed under an employment contract, may choose to perform their activities in an employer- employee relationship, or may qualify for the special regime for artists.

Artist-employee

An artist who is employed by a principal is subject to the general Dutch payroll tax rules and is treated the same as other employees. In that case, the artist will not be entitled to deduct expenses. However, certain expenses specified in the law may be reimbursed or paid by the principal as tax-free allowances. As of January 2011, it is also possible for the employer to provide tax-free allowances to its employees

based on a specific percentage of the total wage sum of the employer. As of January 2015, this regulation is obligated (see below).

The person paying the artist is responsible for withholding and remitting payroll tax, national insurance contributions, social security contributions and income-related contributions under the Health Care Insurance Act. This is usually the principal/employer.

Payroll tax must be withheld at the time the wages are paid. Payroll tax is a pre-levy for personal income tax due from the employee. The payroll tax and national insurance contributions withheld may ultimately be credited against the personal income tax. The payroll tax rates are, in principle, equal to the personal income tax rates.

The following tax rates apply for 2024:

Taxable income	Payroll tax
EUR 0 to EUR 38,098	9,32%
EUR 38,098 to EUR 75,518	36,97%
EUR 75,518	49,50%

In addition, the artist may be obliged to be insured under a national insurance scheme. This is the case if the insurance obligation has been allocated to the Netherlands according to one of the concluded international treaties. National insurance contributions are levied simultaneously with payroll tax.

The following national insurance contributions apply in 2024:

Old age pension	(AOW)	17.9%	on a maximum amount of EUR 38,098
Surviving dependents benefits	(ANW)	0.1%	on a maximum amount of EUR 38,098
Exceptional medical expenses insurance	(Wlz)	9.65%	on a maximum amount of EUR 38,098

The following social security contributions apply for 2024:

Unemployment insurance contributions (definite contract)*	(WW)	2.64%	On a maximum amount of EUR 71,628
Unemployment insurance contributions (indefinite contract)*	(WW)	7.64%	On a maximum amount of EUR 71,628
Health Care Insurance Act	(Zvw)	6.65%	On a maximum amount of EUR 71,628
Invalidity Insurance Act (WAO)/Work and Income Capacity for Work Act (WIA) for small employers**	Aof (WAO/ WIA)	6.68%	On a maximum amount of EUR 71,628
Invalidity Insurance Act (WAO)/Work and Income Capacity for Work Act (WIA) for big employers**	Aof (WAO/ WIA)	8.04%	On a maximum amount of EUR 71,628
Differentiated Invalidity Insurance Act contribution	(WHK)	1,22%	On a maximum amount of EUR 71,628

*The unemployment contribution percentage depends on what type of employment contract is in place between the employee and employer. In case there is an indefinite contract, the percentage will be lower than in case of an employment contract with an end date.

**The Aof contribution percentage depends on the size of the wage sum of the employer. An employer is considered small in case the total wage sum is below EUR 906,000 in the year t-2. The above percentages include the ´uniforme opslag kinderopvang´.

Opt-in

If not all the conditions for an employer-employee relationship are met, the artist and the principal may choose to qualify the employment relationship as an employer-employee relationship. They must inform the competent tax inspector of their choice by submitting a joint statement. In that case, the normal payroll tax rules apply and the principal will have to withhold and remit wage tax and if applicable social security.

Work-related costs rules

As mentioned above, all employers are allowed to provide their employees with tax-free items up to a certain amount. These regulations have been in place since 2015. The rules are quite complex because, amongst others, specific exemptions, such as travel allowances, and a general exemption that is a certain percentage of the total wage sum. The general exemption is currently 1.92% over the first EUR 400,000 of the wage sum combined with 1.18% over the remainder of the wage sum (for 2024). There are additional rules applicable for expenses placed under the general exemption.

Artist regime

A special regime exists in the Netherlands for artists who do not work in an employer- employee relationship and perform in the Netherlands under a short-term agreement or temporarily for other reasons. In this respect, “short term” is understood to mean no longer than three months. The regime does not apply to foreign artists that perform in the Netherlands and are resident or based in a country

with which the Netherlands has concluded a double taxation treaty, or in Aruba, Curaçao, Sint Maarten or the BES islands.

The artist regime only applies to persons engaged in an artistic performance intended to be listened to and/or watched by an audience. Examples include pop musicians, orchestra members, DJs, or actors. Technicians do not fall under this definition. The person paying the artist's fees is obliged to withhold payroll tax on the fees. A foreign principal is only obliged to withhold payroll tax if it has a PE or permanent representative in the Netherlands or voluntarily choses to do so.

The foreign artist's fees are subject to a 20 percent tax rate. Fees consist of the artist's total remuneration, including expense allowances, tips, and benefits in kind. Subject to specific conditions, allowances and benefits relating to consumption and meals, and travel and accommodation expenses, do not form part of the fees.

An expense deduction decision (kostenvergoedingsbeschikking, KVB) can be used to qualify a portion of the fees as a tax-free allowance. The artist and the principal must submit a joint request to the Dutch Revenue's tax inspector for the issuance of such a decision to deduct the actual expenses from the fee. If the principal is not in the possession of such a decision, EUR 163 per performance may be exempted for the purposes of the tax levy.

Generally, payroll tax is the final levy for foreign artists because such artists are not required to file a personal income tax return. Nevertheless, foreign artists may choose to do so. If the foreign artists are not insured in the Netherlands for social security purposes, the lowest tax rate of 9.27% will apply for the first EUR 38,098. In addition, foreign artists will be entitled to deduct the expenses they incurred.

When a foreign group performs in the Netherlands and its members qualify as artists within the meaning of the special regime for artists, the group qualifies as a taxpayer for payroll tax purposes. In this respect, the rules that apply to individual artists will also apply to the group.

Employer obligations

The wage tax law in the Netherlands refers to the corporate income tax definition of a permanent establishment. Performing activities or having activities performed in the Netherlands which are aimed at having artists perform is considered a permanent establishment. It is possible for the foreign principal to transfer the obligation to withhold payroll tax. The person to whom the obligation to withhold payroll tax is transferred must be in possession of a withholding agents statement (in Dutch: inhoudingsplichtigenverklaring). Several administrative obligations apply to the foreign artist's withholding agent.

A withholding agent is obliged to verify an artist's identity based on a valid and original identity document. The identity document must be photocopied, and the photocopy must be kept with the payroll accounts for at least seven years. The artist must file a payroll tax statement (in Dutch: model gageverklaring loonheffingen artiesten en beroepssporters) before commencing the activities in case they want tax credits to be applied.

The withholding agent must ensure that the artist fills in their name, address, place of residence, and national identity number (BSN number). The artist must sign the payroll tax statement mentioned above. If the artist fails to provide this information, the employer is obliged to withhold payroll tax at the anonymity rate of 52 percent.

If an artist has a certificate of coverage for social security purposes, i.e., an A1 certificate for Europe or a Certificate of Coverage for countries the Netherlands has a social security treaty with, this must be kept with the payroll accounts. This certificate exempts social security contributions from having to be paid.

The payroll tax and social security contributions withheld must be remitted to the Dutch Revenue on a monthly basis. Together with the remittance of the payroll tax due, a payroll tax return must be filed electronically. If the payroll tax due is not paid on time or if the payroll tax return is incorrect, an assessment and a penalty will be imposed. The payroll tax due can be paid using the collection slip attached to the payroll tax return or by transferring the amount to the Dutch Revenue's bank account with the correct reference number.

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