

THE NETHERLANDS TACKLE TAX AVOIDANCE



The Netherlands has an open economy, and foreign markets are very important for Dutch businesses. Our tax system is designed with this in mind. It places the fewest possible obstacles in the way of businesses wishing to operate abroad and encourages foreign businesses to invest in the Netherlands.

The downside of our internationally oriented tax system is that it made the Netherlands attractive to companies using tax avoidance structures. For example, by channelling funds to countries that levy little or no tax. The government has therefore announced that it intends to tackle this problem, both through action at EU level and by taking domestic measures that go further than the relevant international standards. The Netherlands is also seeking to improve transparency and integrity. All the measures announced and in negotiation will take effect as expected by 2024.

MEASURES AGAINST TAX AVOIDANCE AND TAX EVASION

Measures protecting the tax base

- A Interest deduction limitation rule: earnings stripping measure (ATAD1)** ⓘ
- The rule limits the amount of interest that taxpayers can deduct, resulting in a higher tax burden for taxpayers. This also reduces the incentive to fund a business using debt. The measure introduced by the Netherlands is more strict than the minimum standard set out in the first Anti-Tax Avoidance Directive (ATAD1) and the measures imposed by neighbouring countries.
- CFC measure (ATAD1)** ⓘ
- The Controlled Foreign Company (CFC) measure is designed to prevent companies shifting profits to low-tax jurisdictions where they have no genuine economic activities.
- B Revised tax ruling policy** *As of July 2019*
- The Dutch Tax and Customs Administration no longer issues tax rulings providing certainty in advance in case of tax avoidance situations, insufficient economic ties with the Netherlands or transactions with a low-tax country.
- C Multilateral Instrument (MLI)** *As of July 2019*
- The MLI enables the Netherlands to amend tax treaties with a large group of countries simultaneously, and without negotiations, in order to combat tax avoidance. The Netherlands decided to include more anti-abuse provisions than many other countries.
- D Scaling back the tax amnesty**
- Taxpayers can no longer declare previously undeclared foreign assets in boxes 2 and 3 to the Dutch Tax and Customs Administration without a fine.
- E Combating hybrid mismatches (ATAD2)** ⓘ
- The possibility to abuse between tax systems in different countries to avoid tax has been limited. It is e.g. no longer possible to defer taxes on the basis of a previously commonly used Dutch limited partnership (CV)/Dutch private limited company (BV) structure.
- F Principal purpose test**
- An important MLI measure is the principal purpose test. This test enables countries to take action if a business is found to be abusing tax treaty provisions to avoid tax, for instance by channelling funds through a Dutch conduit company.



Measures increasing transparency and integrity

- 2019** ▼
- P Strengthening investigative capacity**
- The Dutch Tax and Customs Administration's investigative capacity and access to information were strengthened in terms of tackling concealed assets.
- Q List of low-tax jurisdictions**
- The list is used for existing and new tax avoidance measures, including the (additional) withholding tax on interest, royalties and dividends. The Dutch list includes countries on the EU's blacklist of non-cooperative jurisdictions, as well as countries that charge less than 9% corporation tax or none at all.
- R Publication of tax rulings** *As of July 2019*
- The Dutch Tax and Customs Administration publishes an anonymised summary of every international advance tax ruling on its website. Information on rulings is also shared with foreign tax authorities.
- 2020** ▼
- S Publication of fines for culpable negligence**
- Fines imposed on intermediaries, such as tax advisers, who facilitate tax evasion or benefit fraud are published on the Dutch Tax and Customs Administration website for a period of five years. This allows people to make a more informed decision when choosing a tax adviser.
- T Introduction of UBO register** *As of September 2020*
- Businesses, foundations and associations are required to register owners or persons with a stake of at least 25% in a UBO register (UBO stands for 'ultimate beneficial owner'). This helps us combat financial and economic crime, such as money laundering or tax evasion.

Measures protecting the tax base

G Withholding tax on interest and royalties **i**

Interest or royalty payments to a company within the same group in a low-tax jurisdiction will be taxed, making the Netherlands less attractive for conduit structures.

H Limitation of liquidation and cessation loss rules **i**

The scope for deducting losses resulting from dissolution of a subsidiary (liquidation loss) or ceasing a business activity abroad (cessation loss) from profits in the Netherlands has been limited.

I Limitation of loss offsetting **i**

At present, businesses can fully offset losses against profits from the previous year or from the next six years. From 2022 such losses can only be fully offset against €1 million of profits. Amounts in excess of €1 million can only be offset against 50% of the profits of a business. From 2022 such losses can be carried forward indefinitely.

J Combating transfer pricing mismatches **i**

Companies within the same group must take into account the arm's length principle, i.e. act independently as third parties would. If another country does not apply the arm's length principle or applies it differently, this may result in companies paying too little tax. In such situations, this measure means that Dutch profits will no longer be reduced if in the other party's income a price less than the arm's length price or no price at all is included.

K Deductibility of interest further restricted (earnings stripping measure)

The earnings stripping measure limits the deductibility of interest for corporate income tax. Excess interest (the difference between interest expenses and interest income) was not deductible if it exceeded the highest of: € 1 million or 30% of the gross operating result. As of 2022 this percentage has been tightened to 20%.

Cont.

Measures increasing transparency and integrity

2021

U Reporting cross-border tax arrangements (DAC6)

Under the sixth amendment of the Directive on Administrative Cooperation (DAC6), potentially aggressive tax arrangements which can be used to avoid taxes must be reported to the tax authorities by the person who creates such an arrangement (the 'intermediary') or by its user. This information is automatically exchanged with other tax administrations.

2022

2023

V Exchange of tax information reported by digital platforms (DAC7) **i** *Implementation legislation announced*

DAC 7 provides a reporting obligation for digital platforms to tax administrations in EU-member states concerning income that their sellers derive through the use of these platforms. The reporting of income earned through the use of digital platforms should provide tax administrations with comprehensive information necessary for correctly assessing the income tax that is due. Transparency in these incomes reduces the possibility that users of these platforms do not declare income correctly or that they do not declare income at all.

2023/202

L Reallocation of profits of multinational enterprises (Pillar 1) *Under negotiation*

Many jurisdictions worldwide will implement a new system that will reallocate taxing rights of the approx. 100 largest and most profitable multinationals to the jurisdictions where their consumers are located. The largest digital companies will be in scope of this system. Allocation keys will allocate profits and taxing rights in a fairer way. As a result, jurisdictions will also be able to tax profits of a multinational, if that multinational has no physical presence in that jurisdiction.

M Implementation global minimum tax (Pillar 2) *Under negotiation*

Jurisdictions worldwide will implement a coordinated system that will ensure that multinationals with an annual revenue of more than € 750 million will pay a minimum level of corporate tax. The global minimum rate will be 15%. This will make profit shifting less attractive.

N Additional withholding tax on dividends **i**

An additional withholding tax will be levied on dividend payments to a company within the same group in a low-tax jurisdiction. This will result in the Netherlands being less attractive for conduit structures.

O Tackling the use of conduit companies (Unshell Directive) *Under negotiation*

A proposal for a Directive laying down rules to prevent the misuse of conduit companies (also called shell entities) was published by the European Commission. The Directive identifies when a company should be considered a conduit company. This information will be shared among the EU member states. These EU member states will hereafter levy tax as if the conduit company does not exist.

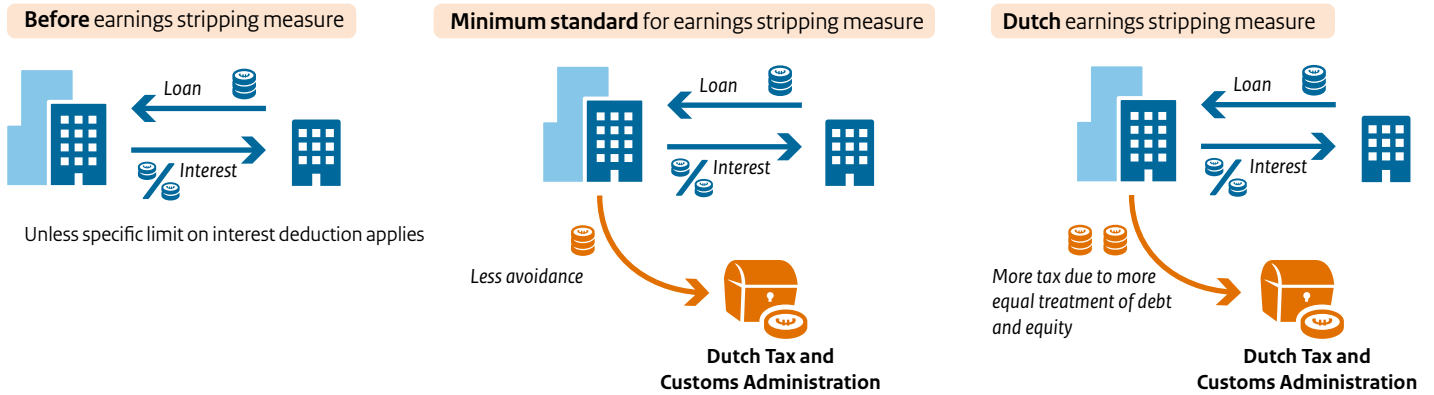
2024

W Exchange of information on crypto-assets and e-money (DAC8) *Proposal Commission announced*

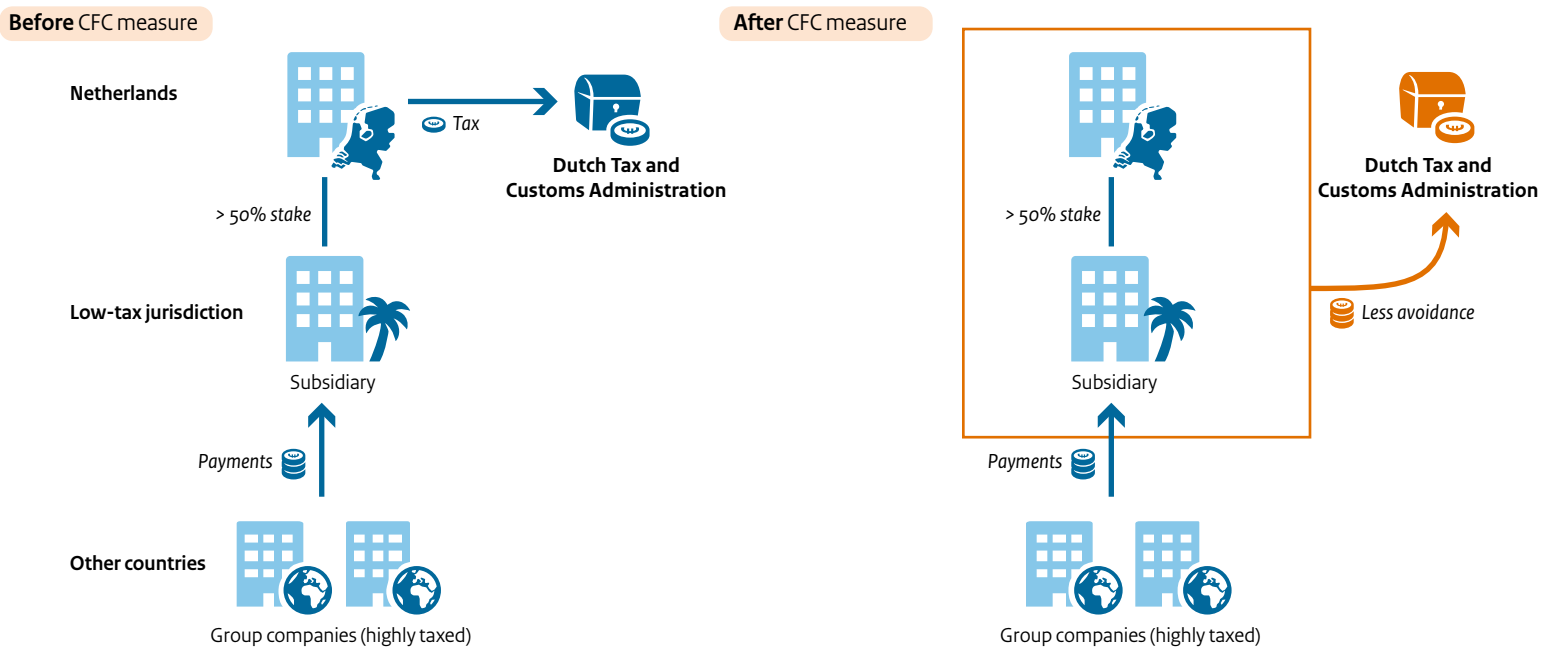
The existing rules on exchange of information of the Directive on Administrative Cooperation (DAC) are extended. The tax administrations in the EU are going to exchange information on properties based on blockchain technology or similar technology, among which crypto-assets and NFT's (non-fungible tokens), so as to get insight in the income their residents derive from it. This income can then be taxed.

HOW DO CERTAIN ARRANGEMENTS AND MEASURES WORK?

A Interest limitation rule: earnings stripping measure (ATAD1)

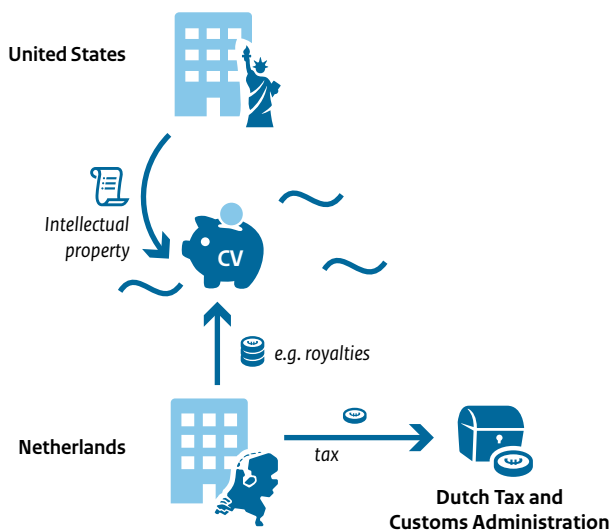


A CFC measure (ATAD1)



E Combating hybrid mismatches (ATAD2)

Before ATAD2: tackling CV/BV structure

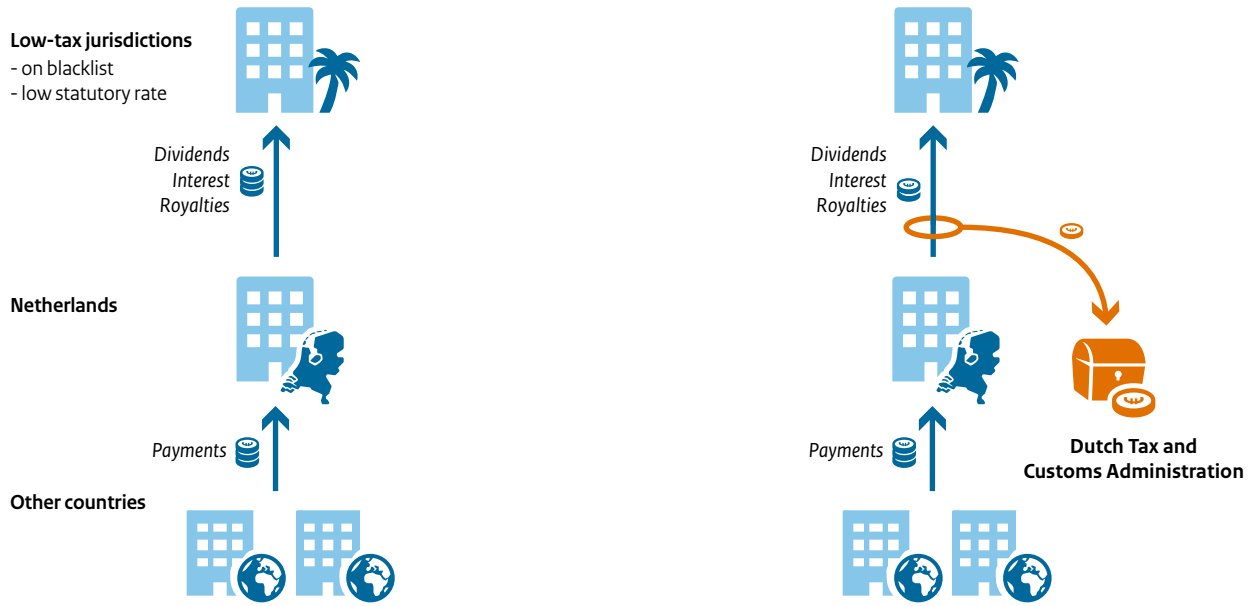


After ATAD2: tackling CV/BV structure



Before (additional) withholding taxes on dividends, interest and royalties

After (additional) withholding taxes on dividends, interest and royalties



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Limitation of liquidation and cessation loss rules

Conditions	Previous situation	New situation as of 2021
Time restrictions	No time limit	Liquidation or cessation loss must be deducted within three years after liquidation/cessation
Origin restrictions*	Worldwide	Only liquidation and cessation losses from the EU or the EEA are deductible
Stake restrictions* (applicable only to liquidation losses)	Stake must be at least 5%	Deduction only allowed if it has decisive influence (generally >50% stake)

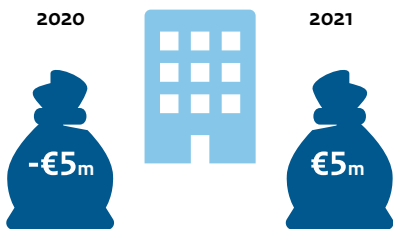
* Since these restrictions apply only if the loss exceeds €5 million, small losses are not affected.

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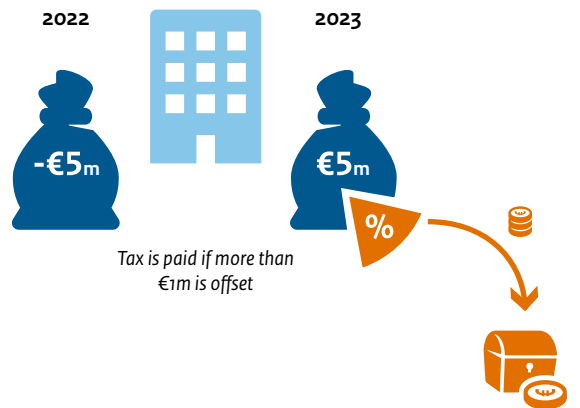
Limitation of loss offsetting

Before limitation of loss offsetting

After limitation of loss offsetting



No tax is paid over 2020 and 2021 because entire loss is offset



Tax is paid if more than €1m is offset

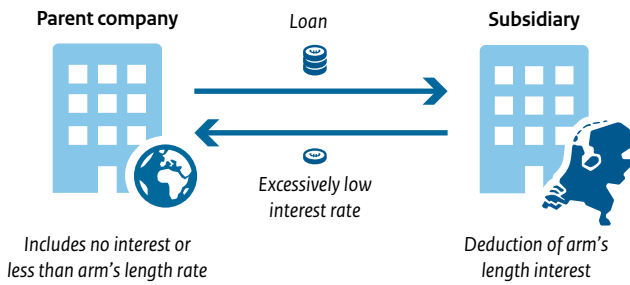
Dutch Tax and Customs Administration

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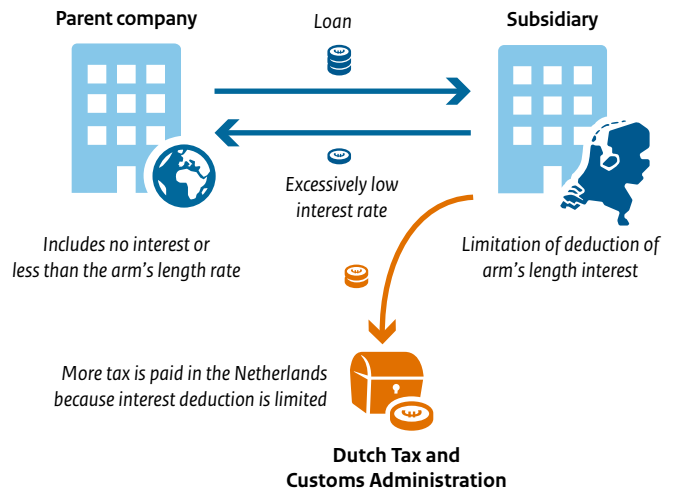
Combating transfer pricing mismatches (arm's length principle)

Example: intra-group loan at excessively low interest rate

Before combating mismatches in application of arm's length principle



After combating mismatches in application of arm's length principle



V

Exchange of tax information reported by digital platforms (DAC7)

Platforms

Sales revenues

Sellers on platforms

