STRATEGIC CONSIDERATIONS FOR INTERNATIONAL INVESTORS IN DUTCH REAL ESTATE

Author
Anton Louwinger

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Anton Louwinger is a partner in the tax practice of CMS Netherlands, Amsterdam. He advises the international business community on a variety of tax matters, such as M&A, cross-border tax planning, real estate investment, and project finance.

INTRODUCTION

From an economic viewpoint, the Netherlands is a highly attractive destination for international real estate investors, thanks to its robust legal framework, transparent property market, and strategic location within Europe. From a tax policy viewpoint, however, the Dutch tax environment can be challenging, as it is subject to frequent legislative changes. Recent updates – including the partial discontinuation of the Dutch equivalent of a R.E.I.T., known as the F.B.I. regime, revised entity classification standards, and stricter interest deduction rules – have significantly impacted the landscape for cross-border investors. This article provides an overview of recent developments and key considerations.

ACQUISITION OF DUTCH REAL ESTATE: TRANSFER TAX, V.A.T., AND STRUCTURING

Purchasing Dutch real estate, whether through a direct asset transaction or by acquiring shares in a real estate holding company, triggers Dutch Real Estate Transfer Tax ("R.E.T.T.") for the buyer. As of 2024, the standard rate for R.E.T.T. is 10.4%, with a reduced 2% rate for owner-occupied residential property. For residential property acquired by investors, a new 8% rate will apply from January 1, 2026. R.E.T.T. is calculated based on the higher of the purchase price or the fair market value.

R.E.T.T. is not limited to direct asset acquisitions. Acquiring shares in a company classified as a real estate entity (*vastgoedlichaam*) can also trigger R.E.T.T. A company is considered a real estate entity if the following two tests are met during a specific reference period:

- More than half of its assets are real estate, with at least 30% of such assets being Dutch real estate.
- At least 70% of the real estate is held mainly for passive investment or active trading in real estate. To illustrate, a self-storage business can qualify as a real estate entity because the services it provides – leasing storage space –mainly relate to the exploitation of real property. In comparison, real estate used in an active hotel business operated by the owner of the real estate or by an affiliated entity would not be considered as either passive investment or active trading in real estate.

R.E.T.T. becomes due if an acquirer, individually or together with affiliates, obtains a significant interest in the real estate entity. Generally, the acquisition of a one-third interest or more in a real estate entity is viewed to be significant.

Generally, the transfer of Dutch real estate is exempt from Value Added Tax ("V.A.T."), as is the transfer of shares in a real estate holding company. Exceptions exist in cases involving (i) the transfer of land held for development or (ii) the transfer of newly constructed property when made within two years of its first use. If applicable, V.A.T. is imposed at the rate of 21%.

If V.A.T. is due by operation of law, R.E.T.T. may not be payable when the concurrence exemption applies. This exemption is available if the acquisition is already subject to V.A.T., provided that (a) the property has not been put into use as of the moment of transfer or (b) the so-called project developer scheme can be applied. provided that the real estate has not been used at the moment of transfer. It is also available if the transaction would have been subject to V.A.T. but for the T.O.G.C. facility regarding sales of going concerns The T.O.G.C. facility is discussed later in this article.

Under the developer scheme, the concurrence exemption from R.E.T.T. applies if the acquisition takes place within six months after the first use of the property provided that (1) the developer has no intention of operating the real estate for its own account other than during the six-month period leading up to a sale and (2) the purchaser can fully or partially deduct the V.A.T. For this concurrence exemption to apply, in principle the real estate must be transferred at its market value.

For acquisitions of real estate in use for more than two years, the transaction is exempt from V.A.T. by law. In some cases, a seller of real estate may opt for V.A.T. taxation on the sale and delivery of the property, which is only possible if the buyer intends to use and actually uses the property during a specific reference period for activities that entitle it to a V.A.T. deduction of at least 90%. This allows the buyer to reclaim the V.A.T. charged in full or nearly in full, but the buyer's use of the property for V.A.T.-taxable or V.A.T.-exempt purposes will be monitored during a ten-year adjustment period.

The T.O.G.C. facility applies where an asset transaction qualifies as a transfer of a going concern, hence "T.O.G.C." It applies if the property is used for business activities for V.A.T. purposes, including leasing activities. When the facility applies, no V.A.T. is due, but R.E.T.T. may still apply.

TAXATION DURING OWNERSHIP: CORPORATE INCOME TAX, INTEREST DEDUCTION, AND DEPRECIATION

Dutch resident companies and nonresident companies with Dutch real estate are subject to Dutch corporate income tax ("C.I.T.") on rental income and capital gains. The C.I.T. rates for 2025, and expected for 2026) are 19% on the first €200,000 of taxable profit and 25.8% on profits above €200,000.

Transaction costs related to the acquisition of real estate are capitalized and depreciated over time. In comparison, costs related to share acquisitions generally are not deductible. Interest expense on loans used to finance real estate acquisitions is generally deductible, but several limitations apply. The earnings stripping rule of A.T.A.D. I limits net interest deduction to the greater of €1.0 million or 24.5% of E.B.I.T.D.A.

The Dutch fiscal unity regime allows companies to form a tax group, enabling the consolidation of profits and losses and the tax-neutral transfer of assets within the group. This regime is available only to companies with at least 95% ownership links, which is why foreign investors often acquire shares in a Dutch real estate entity through a Dutch holding company which subsequently forms a fiscal unity, effectively pushing down the interest costs to the level of the real estate entity.

The deductibility of interest expenses can also be denied where any of the following circumstances:

- Mismatches exist in the cross border treatment of (i) entities, (ii) loans, and (iii) transfer pricing.
- The anti-base erosion rule applies because, (a) interest on related-party debt used to finance share acquisitions is taxed at an effective rate of less than 10% in the hands of the lender or (b) the transaction or the loan are not based on sound business reasons.
- The arrangement is considered abusive under the general anti-abuse rule.

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Buildings can be depreciated for tax purposes, but only down to the W.O.Z. value, the official property value determined by the municipality. Land is not depreciable. However, If the market value of a building falls significantly and durably below the book value, the difference can be deducted in one go, even if this brings the book value below the W.O.Z. value.

Maintenance costs are immediately deductible in the year incurred, while improvement costs must be capitalized and depreciated over the useful life of the improvement, with a minimum period of five years.

V.A.T. ON LEASING AND ONGOING COMPLIANCE

Revenue derived from leasing of real estate generally is exempt from V.A.T. However, the landlord and tenant may jointly opt for V.A.T.-taxable leasing if the tenant uses at least 90% of the property for V.A.T.-taxable activities. This allows the landlord to recover input V.A.T. on costs related to the property. Both Dutch and foreign landlords leasing out Dutch property are subject to these rules and may need to register for V.A.T. in the Netherlands.

From 2026, a five-year adjustment period will apply to services related to immovable property with a value of at least €30,000. This means that any V.A.T. previously deducted must be reviewed annually based on the actual use of the property, and a claw-back of V.A.T. may be required if the use changes.

WITHHOLDING TAXES: DIVIDENDS AND INTEREST

Dividends paid by Dutch companies are subject to 15% Dutch dividend withholding tax, unless reduced or exempted by a tax treaty or the EU Parent-Subsidiary Directive. The application of the dividend withholding tax exemption is subject to strict anti-abuse conditions, including the requirement for sufficient economic substance at the level of the shareholder.

Distributions by Dutch cooperatives owning real estate are generally not subject to dividend withholding tax, which explains the use of cooperatives for the acquisition of Dutch real estate. Another option is to use a foreign entity, not incorporated under Dutch law, to acquire Dutch real estate. The Netherlands does not levy withholding tax on arm's length interest payments. However, as of 2021 for interest and royalties and 2024 for dividends, a conditional withholding tax of 25.8% applies to payments that are made to (i) related entities in listed low-tax or noncooperative jurisdictions or (ii) in cases of abuse. The use of a cooperative instead of a regular private limited company does not prevent the application of conditional withholding tax. The same applies to foreign entities holding Dutch real estate. Consequently, it is important to assess the extent to which an applicable income tax treaty limits Dutch taxing rights.

Foreign investment funds holding shares in Dutch companies may face challenges in reclaiming Dutch dividend withholding tax. Each situation requires careful analysis.

DISPOSALS: ASSET VS. SHARE DEALS AND TAX IMPLICATIONS

When Dutch real estate is sold by a Dutch or foreign company or fund, Dutch corporate income tax is imposed on the capital gain. The buyer is responsible for R.E.T.T. on the acquisition of Dutch real estate, subject to the concurrence exemption in the case of unused real estate.

Gains on the sale of shares by a Dutch investor in a Dutch real estate entity are generally exempt from C.I.T. under the participation exemption, provided the seller holds at least 5% and the subsidiary is not a passive investment company. If a foreign investor sells shares in a Dutch real estate entity, Dutch tax may apply if the shares represent a substantial interest and the structure is considered abusive or lacks sufficient substance. Ownership of 5% or more of the target constitutes a substantial interest. The buyer is liable for R.E.T.T. if the target qualifies as a real estate entity and the substantial interest threshold is met.

LOSS UTILIZATION RULES FOR REAL ESTATE COMPANIES

Tax losses incurred for Dutch corporate income tax purposes can be carried back one year and carried forward indefinitely, provided the loss is confirmed in a tax assessment. For profits up to €1.0 million, losses can be fully offset. For profits above €1.0 million, only 50% of the excess can be offset. If the ultimate ownership of a real estate company changes by more than 30%, unused losses are forfeited. This means that buyers of real estate entities should not attribute value to such tax assets.

RECENT LEGISLATIVE DEVELOPMENTS AND PRACTICAL CONSIDERATIONS

From January 1, 2025, Dutch fiscal investment institutions, including F.B.I.'s which are the Dutch equivalent of R.E.I.T.'s, will no longer be permitted to invest directly in Dutch real estate and benefit from the 0% C.I.T. rate. F.B.I.'s may still invest

indirectly via a regularly taxed subsidiary. This change ensures that income from Dutch real estate is always subject to Dutch C.I.T.

From 2025, Dutch and comparable foreign partnerships will generally be treated as tax transparent for Dutch tax purposes, unless they qualify as regulated mutual funds. In the latter case, specific criteria apply to determine whether a mutual fund is considered transparent or opaque for Dutch tax purposes. To mitigate negative transitional effects, a transitional regime allows funds that adjust their fund terms to the so-called redemption variant before January 1, 2026, to maintain transparent status retroactively from January 1, 2025. On September 16, 2025, an alternative transitional regime was published that will exist alongside the first. Further details regarding the exact conditions of the alternative regime are expected in the coming months, in anticipation of an amendment to the new fund classification rules that are anticipated to come into effect as of January 1, 2027.

CONCLUSION

As illustrated above, the Dutch real estate tax regime is characterized by complexity, frequent legislative changes, and a high level of scrutiny in general, and especially for international and cross-border structures. Key issues for U.S.-based investors include

- the distinction between direct and indirect acquisitions,
- the definition and treatment of real estate entities,
- the application of anti-abuse rules, and
- the impact of recent legislative reforms such as the abolition of the F.B.I. regime for direct real estate investments and the reclassification of partnerships.

With the tightening of rules for interest expense deductions, new V.A.T. adjustment requirements, and strict R.E.T.T. exemptions, it is more important than ever for international investors and their advisors to plan proactively and stay informed during the period of ownership. The classification of the investment vehicle, the presence of sufficient economic substance, and timely restructuring in response to legislative changes are all critical to optimizing investment returns and ensuring compliance.