**Corporate Income Tax Act**

**Chapter I, Taxpayers**

**Article 1, Paragraph 1  
Taxpayers**

Corporate income tax is a direct tax levied from the entities mentioned in articles [2](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) and [3](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/03.htm).

## Article 2, Resident taxpayers

### Paragraph 1, Resident taxpayers

The following entities resident in the Netherlands are treated as resident taxpayers:

1. NV's, BV's, [taxable limited partnerships](http://www.dutchtax.net/Dutch/Abon/TransR/OtherR/AWR03.htm) (*also referred to as "open limited partnerships" - Dutchtax.net*) and other companies with an equity wholly or partially divided into shares;
2. co-operatives and societies on a co-operative basis;
3. mutual insurance companies and societies which act as insurer or credit institution on a mutual basis;
4. other societies and private legal entities not mentioned here before if and to the extent that they [run an enterprise](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/04.htm);
5. [mutual investment funds](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm);
6. the enterprises of public legal entities mentioned in the third paragraph.

### Paragraph 2,Mutual Investment Funds

A mutual investment fund is a fund for the acquisition of benefits for the participants through mutual investments or through another use of money, provided that the participations in the fund are evidenced by freely transferable certificates of participation.

A mutual fund is treated as an enterprise.

The certificates of participation are treated as freely transferable if a disposal can take place without the permission of all the participants, provided that, if a disposal can only be made to the mutual investment fund or to the blood relatives and their partners in the straight line of descent or ascent, such certificates are not treated as being freely transferable.

### Paragraph 4, Deemed resident taxpayers

If the incorporation of an entity took place under Dutch law, then that entity is always deemed to be resident in the Netherlands for purposes of this law, except for [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/CIT13.htm) through [13d](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/CIT13d.htm), [13i](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/CIT13i.htm) to [13k](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13k.htm), [14a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/14a.htm), [14b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/14b.htm), [15](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm), and [15a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15a.htm).  
A European NV which is governed by Dutch law at its incorporation were deemed to be incorporated under Dutch law for purposes of the first sentence.

### Paragraph 5, Running an enterprise

The entities mentioned in the first paragraph, letters a, b and c are deemed to run their enterprise with the use of their total equity.

### Paragraph 6, Registration in trade register

For purposes of this law, the existence of an NV or a BV is always assumed, as soon as and as long as an enterprise is registered with the trade register as belonging to an NV or BV.

**Article 3, Paragraph 1  
Non-Resident taxpayers**

The following entities which are not resident in the Netherlands and which receive [Dutch income](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm) are treated as non-resident taxpayers:

1. societies and other legal persons;
2. [taxable limited partnerships](http://www.dutchtax.net/Dutch/Abon/TransR/OtherR/AWR03.htm) (*also referred to as "open limited partnerships" - Dutchtax.net*) and other companies not having legal personality of which the equity is wholly or partially divided into shares;
3. special purpose funds.

**Article 4  
Running an enterprise**

Running an enterprise as meant in [article 2, first paragraph, letter d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm), also includes:

1. an activity resembling running a business enterprise whereby businesses run by individuals or entities mentioned in [article 2, first paragraph, letters a, b and c](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) are competed against;
2. an activity consisting of taking caring of employees or ex-employees, their spouses or ex-spouses, or their partners or ex partners and their children or foster children by means of payments on the basis of early pension arrangements or pension arrangements, from the insurance of such payments or the insurance of annuities or capital distributions from life insurance.

**Article 5, Paragraph 1  
Exempt entities - General introduction**

We retain the right to exempt from taxation by general decree of government and under conditions to be satisfied:

1. entities of which the assets exclusively or almost exclusively consist of estates identified by the Rural Landscape Act 1928 (*Natuurschoonwet 1928 (Stb. 1989, 252)*), of which the activities at least largely consist of the maintenance of these estates and of which the other activities can not be qualified as the running of an enterprise;
2. entities which exclusively or almost exclusively has as purpose the care of employees and ex employees in case of invalidity and old age and the care of their spouses and ex spouses, or partners and ex partners, and of their children and foster children which have not yet turned 30, by means of pensions under a pension scheme or of distributions under an early retirement scheme, except to the extent that they acquire benefits through activities identified by general decree of government which are not directly related to the execution of these schemes.
3. charities or entities of general public interest which exclusively or almost exclusively perform activities consisting of:
   1. the healing or nursing of ill people, midwives or handicapped people;
   2. providing housing to old people, handicapped people or orphans;
   3. proving activities fit for unsociable or incomplete persons; or
   4. providing small credit facilities to people belonging to the economically weaker groups of society;
4. entities which are allowed under the Housing Act (*Woningwet (Stb. 1991, 439)*) to be active in the interest of housing for the people,..., as well as other institutions active in the interest of housing for the people or caring for monuments which our Minister deems to be similar;
5. entities which are active in the area of agriculture, the mutual insurance against losses or the care of funerals, provided that these entities do not strive to acquire profits at all, or that profits are of secondary importance to them;
6. hospital care funds and private health insurers, to the extent that they do not realise or strive to acquire profits other than for the benefit of public health institutions;
7. institutions which are allowed or recognised by law to carry risk with regard to publicly organised insurances, exclusively or almost exclusively insure risks under social security laws other than the Health Insurance Act (*Zorgverzekeringswet*) and which run no other business than an insurance business;
8. entities of which the activities consist exclusively or almost exclusively of the maintenance of public reading halls and libraries.

**Article 5, Paragraph 2  
Taxable pension funds**

The first paragraph, letter b, is not applicable to:

1. NV's, BV's and other companies of which the equity is wholly or partly divided into shares in which an employee or ex employee, his spouse or partner, one of their blood relatives or relatives by marriage in the direct line of descent or sideline to the second degree, or one of their foster children, alone or together, is a direct or indirect shareholder of at least ten percent of the par value of the paid up share capital;
2. other entities than those under a of which the activities largely consist of the execution of pension schemes and early retirement schemes of employees or ex employees of NV's, BV's or other companies of which the equity is wholly or partly divided into shares in which these employees or ex employees, theirs spouses or partners, their blood relatives or relatives by marriage in the direct line of descent or sideline to the second degree, or their foster children, alone or together, are, or have been at any time, direct or indirect shareholders of at least ten percent of the par value of the paid up share capital;

**Article 5, Paragraph 3  
Definition of pension funds**

For purposes of the first paragraph, letter b, a pension scheme or early retirement scheme is:

1. such a scheme under the Pension law (*Pensioen- en spaarfondsenwet*) or the legal measures regarding wage tax or a foreign scheme of a similar nature and purpose;
2. a pension scheme in which participation is compulsory under the Law for compulsory participation in a pension fund for a branch of industry from 2000 (*Wet verplichte deelneming in een bedrijfstakpensioenfonds 2000*), the Law for the introduction of a maximum age for notaries and the incorporation of a notarial pension fund (*Wet tot invoering van een leeftijdsgrens voor het notarisambt en oprichting van een notarieel pensioenfonds*) or the Law for compulsory participation in a pension fund for professionals (*Wet betreffende verplichte deelneming in een beroepspensioenregeling*).

**Article 5, Paragraph 4  
Introduction of a general decree of government**

The proposal for a general decree of government under the first paragraph is not made within four weeks after the draft was filed with both Houses of Parliament.

# Chapter II, Taxable object for resident taxpayers

## Article 7, Paragraph 1 Taxable amount

With regard to resident taxpayers, tax is levied over the taxable amount.

## Article 7, Paragraph 2 Definition taxable amount

The taxable amount is the taxable profit received in one year, less the losses to be compensated under Chapter IV.

## Article 7, Paragraph 3 Definition taxable profit

The taxable profit is [the profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm) less the [deductible gifts](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/16.htm).

## Article 7, Paragraph 4 Tax year

Year means financial year or, if the taxpayer does not keep regular accounts with regular end of year closings, calendar year. If the taxpayer joins or leaves a tax consolidated group as subsidiary as meant in [article 15, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) during the financial year, that part of that financial year during which the taxpayer does not form part of that tax consolidated group is treated as a separate year.

## Article 7, Paragraph 5 Functional currency

Rules may be laid down by ministerial decree determining in which cases the tax inspector can set conditions under which the taxpayer will, at the latter's request, be allowed to calculate the taxable amount in another currency than the Euro. These rules will indicate the rate at which the amounts mentioned in Euro's in the law must be converted into the other currency and against which rate the taxable amount calculated in the other currency must be converted into Euro's. A notice of objection can be filed against the tax inspector's decision.

## Subchapter 2.2 General articles on determining the profit Article 8, Determining taxable income

### Paragraph 1, Relevant articles from Personal Income Tax Act 2001

The profit is understood and determined on the basis of articles 3.8, 3.11 through 3.12a (*between 1-1-2006 and 1-7-2007 - Dutchtax.net*), [3.13, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/IB2001R/3-13.htm), letters a, h and i, 3.14, first paragraph, letters b through g, and second paragraph through sixth paragraph, 3.21 up to and including 3.30, 3.30a, first up to and including the eigth paragraph, 3.31 up to and including 3.54, 3.55 up to and including 3.57, 10.10, 10a.2 and 10a.3 of the Personal Income Tax Act 2001, where entrepreneur is substituted by taxpayer.

### Paragraph 2, Exceptions to first paragraph

The first paragraph is not applicable to the extent that:

1. it is determined otherwise by or through this law or by article 3.65 of the Personal Income Tax Act 2001;
2. article 3.53 of the Personal Income Tax Act 2001 concerns the formation of an old age provision;
3. the contrary stems from the essential differences between the taxpayer and an individual.

### Paragraph 3, Allocation of profit

If an enterprise is not run for the account of the taxpayer, but the taxpayer is entitled to the equity of the enterprise, other than by way of being share holder, then the profit of the enterprise is enjoyed directly by the taxpayer.

### Paragraph 3a, Film industry incentive

(*between 1-1-2006 and 1-7-2007 - Dutchtax.net*)

For purposes of articles 3.12a, 3.33 and 3.42b of the Personal Income Tax Act 2001, the joint interest holder meant in article 3.3, first paragraph, letter a, is meant to be the taxpayer. Furthermore the amount of Euro 25.000 mentioned in article 3.42b, third paragraph, letter b, of the Personal Income Tax Act 2001 is meant to be Euro 100.000

Paragraph 4, Waiving of distressed debt

[Article 3.13, first paragraph, letter a](http://www.dutchtax.net/Dutch/Abon/TransR/IB2001R/3-13.htm), of the Personal Income Tax Act 2001 is not applicable if the taxpayer formed part of a tax consolidated group and if less than six years passed since leaving the consolidated group, except to the extent that the taxpayer shows it to be likely that the benefits meant there would not have belonged to its profits, if it did not form part of the tax consolidated group.

## Article 8a Exemption foreign dividend tax credit

The reduction of dividend withholding tax to be remitted according to [article 11, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div11.htm), of the Dividend withholding tax act 1965 does not form part of [the profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm).

## Article 8b, Paragraph 1 Arm's length principle

Where an entity participates directly or indirectly in the management, control or capital of another entity and conditions are made or imposed (transfer prices) between the two entities in their legal relations with each other which differ from those conditions which would be made between independent entities in the free market, [the profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm) of those entities are determined as if the latter conditions have been agreed.

## Article 8b, Paragraph 2 Horizontally related entities

The first paragraph is also applicable if the same person directly or indirectly participates in the management or control of, or the equity of, the one and the other entity.

## Article 8b, Paragraph 3 Required administration

The entities meant in the first and second paragraph include information in their administration from which the manner in which the transfer prices meant in that paragraph were formed can be demonstrated and from which it can be deduced whether, with regard to the transfer prices formed, it can be said that these are conditions which would have been agreed to between independent parties on the free market.

**Article 8c, Paragraph 1  
Conduit finance and royalty companies**

In determining [the profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm):

1. interest from loans which are legally or actually, directly or indirectly connected; or
2. royalties received from legal relationships which are legally or actually, directly or indirectly connected;

paid to and received from entities or individuals which form part of the group to which the taxpayer belongs are not taken into account if the taxpayer does not run any real overall risk with regard to the loans or legal relationships.

**Article 8c, Paragraph 2  
Running real risk**

A taxpayer is deemed to run real risk with regard to related loans if the equity which is fitting for covering the risks at least equals the lowest of the following amounts:

* 1 percent of the amount of the outstanding loans, or
* Euro 2,000,000.

The taxpayer should show it to be likely that this amount of equity is present to cover the relevant risks and that it would be lost if these risks were to materialise.

**Article 8c, Paragraph 3  
Arm's length compensation**

In spite of the first paragraph, a compensation calculated under [article 8b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08b.htm) is allocated to the profit of the taxpayer for the functions performed by the taxpayer with regard to the related loans or legal relationships.

**Article 8c, Paragraph 4  
Definition of group**

A group is understood to be: the taxpayer together with its related entities and individuals, as meant in article 10a, [fourth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm) paragraph in conjunction with the [sixth or fifth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm) paragraph.

## Article 9, Deductible expenses

### Paragraph 1, Deductible costs

In determining the profit, the following is also deductible:

1. shares in the profit granted to managers and other personnel with regard to employment performed in the enterprise;
2. shares in the profit which constitute the compensation for the provision of a concession or a license on a patent or of another similar service, such as transfers or purchases, provided that these shares in the profit are not due to incorporators, shareholders, members or participants as such;
3. shares in the profit of an insurance enterprise due to the insured according to their insurance;
4. costs of incorporation, as well as costs of changing the equity;
5. the share in the profit of a taxable limited partnership that is due to the fully liable partners as such;
6. for the enterprises of public legal persons meant in [article 2, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm), letter f: a reasonable interest rate to be determined by our Minister, calculated over the equity at the beginning of the year (*6% for 2006 - Dutchtax.net*);
7. distributions by a co-operative or a society on co-operative basis from the annual profits available therefore on the basis of the services rendered to or by members in that year - not including the provision of equity by members as such - up to the amount of that part of the profit of that year determined under the second paragraph, to the extent that these distributions are made to members who are individuals;
8. *(Please see* [*grandfathering*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/VIIIa.htm) *rules for employee stock option plans granted before 24 May 2006 - Dutchtax.net)*
9. (*...charitable intuitions - not dealt with on this site - Dutchtax.net*)
10. (*...charitable intuitions - not dealt with on this site - Dutchtax.net*)

\*Article 10a, seventh paragraph of the Wage Tax Act 1964  
For purposes of this law, a company related to the withholding agent means:

1. a company in which the withholding agent has an interest of at least one third;
2. a company which has an interest in the withholding agent of at least one third;
3. a company in which a third party has an interest of at least one third, whilst this third party also has an interest of at least one third in the withholding agent.

## Article 10, Non-deductible expenses

### Paragraph 1, Non deductible costs

In determining the profit, the following costs are not deductible:

1. direct or indirect distributions under any name or of any kind, not listed under [article 9](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/09.htm);
2. distributions not listed under [article 9](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/09.htm) and made under articles of association, letter of incorporation, or other similar document, unless the constitute costs of the enterprise by their very nature;
3. interest on the contributions to a co-operative or a society on a co-operative basis, interest on the contributions of a mutual insurance company or a society which acts as insurer or credit institution on a mutual basis and, in general, all payments for capital contributions by incorporators, shareholders, members or participants as such;
4. compensation for a loan as well as the fluctuation in value of the loan, if the loan is concluded under such conditions that it actually functions as equity of the taxpayer.
5. the corporate income tax, as well as taxes levied on the profit or elements of the profit outside the Netherlands, if a measure for the prevention of double taxation is applicable for the taxpayer or if the elements of the profit upon which tax is levied outside the Netherlands are not included in the taxable profit;
6. the dividend tax on profits received and the betting tax on proceeds from games of chance;
7. (*...individual substantial interest holders - not dealt with on this site - Dutchtax.net*);
8. (*...companies held by public law entities - not dealt with on this site - Dutchtax.net*);
9. (*...individual substantial interest holders - not dealt with on this site - Dutchtax.net*);
10. for a company with an equity whole or partly divided into shares: issue or granting of shares in that equity or in that of an entity related to that company, of profit sharing certificates in the company or in that of an entity related to it, as well as the right to acquire shares in that capital or profit sharing certificates in the company or or in that of an entity related to it or similar rights..

## Article 10a, Interest limitation rules

### Paragraph 1, Limitation on interest deductions

*Article 10a'1 is in fact replaced by article 10a'2 and letters b and c of 10a'2 have been swapped around. Hereafter the current text of article 10a'2 (with b and c swapped around) is shown together with the amendments proposed to that text - Dutchtax.net*

In determining the profit, interest payments - including costs and currency exchange results - concerning liabilities which are legally or actually, directly or indirectly due to a related entity or a related individual are also not deductible, to the extent that the liabilities legally or actually, directly or indirectly concern one of the following legal transactions:

1. a profit distribution or a redemption of paid up equity by the taxpayer or by an entity related to it which is subject to this tax, to an entity or an individual related to the taxpayer;
2. a contribution of equity by the taxpayer, a related entity which is subject to this tax or individual resident in the Netherlands, into an entity related to the taxpayer; or
3. the acquisition or extension in of an interest by the taxpayer, a related entity which is subject to this tax or individual resident in the Netherlands, in an entity which is an entity related to the taxpayer after this acquisition or extension.

### Paragraph 2, Definition "concerning" in 10a'1

*Article 10a'2 will become article 10a'1. See that article for the proposed amendments to the current text of article 10a'2.*

A legal transaction can also "concern" a liability as meant in the first paragraph if the liability is incurred after performing the legal transaction.

### Paragraph 3, Limitation to first paragraph

The first paragraph is not applicable if the taxpayer shows it to be likely that:

1. the liability and the related legal actions are primarily based on business reasons; or
2. a profit tax or an income tax is due on the interest in the hands of the one to whom the interest is legally or actually, directly or indirectly due, which tax is reasonable according to Dutch standards and there is no compensation of losses or other types of rights from years preceding the year in which the liability is incurred whereby the interest is effectively not subject to taxation under the mentioned standards, except in case it is likely that the liability is incurred in order to compensate losses or other rights which were formed in that year or that will be formed shortly. An income tax is reasonable by Dutch standards if this results in a levy of at least 10 percent over a taxable basis determined by Dutch standards; articles 12b and 12c are not applicable.

### Paragraph 4, Definition of related entities

For purposes of this article and articles [10](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), [10d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10d.htm), [13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), [13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm), [13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm), [13c](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13c.htm), [13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), [13e](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13e.htm), [13j](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13j.htm), [13k](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13k.htm), [14](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/14.htm), [14a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/14a.htm), [17a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17a.htm), [20](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm), [28](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/28.htm) and 33, the following entities are considered to be related to the taxpayer:

1. an entity in which the taxpayer holds an interest of at least one third;
2. an entity that holds at least a one third interest in the taxpayer;
3. an entity in which a third party holds an interest of at least one third whilst this third party also holds at least a one third interest in the taxpayer. Thereby an interest that is held by the spouse or a minor child of a natural person is attributed to that person. An unmarried adult who can qualify as a partner under Article 1.2 of the Personal Income Tax Act 2001 is also treated as a spouse. A child includes a child of a spouse as well as a foster child;
4. an entity that forms part of a tax consolidated group together with the taxpayer as meant in articles [15](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) and [15a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15a.htm), unless it concerns the application of article [10d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm).

At the request of a group of cooperating unrelated entities, our Minister can allow the tax inspector to treat the group as related entities if certain conditions set by the Minister are met. A notice of objection can be filed against the tax inspector's decision

### Paragraph 5, Related individuals

The following individuals are deemed to be related to the taxpayer:

1. for purposes of this article: an individual that holds an interest of at least one third in the taxpayer or in an entity related to the taxpayer;
2. the following individuals are deemed to be related to the taxpayer for purposes of [article 13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm) and [13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm) an individual that, whether or not together with his spouse, holds an interest of at least one third in the taxpayer or in an entity related to the taxpayer, as well as the spouse of this person and blood relatives or relatives by marriage in the direct line of descendants of this person. A foster child, a spouse of a foster child and a foster parent also qualify as blood relatives or relatives by marriage. An unmarried adult which can qualify as partner under article 1.2 of the Personal Income Tax Act 2001, is also treated as a spouse.

## Article 10b, Convertible loans

### Paragraph 1, Intercompany loans

If the taxpayer acquired a loan from an entity to which it is related as meant under [article 8b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08b.htm) which has no fixed redemption date or a redemption date which is more than 10 years after the time of concluding the loan, while legally or actually no compensation has been agreed to for the loan, or a compensation which is to an important degree lower than that which independent parties would have agreed to on the open market, then compensation for that loan and mutations in the value of that loan are not deductible when determining the profit. If the redemption date is moved to a later time, then for purposes of the first sentence, the loan is deemed to have had the new redemption date as of the time of granting the loan.

**Article 10c, Paragraph 1  
Exemption income on redeemed shares**

Proceeds from [temporary investments](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10c.htm) in redeemed shares and shares in a company which hold at least an interest of one third in the taxpayer are disregarded in determining the profit.

**Article 10c, Paragraph 2  
Temporary investments**

The redemption of shares and the purchase of shares in a related company as meant in article 10a, seventh paragraph of the Wage Tax Act 1964, in order to fulfill a liability under stock options to personnel in the own enterprise or the enterprise of the related company, is a temporary investment until three months after the expiration of the liability under the option. This paragraph is also applicable to those temporary investments which do not yet fall under the application of the first paragraph.

\*Article 10a, seventh paragraph of the Wage Tax Act 1964  
For purposes of this law, a company related to the withholding agent means:

1. a company in which the withholding agent has an interest of at least one third;
2. a company which has an interest in the withholding agent of at least one third;
3. a company in which a third party has an interest of at least one third, whilst this third party also has an interest of at least one third in the withholding agent.

**Article 10c, Paragraph 3  
Definition liability under stock options**

For purposes of this article, a liability under a stock option means a liability which forms the counterpart of a right to acquire one or more shares or similar instruments or of a similar right.

**Article 10c, Paragraph 4  
Definition of a share**

For purposes of this article, a share as meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10c.htm) equals the right to acquire such a share as well as a right of which the value directly or indirectly corresponds to the changes in value of such a share.

## Article 10d, Thin capitalisation

### Paragraph 1, Limitation on interest deduction

If a taxpayer has excess debt in one year, then that part of the interest from loans - including costs of loans - which is equal to the ratio between the excess debt and the average debt is not deductible when determining the profit of that year.

### Paragraph 2, Exception to limitation

Thefirst paragraph is not applicable if the taxpayer is not related to other entities in a group as meant in article 24b of Book 2 of the Civil Code.

### Paragraph 3,Maximum limitation

The amount of interest that is not deductible under the first paragraph can not be higher than the amount of interest concerning loans which are directly or indirectly due to entities related to the taxpayer, less the amount of interest on loans granted to such entities.

### Paragraph 4, Definition excess debt

There is excess debt as meant in the first paragraph to the extent that the average debt of the taxpayer is three times higher than the average equity and this excess is higher than Euro 500,000. For purposes of the first paragraph in combination with the first sentence, tax deductible provisions are not treated as equity and debt only means the total of the outstanding loans to be paid less the outstanding receivables.

### Paragraph 5, Opt for group ratio's

If the taxpayer so chooses in its tax return, then contrary to the fourth paragraph, the excess debt is determined as the amount by which the average debt of the taxpayer exceeds the average equity multiplied by a factor equalling the equity ratio of the group. For purposes of the first paragraph together with the first sentence, the debt and equity are determined on the basis of the annual accounts, as prepared under Title 9, Book 2 of the Civil Code, or under similar foreign legal measures.

If the assets and liabilities of a joint venture or a subsidiary as meant under [article 15](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) constitute part of the equity of the taxpayer, then, for purposes of the second sentence, the debt and equity is determined on the basis of consolidated balance sheet in which the assets and liabilities of that joint venture or that subsidiary are listed separately.

### Paragraph 6, Defining factor to use

The factor meant in the fifth paragraph is equal to the average debt divided by the average equity according to the consolidated annual accounts of the group, as meant in article 24b, Book 2 of the Civil Code or under a similar foreign legal measure, of which the taxpayer forms a part. If the taxpayer forms part of more than one group, the group with the highest balance total is used as measure.

### Paragraph 7, Definition of loan

For purposes of this article, a loan means a receivable or liability stemming from a loan agreement or a similar agreement and by which a liability for which the interest would be considered when determining the profit, except under the application of this article.

\**(Please see* [*grandfathering*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/VIIIb.htm) *rules for loans granted before 1 January 2007 - Dutchtax.net)*

### Paragraph 8, Definition of averages

The averages mentioned in this article are determined on the basis of the amounts at the beginning and end of the year, whereby the average equity is at least equal to Euro 1.

### Paragraph 9, Prevention of double taxation

The exemption from taxation under measures for the prevention of double taxation is calculated without application of the second, third and fifth paragraphs.

### Paragraph 10, Limitation prevention double taxation

When determining the exemption under measures for the prevention of double taxation, the total amount of interest which is not deductible under the first paragraph, is not taken into account to a higher amount than the amount of interest which is not deducted from the taxable profit under that paragraph.

### Paragraph 11, Further measures by decree

Further measures with regard to the ninth and tenth paragraphs can be implement by general decree of government.

# Article 12a, Trading companies with reinvestment reserves

### First paragraph, Substantial change of ownership

If it is likely that there has been an important change in the ultimate interest in the taxpayer at any time, then, contrary to article 3.54 of the Personal Income Tax Act 2001, the following rules apply:

1. a reinvestment reserve present at the time of the change is added to the profit directly before the change;
2. after the change, the reinvestment reserve can only be formed in connection with disposed assets of which the decision to dispose was taken after the change.

The first sentence is not applicable if the taxpayer can show it to be likely that less than half of its assets consisted of investments in the last three months preceding the change.

### Paragraph 2, Exempt changes in ultimate interest

For purposes of the first paragraph a change in the ultimate interest in the taxpayer is ignored to the extent that:

1. the change stems from a transfer under inheritance law or matrimonial property law, or
2. the change concerns the extension of the ultimate interest of an individual or legal person that already had one third of the ultimate interest in the taxpayer at the beginning of the year in which the reinvestment reserve was formed.

### Paragraph 3, Exempt changes in ultimate interest

The first paragraph is not applicable if the taxpayer does not know or could not have known that the ultimate interest in the taxpayer has been changed substantially, provided that the change does not exceed what can be seen as being normal.

### Paragraph 4, Definition of investments

For purposes of this article:

1. investments include liquid assets as well as immovable property which is destined to be made available directly or indirectly to others than entities related to the taxpayer as meant in [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), fourth paragraph;
2. in case of a taxpayer running an enterprise of which the activities necessarily involves the investment of funds, other than equity, which is provided to it by entities or individuals which are not related to it as meant under article 10a, fourth or fifth paragraphs, the investments which are directly connected to such funds are not treated as investments.

# Section 2.3 Royalty box

## Article 12b, Royalty box

### First paragraph, Introduction

If the taxpayer produced an immaterial asset with regard to which he has been granted a patent and if he opts for this in a tax return over a year, then as of the beginning of that year the advantages from that asset are only taken into account for 10/H part, bearing in mind the threshold of the fifth paragraph and upto the maximum indicated in the sixth paragraph. H resembles the percentage of the highest rate, meant in Article 22, applicable to the year in which the benefit is received.

### Paragraph 2, Limitation application of this article

This article is only applicable with regard to immaterial assets of which the expected benefits are to an important degree derived from patents granted to the taxpayer.

### Paragraph 3, Extension to Plant Variety Rights ("*kwekersrechten*")

For purposes of this article, patents include plant variety rights.

### Paragraph 4, Limitation scope of article

This article is not applicable with regard to trade marks, logos, and similar assets, produced by the taxpayer.

### Paragraph 5, Threshold

The first paragraph is applicable to the extent that the total of the benefits received from immaterial assets in that year exceeds the threshold. The threshold is equal to the total amount of the production costs still to be recaptured under the seventh paragraph at the end of the previous year, plus the production costs of the assets for which the taxpayer has opted for application of this article during the year.

### Paragraph 6, Limitation first paragraph

The first paragraph is only applicable to a total amount which equals the total of the remaining space at the end of the previous year as meant in the eighth paragraph plus four times the amount the production costs of the immaterial assets for which the taxpayer chose during the year to apply this article.

### Paragraph 7 , Role tax inspector, determining production costs

Together with determining the assessment for the year, the tax inspector determines, in a decision against which a notice of objection can be filed, the total of the production costs which are:

1. the amount which has been determined on the basis of this paragraph at the end of the previous year, if it has been determined, plus
2. the production costs of the assets for which the taxpayer have chosen the application of this article during the year, less
3. the benefits received during the year which do not exceed the threshold of the year.

### Paragraph 8 , Role tax inspector, determining remaining space

Together with determining the assessment for the year, the tax inspector determines, in a decision against which a notice of objection can be filed, the remaining space at year end which is:

1. the amount which has been determined on the basis of this paragraph at the end of the previous year, if it has been determined, plus
2. four times the production costs of the assets for which the taxpayer have chosen the application of this article during the year, less
3. the benefits received during the year which have only been taken into account in part.

### Paragraph 7, Review by tax inspector

If any fact leads the tax inspector to believe that the amount under the sixth paragraph has been set too high, he can redetermine the decision in that paragraph in a decision against which a notice of objection can be filed. A fact which the inspector was aware or reasonably could have been aware can not justify a review, except in cases where the taxpayer had not been in good faith. Article 16, third paragraph, of the General Tax Act concerning is also applicable. Legal remedies against a decision in the sixth paragraph can only concern the increase under letter b of that paragraph and a reduction under letter c of that paragraph.

### Paragraph 9, Review of tax inspector's decisions

If any fact raises the suspicion that the amount determined under the seventh or eighth paragraph has been set too high or too low, then the tax inspector can review that assessment through an assessment against which a notice of appeal can be filed. A fact know to the inspector or which reasonably could have been known to the inspector, can not constitute ground for a review, except in cases where the taxpayer was in bad faith with regard to this fact. Article 16, third and fourth paragraphs, of the General Tax Act is also applicable. The legal instruments against a decision meant under the seventh or eighth paragraph can only concern on the increase under letter b or the reduction under letter c of those paragraphs.

### Paragraph 10, Royal Decree

Further measures can be introduced by or via royal decree, including further conditions for the application of this article. Measures can also be introduced regarding which part of the tax levied by another state on the benefits under this article, can be set off against corporate income tax under measures for the prevention of double taxation.

*See also* [*article X*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/X.htm) *of bill nr. 30 572, disqualifying intangible assets belonging to the enterprise of the taxpayer before 1 January 2007 and* [*article XI*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/XI.htm) *regarding the effeciency and practical effects of this measure - Dutchtax.net*

# Section 2.4 Group interest box

## Article 12c, Interest box

### Paragraph 1, Introduction

Upon the joint request of the taxpayer and all entities related to it in the sense of the fifth paragraph which are subject to the corporate income tax, the group interest total as meant in the third paragraph are taken into account for 5/H parts with it and the those related entities in determining the taxable profit. H represents the highest rate meant in [Article 22](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/22.htm) applicable in the year of the group interest total.

### Paragraph 2, Applicable period

The first paragraph is applicable as of the beginning of the year in which the request meant in that paragraph has been made and terminates as of the beginning of the year in which there is no longer a joint request by the taxpayer and all entities related to it as meant in the fifth paragraph which are subject to corporate income tax. The application of the first paragraph can terminate at the request of the taxpayer after it has been applicable to it for at least three years.

### Paragraph 3, Definition Positive group interest total

The group interest total of the taxpayer during a year is the amount of interest which is received as income from loans extended to related entities as meant in the fifth paragraph, less the amount of interest deducted from the profit during the year with regard to loans which are directly or indirectly due to related entities as meant under the fifth paragraph. If the amount of interest contributing to the profit exceeds the amount of interest deducted from the profit, this is a **positive group interest total**.

### Paragraph 4, Limitation basis low tax rate

A positive group interest total during a year only qualifies for purpose of the first paragraph to the extent that this total does not exceed an amount equal the percentage indicated hereafter of the average equity of that year determined at the beginning and end of the year, where that average at least equals nil. The percentage is the percentage of late payment interest calculated under article 30f, sixth paragraph of the General Tax Act, applicable for the quarter in which the year commences.

### Paragraph 5, Limitation basis low tax rate

For purposes of this article, an entity related to the taxpayer means:

1. an entity in which the taxpayer holds an interest of more than 50 percent;
2. an entity which holds an interest of more than 50 percent in the taxpayer;
3. an entity in which a third party holds an interest of more than percent, whilst this third party also holds an interest of more than 50 percent in the taxpayer.

An interest which is held by the spouse or a minor of an individual is allocated to that individual. An unmarried adult who can qualify as a partner under Article 1.2 of the Personal Income Tax Act 2001 is also treated as a spouse. A child includes a child of a spouse as well as a foster child.

### Paragraph 6, Definitions

For purposes of this Article:

1. a loan means a receivable or liability stemming from a loan agreement or similar agreement;
2. interest regarding loans extended to a related entity meant under the fifth paragraph also includes the proceeds of short term investments to the extent the taxpayer shows it to be likely that these are held for financing the acquisition of participations;
3. loans extended to a related entity meant under the fifth paragraph does not include loans which directly or indirectly concern the disposal of assets to a relate entity as meant under the fifth paragraph, unless the taxpayer shows it to be likely that the loan and the disposal are jointly primarily based on business reasons;
4. interest regarding loans extended to a related entity meant under the fifth paragraph or interest concerning loans directly or indirectly due to related entities meant under that paragraph also includes the costs with regard to those loans;
5. loans directly or indirectly due to related entities as meant under the fifth paragraph include a loan due to an unrelated entity or individual, if the loan proceeds have been used through an equity contribution to generate income covered by the first paragraph, unless the taxpayer shows it to be likely that the loan and the disposal are jointly primarily based on business reasons.

### Paragraph 7, Treating unrelated entities as related

At the request of a group of cooperating unrelated entities, our Minister can allow the tax inspector to treat the group as related entities if certain conditions set by the Minister are met. A notice of objection can be filed against the tax inspector's decision.

### Paragraph 8, Treating related entities as unrelated

At the request of a group of cooperating related entities, our Minister can allow the tax inspector to treat entities belonging to an independent part of the group as unrelated entities vis a vis the entities forming part of another independent part of the group for purposes of this article.

### Paragraph 9, Royal Decree

Further measures can be introduced by or via royal decree, including further conditions for the application of this article. Measures can also be introduced regarding which part of the tax levied by another state on the benefits under this article, can be set off against corporate income tax under measures for the prevention of double taxation.

# Section 2.5 Participations

## Article 13, Participation exemption - Introduction

### Paragraph 1, General introduction

In determining the profit, the proceeds from a participation, including the acquisition or the disposal costs of a participation, are ignored (participation exemption).

*The next two sentences become article 13'6 and the final sentence of article 13'7 - Dutchtax.net*

### Paragraph 2, Conditions for participation exemption

There is a participation if the taxpayer:

1. is shareholder of at least 5 percent of the par value of the paid up share capital of a company of which the equity is wholly or partly divided into shares;
2. holds at least 5 percent of the available certificates of participation of a mutual investment fund;
3. has an interest as limited partner (*commanditaire vennoot*) in a taxable limited partnership (*open commanditaire vennootschap*) and thereby participates for at least 5 percent in the benefits achieved by that partnership.

### Paragraph 3, EU participations - voting rights

If a taxpayer holds shares in a company which is resident in a member state of the European Union with which the Netherlands concluded a double tax treaty which provides for a reduction of taxation on dividends on the basis of the number of votes, then, contrary to the second paragraph, top and letter a, there is also a participation of the interest of the taxpayer represents at least 5 percent of the voting rights.

See [grandfathering](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/VIIIc.htm) for certain participations not qualifying for the participation exemption on or after 1 January 2007, when this article was amended, but which have qualified before - Dutchtax.net

### Paragraph 4,Extending definition of shares

If a taxpayer has a participation in an entity as meant under the second or third paragraph, then the participation includes:

1. profit sharing certificates of that entity;
2. receivables from that entity as meant in [article 10](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), first paragraph, letter d

held by the taxpayer.

### Paragraph 5, Extending definition of participation

There is also a participation if the taxpayer:

1. is a shareholder of a company, is participating in a mutual investment fund, or participates in a taxable limited partnership (*open commanditaire vennootschap*), while this company, or mutual investment fund or limited partnership respectively, is related to the taxpayer under article 10a, fourth paragraph, or in which an entity related to the taxpayer has a participation as meant in the second or third paragraph;
2. has a receivable from an entity as meant in article 10, first paragraph, letter d, while the taxpayer does not, but an entity related to the taxpayer does have a participation as meant in the second or third paragraph, or that entity is related to the taxpayer as meant under article 10a, fourth paragraph;
3. holds a profit sharing certificate of an entity while the taxpayer does not, but an entity related to the taxpayer does have a participation as meant in the second or third paragraph, or that entity is related to the taxpayer as meant under article 10a, fourth paragraph.

### Paragraph 6, Extending definition of participation proceeds

If a participation or a part thereof is disposed of or acquired against a price which in whole or in part consists of a right to one or more period payments of which the number or the size is not yet determined in the year of the acquisition or the disposal, then the fluctuations in value of that right forms part of the proceeds from the participation for the disposer and the acquirer. The first sentence is also applicable to adjustments in the price against which the disposal or acquisition took place; the sentence is furthermore applicable to the holder of a participation from which the company in which the participation is held, redeemed shares.

### Paragraph 7, Extending definition of participation

If the tax inspector determines in advance, and if necessary under further conditions, in a decision against which a notice of objection can be filed that a legal transaction concerns the hedging of currency exchange risks related to a participation, then a benefit from the relevant legal transaction is a benefit from the participation.

### Paragraph 8, Fiscal mutual investment funds

The participation exemption is not applicable for a taxpayer which is treated as a [fiscal investment fund](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/28.htm).

### Paragraph 9, Excluding low taxed participations

The participation exemption is not applicable to benefits from a low taxed portfolio participation, or on the costs concerning the acquisition or disposal of that participation.

### Paragraph 10, Excluding low taxed participations

There is a low taxed portfolio participation if the assets of the entity in which the taxpayer holds a participation, largely, directly or indirectly, consist of free investments, that entity is not subject to a profit tax which results in a levy at a rate of at least 10 percent over a taxable profit calculated by Dutch standards, in which articles 12b and 12c are not applied, and the participation is not a real estate investment company. Free investments are other investments than those reasonably required by the business activities of the entity holding the investments.

### Paragraph 11, Free investments under paragraph 10

Free investments as used in paragraph 10 includes assets which are used for activities which mostly consist of direct or indirect financing of the taxpayer or of entities related to the taxpayer, or assets of the taxpayer or entities related to the taxpayer, including the making available of assets for use or a right of use of assets, unless it is likely that the activities of the entity in which the taxpayer holds a participation can be treated as active financing activities under rules to be determined by ministerial decree.

### Paragraph 12, Investments under paragraph 10

For purposes of the tenth paragraph, assets which, directly or indirectly, consist of interests in entities, constitute a portfolio investment in any case, if they consist of:

1. interests of less than five percent of the paid up par value of the issued and outstanding share capital of a company with an equity wholly or partly divided into shares;
2. interests of less than five percent of the certificates of participations in a mutual investment fund; the number of other than single certificates of participation are converted to the corresponding amount of single certificates;
3. a participation as limited partner (*commanditaire vennoot*) in a taxable limited partnership, which participation shares for less than five percent in the profit realised by that company.

### Paragraph 13, Real estate participations

A participation is a real estate participation if the assets of the entity in which teh taxpyaer holds a participation, on a consolidated basis, almost exclusively consist of real estate which is not directly or indirectly held by an entity treated as a mutual investment fund. Only interests of at least five percent are taken into consideration for the consolidation.

### Paragraph 14, Grandfathering less than 5% participations

If an interest that the taxpayer has held for more than one year and for which it continiously qualified for the participation exemption during that time, is not treated as a participation anymore because the size of the interest does not satisfy the condition of at least five percent, as meant in the second and third paragraph, then during a period of thre more years, the participation exemption remains applicable with regard to benefits from that interest and costs regarding the acquisition or disposal of that interest. The sixth, seventh and ninth paragraphs are also applicable.

## Article 13a, Participations not subject to tax

### Paragraph 1, 25% Passive porfolio investments

The taxpayer which alone or together with a related entity has an interest of 25 percent or more in an entity values that interest at market value if

1. the assets of that entity consist exclusively or almost exclusively, directly or indirectly, of free investments, also including assets used for financing activities as meant in [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), eleventh and twelfth paragraphs, and which can not be deemed to be active financing activities.
2. which is not subject to a profit tax resulting in a levy at a rate of at least ten percent on a taxable profit determined by Dutch standards.

When determining the profit, losses and costs relating to income and gains from an asset which is not a participation, because the conditions of [article 13, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), second or third sentence are not met, are only deductible to the extent that taxable income and gains are derived from that asset.

### Paragraph 2, Book value when article no longer applies

*Article 13a new is an amended version of article 28b which is abolished by this bill. Hereafter, the original article 28b'2 and the proposed amendments are reflected - Dutchtax.net*  
As of the date when the first paragraph no longer applies to the taxpayer, the historic cost price of the interest in the entity is set at the book value of the interest at the time directly preceding the moment when the first paragraph is no longer applicable, in order to determine the profit.

### Paragraph 3, Determination of 25% interest

To determine the size of the interest meant in the first paragraph, shares, membership rights, certificates of participation and participations as a limited partner (*commanditaire vennoot*) in a taxable limited partnership (*open commanditaire vennootschap*) which do not share in the reserves of the entity upon liquidation of the entity are ignored.

## Article 13b, Written down receivables

### Paragraph 1, Writing down and transferring receivables on participations

If a receivable on an entity (debtor) in which the taxpayer or an entity related to it has a participation has been written down against profits taxable in the Netherlands of the taxpayer or an entity related to it, and if the receivable is disposed of or is transferred by the taxpayer as described in the second paragraph, then an amount equal to the amount written down is allocated to the profit of the taxpayer in connection with the disposal or the transfer, to the extent that an amount has not already been allocated to the profit of the taxpayer or an entity related to it on the basis of this article with regard to the receivable.

### Paragraph 2, Disposal or transfer of receivable

A disposal or transfer as meant in the first paragraph takes place if the written down receivable:

1. is disposed of to an entity or individual related to the taxpayer;
2. is transferred to the assets of an enterprise outside the Netherlands, or to the assets of part of an enterprise outside the Netherlands the profits of which are sheltered under a measure for the prevention of double taxation.

### Paragraph 3, Disposal of the enterprise of the debtor

The first paragraph is also applicable if the enterprise or part of the enterprise of the debtor is disposed of to an entity or individual related to the taxpayer.

### Paragraph 4, Presumption of sale to a related foreign party

For purposes of the second paragraph, letter a and the third paragraph in case of a disposal to an entity resident outside the Netherlands or an individual resident outside the Netherlands that entity or individual is deemed to be related to the taxpayer, unless the taxpayer shows the opposite to be likely.

### Paragraph 5, Extended application art. 13b

This article is equally applicable if the taxpayer or an entity related to it holds an indirect interest via a participation of five percent or more in the debtor.

## Article 13ba, Converting debt into equity

### Paragraph 1, Conversion of written down receivables

If a receivable on an entity (debtor) in which the taxpayer or an entity related to it has a participation has been written down against profits taxable in the Netherlands of the taxpayer or a related entity or the income from activities of an individual related to it, then an amount equal to the write down is added to the profit of the taxpayer, if a situation as described in the second paragraph has taken place.  
The amount meant in the first sentence is simultaneously added to a provision against the profit (revaluation reserve).

### Paragraph 2, Definition of conversion of written down receivables

A situation as mentioned in the first paragraph takes place if:

1. the debt corresponding to the receivable is fulfilled by the debtor through the issue of shares, profit sharing certificates, membership rights or certificates of participation (conversion);
2. the debt corresponding to the receivable comes to function as equity of the debtor, without the debtor issuing shares and the receivable is thereby allocated to a participation of the taxpayer; or
3. the receivable is waived in whole or in part.

### Paragraph 3, Limitation re. art. 13b

The first paragraph is not applicable to the extent that an amount has already been added to the profit of the taxpayer or an entity related to it under the first paragraph or [article 13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm) with regard to the receivable.

### Paragraph 4, Limitation of taxation if debtor is taxable

The first paragraph is not applicable with regard to paragraph 2, letter c, to the extent that the circumstances mentioned in that paragraph lead to an income tax for the debtor in the Netherlands or results in a benefit which is subject to an income tax with the debtor which results in a levy of at least 10 percent over a taxable basis determined by Dutch standards.

### Paragraph 5, Revaluation reserve

The revaluation reserve is released to the profit to the extent that the difference between the current fair market value of the participation and the fair market value of the participation at the time of the circumstance meant in the first paragraph exceeds the amount by which the revaluation reserve has been released since. For purposes of the first sentence, the sixth paragraph and tenth paragraph, letter b, the participations held by an entity related to the taxpayer in the debtor are allocated to the taxpayer, unless the related entity also has a revaluation reserve with regard to the debtor.

### Paragraph 6, Revaluation reserve

If the participation has been sold in whole or in part to an entity unrelated to the taxpayer or an individual unrelated to the taxpayer after the circumstances mentioned in the first paragraph, then, for purposes of the fifth paragraph, the current fair market value of the participation is increased by the proceeds from the disposed part including the changes in value meant under [article 13, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), first sentence and the price adjustments meant in the second sentence of that paragraph. If, after the circumstances meant in the first paragraph, the participation is extended by shares, profit sharing certificates, membership rights, certificates of participation or receivables received from the debtor itself or from an entity unrelated to the taxpayer or individual unrelated to the taxpayer, then, for purposes of the fifth paragraph, the current fair market value of the participation is decreased by the historic cost price of the extension as meant under [article 13d, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm). An extension of the participation includes the contribution of equity without the issue of shares, profit sharing certificates, membership rights or certificates of participation.

### Paragraph 7, Release revaluation reserve

If the revaluation reserved is formed through a circumstance as meant under the second paragraph, letter a, then the reserve is released without adding it to the profit up to the amount of the income from the issue of shares, profit sharing rights, rights of participation or certificates of participation, to which the participation exemption did not apply. The first sentence is not applicable to the extent that the participation exemption is not applicable under article [13c](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13c.htm).

### Paragraph 8, Final release revaluation reserve

If circumstances, other than those meant in the tenth paragraph, result in neither the taxpayer, nor an entity related to the taxpayer, still having a participation in the debtor, then, the fifth paragraph is applied for the last time directly before those circumstances take place. If there is still an amount of revaluation reserve left thereafter, it is released without being added to the profit. Thereafter [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), sixth paragraph, are not applicable with regard to that participation for the taxpayer or the entity related to it, to the extent that positive benefits are concerned up to the remaining amount meant in the second sentence, and to the extent that negative benefits are concerned up to the amount of the original revaluation reserve.

### Paragraph 9, Limitation paragraph 8

Contrary to the eighth paragraph, second sentence, the remainder of the revaluation reserve is added to the profit if the circumstances are primarily aimed at the realisation of a release of the revaluation reserve which is not added to the profit. Unless the opposite is shown to be likely, circumstances are deemed to be primarily aimed at the realisation of a release of the revaluation reserve which is not added to the profit, if the taxpayer or an entity related to it acquires a participation in the debtor again within three years after those circumstances.

### Paragraph 10, Compulsory release revaluation reserve

If a circumstance as indicated in the next sentence occurs, the revaluation reserve is released to the profit directly before that. A circumstance as mentioned in the first sentence is:

1. the enterprise or a part of the enterprise of the debtor is sold to the taxpayer or an individual or entity related to the taxpayer;
2. the participation is sold in whole or in part to an individual related to the taxpayer;
3. the debtor becomes a subsidiary in a tax consolidated group under [article 15](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm).

When selling part of a participation to an individual related to the taxpayer, then, contrary to the first sentence, the release of the revaluation reserve to the profit is limited to that part of the reserve which is proportionate to the part of the participation being disposed of.

### Paragraph 11, Scope of this article

This article is also applicable if the taxpayer acquires a participation in the debtor under the circumstances described in the second paragraph.

### Paragraph 12, Indirect interests

If the taxpayer or an entity related to it has an indirect interest of 5 percent or more in the debtor via a participation, this article is also applicable. The fifth, sixth, eighth, ninth and tenth paragraphs are applicable to the participation or participations through which the indirect interest is held.

### Paragraph 13, Receivables

If the taxpayer has a receivable on an entity, and if the receivable is written down against profit taxable in the Netherlands of the taxpayer or an entity related to it or against the income from an activity of a related individual, then this article is also applicable under circumstances as meant in the next sentence. Circumstances as meant in the first sentence include a situation where the taxpayer or an entity related to it acquires a direct participation in the debtor or acquires an interest of 5 percent or more in the debtor via a participation in connection with the disposal of the receivable to a unrelated entity or person. In the latter case, the fifth, sixth, eighth, ninth and tenth paragraphs are applicable with regard to the participation or participations through which the indirect interest is held. Furthermore, the revaluation reserve is released without being added to the profit to the amount of the increased value of the receivable, to the extent that the taxpayer shows it to be likely that this increase is taxable in the Netherlands or is subject to an income tax which results in a levy of at least 10 percent over a taxable basis determined by Dutch standards in the hands of the acquiror.

### Paragraph 14, Limitation article 13ba

This is article is not applicable if the participation meant under the first paragraph is a low taxed portfolio investment.

**Article 13c, Paragraph 1  
Converting a p.e. into a participation**

The participation exemption is not applicable to positive income and gains from a participation in an entity running an enterprise that was previously run as a foreign enterprise of the taxpayer or of an entity related to it while the profits from that foreign enterprise were sheltered by a measure for the prevention of double taxation; the participation exemption does not apply up to the amount of the losses from the permanent establishment which has been set off against taxable profits in the Netherlands during the years that the foreign enterprise was run by the taxpayer or the related entity, to the extent that these losses have not yet been set off against positive foreign income of the taxpayer or the related entity in accordance with article 38, first paragraph of the General Law on Taxation.

**Article 13c, Paragraph 2  
Definition of conversion of a p.e.**

If a circumstance as indicated in the next sentence takes place within any year, the taxpayer is deemed to have received income and gains from the participation meant in the first paragraph in that year up to the amount of the losses meant in that paragraph to the extent that amount exceeds the previous income and gains taken into account under that paragraph. A circumstance as mentioned in the first sentence is:

1. the participation is sold in whole or in part to an entity resident outside the Netherlands;
2. the enterprise or part of the enterprise of the entity in which the participation is held is sold to another entity;
3. the taxpayer's right in the profits which belongs to it on the basis of its participation is reduced because an entity resident outside the Netherlands acquires or extends an interest in the profit;
4. the participation becomes a part of the assets of an enterprise of the taxpayer outside the Netherlands, the profits of which are sheltered by a measure for the prevention of double taxation.

The first sentence is not applicable with regard to the circumstances mentioned under a, b, or c if the taxpayer shows it to be likely that the disposal took place to an unrelated entity or that an unrelated entity acquired a share in the profits.

**Article 13c, Paragraph 3  
Application of second paragraph for tax consolidated groups**

The second paragraph is also applicable if the participation joins a tax consolidated group as meant in [article 15, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) as a subsidiary. In that case the benefits meant in the second paragraph, first sentence, are assumed to have been enjoyed at the time immediately preceding the time of joining of the subsidiary as meant under [article 15aa, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), letter b.

The first sentence is not applicable to the extent that positive income and gains have been taken into account in connection with the participation under [article 15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm), to which the participation exemption did not apply.

## Article 13d, Losses from liquidation

### Paragraph 1, Introduction

The participation exemption is not applicable to a loss from a participation which is realsed after the entity in which the taxpayer participates is liquidated (losses from liquidation).

### Paragraph 2, Amount of losses from liquidation

The loss from liquidation is set at the difference between the historic cost price of the participation and the total liquidation proceeds received. The historic cost price of the participation includes:

1. the amounts which have been allocated to the profit under [article 13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm) or [article 13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm), fifth, ninth or tenth paragraph, with regard to receivables from that participation;
2. the positive income and gains from the participation which were not exempt under the participation exemption due to the application of [article 13c](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13c.htm);
3. the fluctuations in value of a liability connected to the participation as meant in article 13, sixth paragraph, first sentence, as well as changes to the price against which the participation is acquired as meant in article 13, sixth paragraph, second sentence.

If, under [article 13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm), amounts have been added to the profit of an entity which does not hold the participation itself, then, for purposes of the first sentence, these amounts are taken into account with the entities related to that entity which do hold the participation proportionate to their shareholdings. When disposing of part of a participation, the historic cost price of that participation is allocated for a pro rated part to the assets of a like kind which are not disposed of and continue to constitute a participation.(*Based on the parliamentary history of the originally proposed law, the previous sentence does not apply with regard to decisions already issued by tax inspectors on the basis of article 13d'10 before this measure entered into force - Dutchtax.net*)

### Paragraph 3, Liquidation proceeds received

The total liquidation proceeds received at least include the positive income and gains to which the participation exemption applied and received from a participation in:

1. the year in which the liquidated entity has completely or almost completely terminated its enterprise, the five preceding years and the following years;
2. the sixth to tenth year preceding the year in which the liquidated entity has completely or almost completely terminated its enterprise if the entity realised losses in that particular year according to its annual accounts which have been prepared on the basis of Chapter 9 of Book 2 of the Civil Code, or in case of a participation in an entity resident outside the Netherlands, on the basis of similar foreign laws.

### Paragraph 4, Liquidation of an intermediate holding company

If a participation directly or indirectly formed part of the assets of a liquidated entity, which forms part of the liquidation proceeds or which has been disposed of and which has decreased in value since the acquisition of the participation in the liquidated entity, then the loss from liquidation is only taken into account to the extent that this loss exceeds that decrease in value.  
If another participation, which has since then increased in value, directly or indirectly formed part of the assets of the liquidated entity, the previous sentence is only applicable to the extent that such a decrease exceeds this increase.  
Increases and decreases in value which manifest themselves both directly and indirectly are only taken into account to the extent they are manifested directly.  
If a participation directly or indirectly formed part of the assets of a liquidated entity and if that participation was acquired from a related entity, then the loss from liquidation which can be allocated to a decrease in value of that participation is only taken into account to the extent that this part of the loss does not exceed the loss from liquidation which has been taken into account with the liquidated entity in connection with that participation.

### Paragraph 5, Liquidation of an intermediate holding company with losses from liquidation

If a participation directly or indirectly formed part of the assets of a liquidated entity which participation has already been liquidated and if no loss from liquidation of that participation was taken into account due to the ninth paragraph, or if no loss from liquidation would have been taken into account if that participation would have been held by an entity resident in the Netherlands, then the loss from liquidation is only taken into account to the extent that it exceeds the loss from liquidation in that participation.

### Paragraph 6, Historic cost price of participations acquired from related entities

If a participation is acquired from a related entity, the historic cost price at the time of the acquisition can not be higher than historic cost price applying to that related entity. If such a participation is acquired in connection with the liquidation of the related entity, and if the fourth paragraph, first sentence was applied with regard to that participation, the historic cost price is increased by the decrease of value referred to therein up to the historic cost price of the participation for the related entity.  
If a contribution to the share capital or certificates of participation consists of shares or certificates of participation in a related entity, the historic cost price at the time of the contribution can not be higher than the historic cost price of the contributed shares or certificates of participation.

### Paragraph 7, Historic cost price in a share for share exchange

If shares or certificates of participation are acquired from a related entity resident outside the Netherlands and if these shares or certificates of participation form part of a participation at the time of the exchange or any time thereafter, then the historic cost price can not be higher than the historic cost price applying to the counter party. The first sentence is not applicable to the extent that the taxpayer shows it to be likely that the amount of the value increase of the shares or certificates of participation after the time of the acquisition thereof by the entity of which the taxpayer acquires the shares or certificates of participation, a tax has been levied on the profit which results in a levy at a rate of at least ten percent over a taxable basis determined by Dutch standards.

### Paragraph 8, Historic cost price in case of tax consolidated group

If the participation is a subsidiary in a tax consolidated group with the taxpayer as meant in [article 15, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm), then, at the time that the subsidiary is deconsolidated, the historic cost price paid by the taxpayer for the subsidiary is set at the equity of the subsidiary for purposes of levying corporate income tax thereafter, after it has been reduced by the provisions allowed for tax purposes.

### Paragraph 9, Time at which losses from liquidation are allowed

The loss from liquidation is only taken into account at the time that the settlement of the liquidation is completed, provided that:

1. there is no form of compensation available for the losses which the liquidated entity has not set off against profits, except for losses on the basis of this article or [article 13e](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13e.htm), relating to:
   1. the taxpayer, or an entity related it;
   2. the entity or person that continues the enterprise in whole or in part or an entity related to that entity;
2. the enterprise of the liquidated entity:
   1. is fully terminated, or;
   2. is continued in whole or in part exclusively by another person than the taxpayer or an entity related to it;
3. the extent of the losses from liquidation is determined and it is also apparent that the conditions under a.1 and b. have been fulfilled.

### Paragraph 10, Fixing historic cost price by inspector's decision

The historic cost price paid for a participation in one year is determined by the tax inspector upon a request filed with the tax return; a notice of objection can be filed against the tax inspector's decision. If the historic cost price has been determined incorrectly, the tax inspector may review his decision in a decision against which a notice of objection can be filed. The authority to review the determined cost price terminates five years after the decision has been made.

### Paragraph 11, Continuation of enterprise within the group

If the enterprise of the liquidated entity is continued in whole or in part by the taxpayer or an entity related to it, then, at the request of the taxpayer, the loss from liquidation is determined by the tax inspector in a decision against which a notice of objection can be filed. Article 20b, third paragraph is applicable.

## Article 13e, Paragraph 1 Liquidation loss at termination enterprise

If the enterprise of the liquidated entity is continued in whole or in part by the taxpayer, then the loss from liquidation calculated according to [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm) is taken into account as soon as the enterprise is completely terminated by the taxpayer or is continued exclusively, in whole or in part, by another entity than the taxpayer or an entity related to it, provided that the conditions of [article 13d, ninth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), letters a and c are met.

## Article 13e, Paragraph 2 Calculation of historic cost price

If the enterprise of the liquidated entity is continued in whole or in part by a related entity in which the taxpayer or an entity related to it participates, then historic cost price of that participation is increased by the loss from liquidation under [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), provided that the conditions of [article 13d, ninth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), letters a and c are satisfied.

## Article 13i, Share mergers

Paragraph 1, Disposing shares in share merger

If the taxpayer disposes of shares or profit sharing certificates which form a participation in connection with a share merger as meant in article 3.55 of the Personal income tax act 2001, then

1. the historic cost price meant in article [13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm) of the shares or profit sharing certificates acquired in connection with the merger, is not set higher than the amount paid for the disposed shares or profit sharing certificates;
2. a loan to which [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), first paragraph is applicable which concerns the disposed shares, is deemed to concern the shares or profit sharing certificates acquired in connection with the merger.

### Paragraph 2,Valuation shares

If the proceeds from the disposal of shares or profit sharing certificates are disregarded under article 3.55 of the Personal income tax act 2001, then

1. if the shares or profit sharing certificates which are acquired in connection with the merger form a participation, then they replace the shares of profit sharing certificates which are disposed of in connection with the merger;
2. contrary to the mentioned article, if the acquired shares or profit sharing certificates do not form a participation, they are booked for their fair market value less the amount which is ignored under the second paragraph of that article.

## Article 13j, Demergers

### Paragraph 1, Transfer assets under demerger

If the assets and liabilities of a legal person in which the tax payer has a participation are transferred under general legal title in connection with a demerger, then the disposal of shares and receivables meant under article 3.56, first paragraph, of the Personal income tax act 2001, is deemed to have taken place to an entity related to the taxpayer and the demerging legal person.

### Paragraph 2, Allocation historic cost price

The historic cost price paid for the shares in the demerging legal person as meant under [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), second paragraph, is allocated for a proportionate part to the shares acquired by the acquiring legal person. If the demerging legal person continues to exist after the demerger, then the historic cost price paid for the shares in the demerging legal person is reduced to the same extent.

### Paragraph 3, Profit sharing loans

A loan to which [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), second paragraph is applicable and which concerns the shares which the taxpayer has in the demerging legal person, is deemed to concern the shares which the taxpayer has directly after the legal demerger in the legal persons involved in the demerger.

### Paragraph 4, Valuation shares

If the proceeds from the demerger are not taken into account under article 3.56 or the Personal Income Tax Act 2001, then:

1. if the shares which the taxpayer has in the demerging and the acquiring entities directly after the demerger form a participation, they replace the shares which the taxpayer has in the demerging legal person at the time of the demerger;
2. contrary to the third paragraph of the mentioned article, to the extent that the shares which the taxpayer has directly after the demerger in the demerging and the acquiring entities do not form a participation, they are booked at their fair market value reduced by the benefit which was not taken into account.

### Paragraph 5, Triangular cases

The previous paragraphs are also applicable if shares are issued in connection with the demerger:

1. to another entity than the taxpayer or
2. by another legal person than the legal person to whom the assets and liabilities are transferred under general legal title.

### Paragraph 6, Profit sharing loans

The second, third and fourth paragraphs are also applicable to receivables which actually functions as equity to the debtor as meant in [article 10](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), first paragraph, letter d.

## Article 13k, Mergers

### Paragraph 1, Transfer assets under merger

If the assets and liabilities of a legal person in which the taxpayer has a participation are transferred under general legal title in connection with a merger, then the disposal of shares and receivables meant under article 3.57, first paragraph, of the Personal income tax act 2001, is deemed to have been made to an entity related to the taxpayer and the disappearing legal person.

### Paragraph 2, Historic cost price

The historic cost price, as meant under the [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), paid for the shares in the acquiring legal person is not set higher than the amount which is paid for the shares in the disappearing legal person.

### Paragraph 3, Profit sharing loans

A loan to which [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), first paragraph is applicable and which concerns the shares which the taxpayer have in the disappearing legal person, is deemed to concern the shares which the taxpayer have in the acquiring legal person directly after the merger.

### Paragraph 4, Valuation shares

If the proceeds from the merger are not taken into account under article 3.57, second paragraph, of the Personal income tax act 2001, then:

1. if the shares acquired in connection with the merger form a participation, they replace the shares which the taxpayer have in the disappearing legal person at the time of the merger;
2. if the shares acquired in connection with the merger do not form a participation, then, contrary to the third paragraph of the mentioned article, they are booked at their fair market value reduced by the benefit which have not been taken into account.

### Paragraph 5, Taxpayer is acquiring legal person

If the taxpayer is also the acquiring legal person, then article 3.57, second paragraph, of the Personal income tax act 2001, is not applicable. Upon a request made by the taxpayer prior to the merger, our Minister can allow the tax inspector, under conditions set by the Minister, to disregard, in whole or in part, the income which is realised through the disposal meant under the first paragraph. The conditions meant in the second sentence may only concern the guarantee of the levying and the collecting of taxes which would be or become due if that sentence is not applicable. A notice of objection can be filed against the decision of the tax inspector.

### Paragraph 6, Triangular cases

The previous paragraphs are also applicable if, in connection with the merger, shares are issued by another legal person than the legal person to whom assets and liabilities are transferred under general legal title.

# Article 14, Business asset mergers

### Paragraph 1, General introduction

The taxpayer that transfers (transferor) the whole or an independent part of its business enterprise to another entity (transferee) that already is subject to tax or becomes subject to tax through the transfer and does the transfer against the issue of shares in the transferee (asset merger), does not have to take into account the profits realised through the transfer, provided that the same regulations are applicable to the transferor and the transferee with regard to profit determination, the transferee is not entitled to the carry forward of losses on the basis of [article 20](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm), to relief from double taxation with regard to foreign income, to the application of the royalty box or to application of the participation credit and that the future levying of taxes is secured.

If the profit is not taken into account, then the transferee is taking over the position of the transferor with regard to all the assets acquired in the asset merger.

### Paragraph 2, Standard conditions

If the transferee has a right to loss carry forward, to relief from double taxation with regard to foreign income, to the application of the royalty box or to application of the participation credit , or if different measures are applicable for the determination of the profit, or if due to other circumstances the levying of taxation can only be guaranteed through further conditions, then at the joint request of the transferor and the transferee our Minister can, under further conditions, allow the tax inspector concerned with the levying of taxation of the transferor to ignore, in whole or in part, the profit realised through the transfer. To the extent that no further conditions are set, the transferee replaces the transferor with regard to all that is acquired through the transfer. The request with the tax inspector meant in the previous sentence is made before the transfer; a notice of objection can be filed against the decision of the tax inspector.

*See* [*article XII*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/XII.htm) *of bill nr. 30 572 on the tax inspector's decision - Dutchtax.net*

### Paragraph 3, Historic cost price participation

If the profit is disregarded on the basis of the first or second paragraph and if the shares acquired through the asset merger form a [participation](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), then the cost price paid for those shares is set at the tax book value of the transferred assets and liabilities reduced by the reserves related thereto as meant in articles 3.53 and 3.54 of the Personal income tax act 2001.

### Paragraph 4, Anti-abuse measure

Contrary to the first and second paragraphs, profit is taken into account if the asset merger is primarily aimed at the avoidance or deferral of taxation. Unless the contrary is shown to be likely, the asset merger is deemed to be primarily aimed at the avoidance or deferral of taxation if this does not take place on the basis of business considerations, such as the restructuring or rationalising of the active business of the transferor and the transferee. If shares in the transferor or the transferee are disposed of directly or indirectly within three years after the transfer to an entity which is not related to the transferor and the transferee, business considerations are not deemed present, unless the contrary is shown to be likely.

### Paragraph 5, Mutual investment funds

The previous paragraphs are also applicable with regard to a [mutual investment fund](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm), in case of a transfer of assets of that fund.

### Paragraph 6, Definition of shares

For purposes of this article profit sharing certificates, certificates of participation and membership rights are equal to shares.

### Paragraph 7, Limitations conditions second paragraph

The conditions meant under the second paragraph may only concern the guarantee of the levying and the collecting of taxes which would be or become due if the second or the fifth paragraph is not applicable. Conditions may furthermore be made which concern the determination of the profit realised during a year, the allowable reserves and provisions, the losses to be compensated, relief from double taxation with regard to foreign income, the application of the royalty box or the application of the participation credit and conditions may also be made if the fair market value of the transferred assets and liabilities is lower than the book value of these assets and liabilities at the time of the asset merger.

### Paragraph 8, Advance certainty

The transferor which requires certainty about the question whether the asset merger is not deemed to be primarily aimed at the avoidance or deferral of taxation can file a request with the tax inspector before the transfer; a notice of objection can be filed against the decision of the tax inspector.

### Paragraph 9, Advance certainty

The transferor or the transferee which requires certainty, prior to a planned disposal of shares as meant in the last sentence of the fourth paragraph, about the question whether it is likely, in spite of the disposal, that the transfer is not primarily aimed at the avoidance or deferral of taxation, can file a request before the transfer with the tax inspector; a notice of objection can be filed against the decision of the tax inspector.

## Article 14a, Demergers

### Paragraph 1, Legal demerger

If the assets of a taxpayer (the demerging legal person) are transferred under general title in connection with a demerger, then

1. if the demerging legal person ceases to exist, then it is deemed to have transferred its assets to the legal persons which acquired these assets under general title (the acquiring legal persons) at the time of the demerger. It is also deemed to have ceased generating taxable profits from the enterprise in the Netherlands at that time;
2. if the demerging legal person continues to exist, then it is deemed to have transfered its assets to the legal person or persons which acquired these assets under general title (the acquiring entity or entities) at the time of the demerger.

### Paragraph 2, Roll over for demergers

The profit realised due to the first paragraph does not have to be taken into account provided that the same measures apply for the determination of the profit of the demerging legal person and the acquiring legal persons, that neither the demerging legal person if it ceases to exist nor the acquiring legal person has a right losses to be carried forward under [article 20](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm), to relief from double taxation with regard to foreign income, to the application of the royalty box or to the application of the participation credit and that the later levying of tax is guaranteed. If the profit is disregarded, the acquiring legal person replaces the demerging legal person with regard to everything that is acquired in connection with the demerger.

### Paragraph 3, Conditions 14a'2 not satisfied

If the conditions meant in the second paragraph, first sentence, are not satisfied, our Minister can, at the joint request of the demerging legal person and the acquiring legal persons prior to the demerger, allow the tax inspector involved with the levying of taxation from the demerging legal person, under conditions set by the minister, to disregard in whole or in part profit made due to the first paragraph. The acquiring legal person replaces the demerging legal person with regard to everything that is acquired in connection with the demerger, to the extent that no conditions are made. A notice of objection can be filed against the decision of the tax inspector in which the conditions meant in the first sentence are included.

*See* [*article XII*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/XII.htm) *of bill nr. 30 572 on the tax inspector's decision - Dutchtax.net*

### Paragraph 4, Historic cost price participation

If the profit is not taken into account and the acquiring legal person issues shares to the demerging legal person then, if the issued shares constitute a participation, the cost price paid for the shares is set at the tax book value of the assets and liabilities that are transferred in connection with the demerger, reduced by the reserves related thereto as meant under the articles 3.53 and 3.54 of the Personal income tax act 2001.

### Paragraph 5, Limitations conditions third paragraph

The conditions meant under the third paragraph may only concern the guarantee of the levying and the collecting of taxes which would be or become due if the first sentence of the third paragraph is not applicable. Conditions may furthermore be made which concern the determination of the profit of the acquiring legal person realised during a year, the allowable reserves and provisions, the losses to be compensated, relief from double taxation with regard to foreign income, the application of the royalty box or the application of the participation credit and conditions may be made if the fair market value of the assets and liabilities which are transferred under general legal title are lower than the book value of these assets and liabilities at the time of the transfer.

### Paragraph 6, Anti-abuse measure

The second and third paragraph, first full sentence, respectively is not applicable if the demerger is primarily aimed at the avoidance or deferral of taxation. Unless the contrary is shown to be likely, the demerger is deemed to be primarily aimed at the avoidance or deferral of taxation if the demerger does not take place on the basis of business considerations, such as the restructuring or rationalising of the active business of the demerging and the acquiring legal persons. If shares in the demerging or an acquiring legal person are disposed of in whole or in part, directly or indirectly within three years after the demerger to an entity which is not related to the demerged legal person and the acquiring legal persons, business considerations are not deemed present, unless the contrary is shown to be likely.

### Paragraph 7, Related entities

The acquiring legal person is deemed to be an entity related to the taxpayer at the time of the demerger.

### Paragraph 8, Advance certainty

The demerging legal person which requires certainty about the question whether the demerger is not deemed to be primarily aimed at the avoidance or deferral of taxation can file a request with the tax inspector before the demerger; a notice of objection can be filed against the decision of the tax inspector.

### Paragraph 9, Advance certainty

The demerged legal person or the acquiring legal person which requires certainty, prior to a planned disposal of shares as meant in the last sentence of the sixth paragraph, about the question whether it is likely, in spite of the disposal, that the demerger is not primarily aimed at the avoidance or deferral of taxation, can file a request with the tax inspector; a notice of objection can be filed against the decision of the tax inspector.

### Paragraph 10, Definition of shares

For purposes of this article, profit sharing certificates, certificates of participation and membership rights are equal to shares.

### Paragraph 11, Residence requirement

The second through the twelfth paragraphs are only applicable if the demerging and the acquiring legal persons are resident in the Netherlands or are resident in a member state of the EU under article 3.55, fifth paragraph, of the Personal income tax act 2001.

## Article 14b, Legal mergers

### Paragraph 1, Legal merger

If the assets of the taxpayer (the disappearing legal person) are transferred under general title in connection with a legal merger, then the disappearing legal person is deemed to have transfered its assets at the time of the legal merger to the legal person which acquired these assets under general title (the acquiring legal person). The disappearing legal person is deemed to have ceased generating taxable profits from the business in the Netherlands at that time.

### Paragraph 2, Roll over for legal mergers

The profit realised due to the first paragraph does not have to be taken into account, provided that the same measures apply for the determination of the profit of the disappearing legal person and the acquiring legal persons, that none of these legal persons has losses to be carried forward under [article 20](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm), to relief from double taxation with regard to foreign income, to the application of the royalty box or to the application of the participation credit and that the later levying of tax is guaranteed. If the profit is disregarded, the acquiring legal person replaces the disappearing legal person with regard to everything that is acquired in connection with the legal merger.

### Paragraph 3, Conditions 14b'2 not satisfied

If the conditions meant in the second paragraph, first sentence, are not satisfied, our Minister can, at the joint request of the disappearing legal person and the acquiring legal person prior to the legal merger, allow the tax inspector involved with the levying of taxation from the disappearing legal person, under conditions set by the minister, to disregard in whole or in part profit made due to the first paragraph. The acquiring legal person replaces the disappearing legal person with regard to everything that is acquired in connection with the legal merger, to the extent that no conditions are made. A notice of objection can be filed against the decision of the tax inspector in which the conditions meant in the first sentence are included.

*See* [*article XII*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/XII.htm) *of bill nr. 30 572 on the tax inspector's decision - Dutchtax.net*

### Paragraph 4, Limitations conditions third paragraph

The conditions meant under the third paragraph may only concern the guarantee of the levying and the collecting of taxes which would be or become due if the first sentence of the third paragraph is not applicable. Conditions may furthermore be made which concern the determination of the profit of the acquiring legal person realised during a year, the allowable reserves and provisions, the losses to be compensated, to relief from double taxation with regard to foreign income, to the application of the royalty box or to the application of the participation credit and conditions may be made if the fair market value of the assets and liabilities which are transferred under general legal title are lower than the book value of these assets and liabilities at the time of the transfer.

### Paragraph 5, Anti-abuse measure

The second and third paragraph, first full sentence, respectively is not applicable if the legal merger is primarily aimed at the avoidance or deferral of taxation. Unless the contrary is shown to be likely, the legal merger is deemed to be primarily aimed at the avoidance or deferral of taxation if the legal merger does not take place on the basis of business considerations, such as the restructuring or rationalising of the active business of the demerging and the acquiring legal persons.

### Paragraph 6, Related entities

The acquiring legal person is deemed to be an entity related to the taxpayer at the time of the legal merger.

### Paragraph 7, Advance certainty

The disappearing legal person which requires certainty about the question whether the legal merger is not deemed to be primarily aimed at the avoidance or deferral of taxation can file a request with the tax inspector before the legal merger; a notice of objection can be filed against the decision of the tax inspector.

### Paragraph 8, Residence requirement

The second through the ninth paragraphs are only applicable if the disappearing and the acquiring legal persons are resident in the Netherlands or are resident in a member state of the EU under article 3.55, fifth paragraph, of the Personal income tax act 2001.

## Article 14c, Paragraph 1 Reverse incorporation

If an NV or a BV which only has individuals as shareholder is liquidated and the enterprise run by the company is continued by the shareholders, then our Minister can, at the joint request of the taxpayer and the continuing shareholders, allow, under conditions set by him, that the profit which is realised due to the liquidation, is not taken into account. To the extent that no conditions are made to the contrary, the shareholders, each for their own part, replace the taxpayer with regard to the assets and liabilities with which they continue the enterprise and which they acquire in connection with the liquidation.

## Article 14c, Paragraph 2 Loss carry forwards & pe results

If the taxpayer has the right to loss carry forward or if profit from a foreign enterprise has been carried forward according to measures for the prevention of double taxation which has not been taken into account yet, then the profit meant in the first paragraph is only disregarded to the extent that this exceeds the losses or the profits from its foreign enterprise. To the extent that the profit meant in the first paragraph concerns a foreign enterprise, the profit is only disregarded to the extent that this exceeds the losses from the foreign enterprise which are carried forward according to measures for the prevention of double taxation and which have not been taken into account yet. To the extent that the profit meant in the first paragraph is taken into account, the book values of assets are increased or the tax reserves are released.

## Article 15, Conslidated groups

### Paragraph 1, Tax consolidated group

If a taxpayer (parent) holds the legal and beneficial title of at least 95 percent of the shares in the par value of the paid up shares of another taxpayer (subsidiary), then, at the request of both taxpayers, the tax is levied from them as if there is one taxpayer, in the sense that the activities and the equity of the subsidiary form part of the activities and equity of the parent.  
The tax is levied from the parent. In that case, the taxpayers are treated as a tax consolidated group (*"fiscal unity" - Dutchtax.net*). More than one subsidiary can form part of a tax consolidated group.

### Paragraph 2, Indirect participations

Holding shares as meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) includes an indirect holding of shares, provided that these are directly held by one or more taxpayers forming part of the tax consolidated group.

### Paragraph 3, Conditions

The first paragraph is only applicable if:

1. the periods over which tax is levied are the same for both taxpayers, provided that a part of a financial year which is treated as a separate year under [article 7](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/07.htm), fourth paragraph, is not treated as a separate period for the purposes of this section (*see also* [*art.5, 2003 Decree*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/05.htm) *- Dutchtax.net*);
2. the same measures are applicable to the determination of the profits of both taxpayers;
3. both taxpayers are resident in the Netherlands and if the Tax Agreement for the Kingdom of the Netherlands or a treaty for the prevention of double taxation is applicable to a taxpayer, that taxpayer is also deemed to be resident in the Netherlands according to the Agreement or that treaty.
4. the parent is an NV, a BV, a cooperative or a mutual insurance company, or a company that is incorporated under the laws of the Netherlands Antilles, Aruba, a member state of the European Union or a state in relation to which a treaty for the prevention of double taxation concluded with the Netherlands is applicable in which a clause is included preventing discrimination on the basis of nationality for entities which otherwise are in similar circumstances as entities incorporated under Dutch law, which entity is furthermore similar to the previously mentioned entities incorporated under Dutch law with regard to its nature and set up (*see also* [*art.3, 2003 Decree*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/03.htm) *- Dutchtax.net*);
5. the subsidiary is an NV, a BV or an entity which is similar thereto in terms of its nature and set up, which is incorporated under the laws of a country or state meant under letter d (*see also* [*art.3, 2003 Decree*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/03.htm) *- Dutchtax.net*);
6. the parent does not hold the shares in the subsidiary, directly or indirectly as stock in trade.

### Paragraph 4, Exceptions to the conditions under the third paragraph

Conditions can be set by Ministerial Decree according to which taxpayers for whom different measures are applicable for the determination of their profits can form a tax consolidated group, contrary to the third paragraph, letter b.

Furthermore, contrary to paragraph 3, letter c, a taxpayer which is not resident in the Netherlands according to national law, or under the Tax Agreement for the Kingdom of the Netherlands or a treaty for the prevention of double taxation, but which does run an enterprise through a permanent establishment in the Netherlands, may, and under conditions set by general decree of government, form part of a tax consolidated group to the extent that the right to taxation on profits from this enterprise is allocated to the Netherlands under the Tax Agreement for the Kingdom of the Netherlands or a treaty for the prevention of double taxation, if:

1. the place of actual management of this taxpayer is situated in the Netherlands Antilles, Aruba, a member state of the European Union or a state in relation to which a treaty for the prevention of double taxation concluded with the Netherlands is applicable in which a clause is included preventing the discrimination of permanent establishments;
2. the taxpayer, meant under letter a, is an NV, a BV or an entity of similar nature and set up (*see also* [*art.3, 2003 Decree*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/03.htm) *- Dutchtax.net*); and
3. - in case the taxpayer, meant under letter a, forms part of a tax consolidated group as parent - the shares held in the subsidiary, meant in the first paragraph, form part of the assets of the permanent establishment situated in the Netherlands of this parent.

Contrary to the first paragraph, the conditions meant in the previous sentence can also concern the question which part of the activities and the equity of the subsidiary forms part of the activities and the equity of the parent.

### Paragraph 5, Time of formation of tax consolidated group

The tax consolidated group is formed at the time indicated by the taxpayers in the request meant in the first paragraph, but not earlier than three months before the time that the request is made.

### Paragraph 6, End of tax consolidated group

The tax consolidated group ends:

1. if the conditions set by or through this article are no longer fulfilled;
2. if the taxpayer, meant in the fourth paragraph, second sentence, moves the place of actual management to the Netherlands;
3. if the taxpayer moves the place of actual management to outside the Netherlands whilst leaving a permanent establishment in the Netherlands;
4. at the joint request of the parent and subsidiary at the time mentioned in the request, but not earlier than the date of filing the request;

provided that if the tax consolidated group is ended with regard to one or more subsidiaries, the tax consolidated group does not also end with regard to other taxpayers.

### Paragraph 7, Starting and ending a tax consolidated group in the same financial year

If a subsidiary joins a tax consolidated group during the financial year and if this tax consolidated group is ended with this subsidiary during the same financial year, then no tax consolidated group is deemed to have been formed in the meantime with regard to this subsidiary. The previous sentence is also applicable to an existing tax consolidated group which joins another tax consolidated group during its financial year and leaves the last consolidated group in the same year.

### Paragraph 8, Request for forming a tax consolidated group

The request meant in the first paragraph and sixth paragraph, letter d, is made with the tax inspector dealing with the assessment of the parent. The inspector takes a decision against which a notice of objection can be filed.

### Paragraph 9, Request deemed to be made for all members of a tax consolidated group

If the taxpayer making the request meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) is already a parent in a consolidated tax group, then this request is deemed to also be made on behalf of the other taxpayers which form part of that tax consolidated group.

### Paragraph 10, Further conditions set by general decree of government

Further conditions can by set by or through general decree of government to safeguard the levying and collection of taxes in view of the fact that the taxpayers meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) form a tax consolidated group for purposes of this law. These conditions also include conditions for:

1. the determination if an entity incorporated under foreign law is similar to an entity incorporated under Dutch law as meant in letters d and e of the [third paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm);
2. the fact that the parent does not hold all the shares in the subsidiary;
3. the continuation of the tax consolidated group with regard to a taxpayer in case of a condition as meant in the [sixth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm), letter b or c;
4. the application of [article 13d, eighth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), and articles [15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm) through [15af](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15af.htm);
5. the calculation of exemptions for the prevention of double taxation with regard to foreign results;
6. the application of the [royalty box](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/12b.htm); and
7. the application of the [participation credit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/23c.htm).

### Paragraph 11, Conditions set to general decree of government

A general decree of government issued under the fourth paragraph, first sentence and tenth paragraph does not enter into force earlier than eight weeks after the date of issue of the Government Gazette in which it is placed. Both chambers of are immediately informed of the placement.

## Article 15a, Paragraph 1 Tax consolidated group - Cooperations

A central cooperation and its member cooperations are taxed, at the request of all these taxpayers and no earlier than the start of the year in which the request is filed, as if there is one taxpayer, in the sense that the activities and the equity of the member cooperations form part of the activities and equity of the central cooperation. The tax is levied from the central cooperation. In that case, the taxpayers are treated as a tax consolidated group (*"fiscal unity" - Dutchtax.net*).

**Article 15aa, Paragraph 1  
Definitions**

For purposes of article 15ab through 15aj, the following definitions are used:

1. consolidated member: a taxpayer forming part of a tax consolidated group;
2. consolidation moment: the time as of which the taxpayer forms part of a tax consolidated group;
3. deconsolidation moment: the time as of which a taxpayer does not form part of a tax consolidated group any longer, other than trough liquidation of a subsidiary.

**Article 15aa, Paragraph 2  
Relation to article 3.54 Personal Income Tax Act 2001**

If the hidden reserves realised upon the disposal of assets are rolled over to other assets under the principles of sound business practice, without the application of article 3.54 of the Personal Income Tax Act 2001 (*reinvestment provision - Dutchtax.net*), then for purposes of articles [15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm) through [15aj](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aj.htm), the forming of a provision from this profit, as well as the release thereof against the acquisition costs or production costs of the other assets are deemed to have taken place with the application of article 3.54 of the Personal Income Tax Act 2001.

## Article 15ab, Marking subsidiaries to market

### Paragraph 1, Valuation of subsidiary at time of joining

At the time directly preceding the consolidation moment of a subsidiary, the parent marks its interest in the subsidiary to market, or if other subsidiaries are joined simultaneously, the parent and the simultaneously joined subsidiaries mark their interest to market.

### Paragraph 2, Losses from liquidation

If at the time of joining of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), a participation forms part of the assets of that consolidated member of which the enterprise has been discontinued completely or almost completely, or if such has been decided, or if at the time of joining of a consolidated member, an enterprise forms part of the assets of that consolidated member upon which [article 13e](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13e.htm) is applicable, then, regardless of articles [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm) and [13e](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13e.htm), a loss from liquidation from that participation is only taken into account to the extent that the profit of the tax consolidated group is allocated to that consolidated member, without taking the loss from liquidation into account.

### Paragraph 3, Carry forward and carry back of losses from liquidation

To the extent that a loss from liquidation has not been taken into consideration under the second paragraph in one year, it is subsequently set off against and up to the positive taxable amounts of the preceding year and the nine\* following years of:

1. the relevant [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), in the years in which it did not or does not form part of the tax consolidated group; or
2. the tax consolidated group, to the extent that the profit of the tax consolidated group can be allocated to the consolidated member.

\**(Please note that until 2011,* [*grandfathering*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/VIII.htm) *rules apply for loss carry forwards - Dutchtax.net)*

### Paragraph 4, Order of compensation losses from liquidation

The reduction of losses from liquidation take place in the order in which they were made and the positive taxable amounts were made.

### Paragraph 5, No interest on reduction of taxable profit

The assessment will be reviewed to the extent that a loss from liquidation reduces the taxable profit of the previous year on the basis of the third paragraph. No interest is paid on the reviewed amount.

### Paragraph 6, Marking intercompany receivables to market before joining

The receivables from another [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) forming part of the assets of a consolidated member are marked to market or, if that is lower, to par value at the time immediately preceding the time at which the tax consolidated group is formed with regard to these consolidated members. The liabilities of the other consolidated member relating to these receivables, are also set at the same value as the receivables in the previous sentence at that first mentioned time.

### Paragraph 7, Limitation of sixth paragraph

To the extent that an amount has already been taken into account under articles [13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm) or regarding a receivable with the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) holding that receivable or an entity related to it as meant under [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), fourth paragraph, the sixth paragraph is not applicable .

See the grandfathering granted under [article V](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/29381/2003-0349-V.htm) of proposal of law nr. 2003-0349 2.

## Article 15ac, Calculating group taxable income

### Paragraph 1, Salaries and bonuses granted by subsidiaries

In determining the profit of the tax consolidated group and for purposes of article 11, bonuses and salaries granted by a subsidiary to someone else than the parent, are deemed to be granted as such by the parent.

### Paragraph 2, Waiving of distressed debt

[Article 3.13, first paragraph, letter a, of the Personal Income Tax Act 2001](http://www.dutchtax.net/Dutch/Abon/TransR/IB2001R/3-13.htm) (*exemption of certain profits upon waiving of a debt - Dutchtax.net*) is not applicable in determining the profits of the tax consolidated group, except to the extent that it is shown to be likely that the benefits meant there would not have formed part of the profit of the debtor if it did not form part of the tax consolidated group.

### Paragraph 3, Cooperatives

Article 9, first paragraph, letter g, is not applicable to a cooperative which forms part of a tax consolidated group as a parent.

### Paragraph 4, Prevention of double taxation

The reduction of taxation under measures for the prevention of double taxation is calculated as if the companies of the tax consolidated group are one taxpayer.

### Paragraph 5, Prevention of double taxation for foreign branches

If profit from a foreign permanent establishment or foreign real estate forms part of the profit of the consolidated tax group and if the amount of foreign profit taken into consideration for the prevention of double taxation according to the rules for the prevention of double taxation would be higher for the consolidated group than the combined amount would have been if there was no consolidated tax group, due to the fact that costs of financing would in the latter case have been allocated to the foreign permanent establishment or real estate but for existence of the consolidated tax group, then, contrary to the fourth paragraph, the exemption is calculated as if these costs of financing are allocated to the consolidated tax group, provided that the combined amount mentioned above is the least that will be taken into account for the calculation of the exemption.

If, in the absence of the tax consolidated group, [article 10](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), first paragraph, letter d would have been applicable to the financing costs or a part thereof, the first sentence is applied as if article 10, first paragraph, letter d, would not have applied thereto.

### Paragraph 6, Limitation of paragraph 5

The fifth paragraph is not applicable to the extent that the taxpayer shows it to be likely that the costs of finance meant in that paragraph are not deductible in calculating the taxable basis in the other country.

### Paragraph 7, Relation to article 13, first paragraph, second sentence

If a subsidiary has been acquired in whole or in part against a liability as meant in [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm), sixth paragraph, first sentence, then the fluctuations in value of the liability are disregarded in determining the profit of the consolidated tax group. The first sentence is also applicable to changes in the price against which a subsidiary is acquired as meant in article 13, sixth paragraph, second sentence.

**Article 15ae, Paragraph 1  
Offsetting losses and profits across consolidation moment**

For purposes of [article 20, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm):

1. the set off of losses of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) from before the [consolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) (pre-consolidation losses) against the taxable profit of the tax consolidated group takes place to the extent that this profit can be allocated to that consolidated member (*See* [*12'1*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/12.htm) *Tax Consolidated Group Decree 2003 - Dutchtax.net)*;
2. the set off of losses of the tax consolidated group from after the consolidation moment against a taxable profit of a consolidated member from before the consolidation moment takes place to the extent that those losses can be allocated to that consolidated member (*See* [*12'1*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/12.htm) *Tax Consolidated Group Decree 2003 - Dutchtax.net)*;
3. - if an existing tax consolidated group is enlarged or if an existing tax consolidated group is included into a new tax consolidated group - the set off of losses from before the consolidation moment of that existing tax consolidated group against the taxable profit of the tax consolidated group takes place to the extent that this profit can be allocated to the consolidated members which belonged to the tax consolidated group directly before the consolidation moment (*See* [*12'2*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/12.htm) *Tax Consolidated Group Decree 2003 - Dutchtax.net)*;
4. - if an existing tax consolidated group is enlarged or if an existing tax consolidated group is included into a new tax consolidated group - the set off of losses of the tax consolidated group from after the consolidation moment against the taxable profit of the existing tax consolidated group takes place to the extent that this loss can be allocated to the consolidated members which belonged to the tax consolidated group directly before the time of joining (*See* [*12'2*](http://www.dutchtax.net/Dutch/Abon/TransR/FEDecR/12.htm) *Tax Consolidated Group Decree 2003 - Dutchtax.net)*.

**Article 15ae, Paragraph 2  
Limitation of first paragraph, letter a**

The first paragraph, letter a, does not apply to the extent that the profit of the tax consolidated group concerns assets which have been acquired by a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) from another consolidated member which formed part of the tax consolidated group at the time of the acquisition if that profit would have been allocated to that other consolidated member on the basis of article [15ah, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ah.htm), if the tax consolidated group had not been ended with regard to that other consolidated member, except if [article 15ai, first](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ai.htm) or [second](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ai.htm) paragraph, applied with regard to the assets.

**Article 15ae, Paragraph 3  
Meaning of taxpayer in article 20a**

With regard to the credit meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ae.htm), "the taxpayer" in article 20, [fourth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) and [sixth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) paragraphs and article [20a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20a.htm) means: the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), or the existing tax consolidated group which is enlarged, or the existing tax consolidated group which is included into a new tax consolidated group.

**Article 15ae, Paragraph 4  
Carry forward of losses**

The [pre-consolidation losses](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ae.htm) of subsidiaries are ignored in the carry forward of losses of the tax consolidated group or pre-consolidation losses of the parent when determining which year qualifies as the oldest year for purposes of [article 20a, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20a.htm).

**Article 15ae, Paragraph 5  
Transfer of activities within the tax consolidated group**

For purposes of [article 20a, fourth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20a.htm), the activities which have been transferred within the tax consolidated group from one [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) to another consolidated member after the beginning of the oldest year as meant in the [first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20a.htm) of that article, are continued to be allocated to the transferor during the existence of the tax consolidated group between these consolidated members.

**Article 15af, Paragraph 1  
Compensation of losses after subsidiary leaves tax consolidated group**

For purposes of [article 20, second paragraph,](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) and from the deconsolidation moment of a subsidiary, the following losses are set off against the taxable profit of that subsidiary enjoyed after that time:

1. the [pre-consolidation losses](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ae.htm) of that [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm); and
2. the losses of the tax consolidated group which can be allocated to that subsidiary.

**Article 15af, Paragraph 2  
Limitation of first paragraph, letter b**

The first paragraph, letter b, only applies if that [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) and the parent request this and to the extent that it is shown to be likely that these losses can be allocated to the subsidiary.

**Article 15af, Paragraph 3  
Joint request by parent and subsidiary**

The request meant in the second paragraph is made in the tax return of the parent for the last year in which the subsidiary still forms part of the tax consolidated group. The inspector determines the loss of the tax consolidated group to be allocated to the subsidiary in a decision against which a notice of objection can be filed. Article 20b, third paragraph, is also applicable (*Inspector's right of review in case of new evidence - Dutchtax.net*).

**Article 15af, Paragraph 4  
Limitation of first paragraph**

Contrary to the first paragraph, no compensation takes place against the taxable profits of the deconsolidated subsidiary to the extent that this profit relates to assets which have been acquired by this [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) from another consolidated member with which it formed part of the tax consolidated group at the time of the acquisition if, on the basis of [article 15ah, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ah.htm), that profit would not have been allocated to the deconsolidated subsidiary had the consolidation not been ended with regard to it.

**Article 15af, Paragraph 5  
Limitation of fourth paragraph**

The [fourth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15af.htm) is not applicable if [article 15ai, first](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ai.htm) or [second](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ai.htm) paragraph applied with regard to the assets meant in the fourth paragraph.

**Article 15af, Paragraph 6  
Loss compensation after time of leaving of subsidiary**

As of the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) as meant in the first paragraph, no loss which is set off against the taxable profit of the subsidiary that left the tax consolidated group under that paragraph is set off against the profit of the tax consolidated group or the parent.

**Article 15af, Paragraph 7  
Definition of "taxpayer" under article 20a**

With regard to losses of the tax consolidated group which the deconsolidated subsidiary may compensate on the basis of the first paragraph letter b, "the taxpayer" under article 20, [fourth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) and [sixth](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) paragraphs and article [20a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20a.htm) means the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm).

## Article 15ag, Paragraph 1 Compensation of losses after parent leaves tax consolidated group

From the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a parent and for purposes of [article 20, second paragraph,](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) [pre-consolidation losses](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ae.htm) of the parent are not compensated against taxable profit enjoyed by the parent after leaving the tax consolidated group to the extent that this profit relates to assets which have been acquired by it from a subsidiary during the existence of the tax consolidated group and if, on the basis of article 15ah, second paragraph, that profit would not have been allocated to the parent if the tax consolidated group has not been ended with regard to that subsidiary.

## Article 15ag, Paragraph 2 Limitation of first paragraph

The first paragraph does not apply if [article 15ai, first or second](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ai.htm) paragraphs applied with regard those assets.

## Article 15ah, Independent profit calculation

### Paragraph 1, Profit to be allocated to a company

For purposes of [article 15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm), second paragraph, and [15ae](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ae.htm) the profit of the tax consolidated group to be allocated to a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) is the profit of that consolidated member calculated as if it does not form part of the tax consolidated group, to the extent that this profit is realised by the tax consolidated group without taking [article 10d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10d.htm) into account and taking into account the second and third paragraph.

### Paragraph 2, Allocation of profit

If an asset is acquired in any year by a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) (acquirer) from another consolidated member (transferor) which forms part of the tax consolidated group:

1. the depreciation on the transferred asset is calculated on the basis of the fair market value at the time of the transfer, when determining the profit to be allocated to the acquirer;
2. the difference between the amount of depreciation on the transferred asset taken into account with the acquirer under letter a and the amount of depreciation that forms part of the profit of the tax consolidated group, is allocated to the profit of the transferor when determining the profit to be allocated to the transferor;
3. the hidden reserves realised with regard to the transferred asset, to the extent that these reserves were already present at the time of the acquisition, and have not already been allocated to the transferor under letter b are disregarded when determining the profit to be allocated to the acquirer;
4. the amount that is disregarded under letter c when determining the profit to be allocated to the acquirer, is allocated to the transferor.

### Paragraph 3, Allocation of profit

Furthermore, when determining the profit to be allocated to one [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), positive or negative results from legal relations between consolidated members which form part of the tax consolidated group and which do not form part of the profit of the tax consolidated group are taken into account to the extent that positive results are realised when calculating the profit of the one consolidated member and negative results are realised to the same amount when calculating the profit of the other consolidated member.

### Paragraph 4, Reinvestment reserve

If the intention of reinvestment as meant in article 3.54 of the Personal Income Tax Act 2001 is fulfilled by another [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of the tax consolidated group than the consolidated member that disposed of the original asset in relation to which the reinvestment reserve is formed, then for purposes of the second paragraph, the asset in which the reinvestment is made is deemed to have been acquired by the consolidated member that disposed of the original asset and to have been transferred to the other consolidated member immediately thereafter.

**Article 15ai, Paragraph 1  
Transfer of hidden reserves within the tax consolidated group**

If in any year a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) (transferor) transferred an asset to another consolidated member (acquirer) of which the fair market value at that time exceeded the book value, then that asset is marked to market at the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of the transferor or the acquirer.  
If a provision has been made as meant in article 3.54 of the Personal Income Tax Act 2001 with regard to the asset meant in the previous sentence, then this provision is added to the profit of the tax consolidated group at the time immediately preceding the deconsolidation moment meant in the previous sentence.  
If the provision meant in the second sentence has already been set off against the acquisition or production costs of a replacement asset, that asset is marked to market at the time immediately preceding the deconsolidation moment meant in the first sentence.

**Article 15ai, Paragraph 2  
Limitation first paragraph**

Contrary to the first paragraph and at the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) the transferred asset is marked to an amount equal to the fair market value of the asset at the time of the transfer, less the depreciation between the time of the transfer and the deconsolidation moment calculated according to [article 15ah, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ah.htm), letter a, provided that the taxpayer shows the height of the amount to be likely.

**Article 15ai, Paragraph 3  
Limitation first paragraph**

The first paragraph is not applicable if:

1. the transfer took place in connection with ordinary business activities fitting the size and nature of the transferor and the acquirer;
2. it concerned the transfer of an enterprise or an independent part of an enterprise, against the issue of the acquirer's own shares, and at least three calendar years passed since the transfer took place; or
3. at least six calendar years have passed since the transfer took place.

**Article 15ai, Paragraph 4  
Reinvestment reserve**

If the intention of reinvestment as meant in article 3.54 of the Personal Income Tax Act 2001 is fulfilled by another [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of the tax consolidated group than the consolidated member that disposed of the asset in relation to which the reinvestment reserve is formed, then for purposes of the first paragraph, the asset in which the reinvestment is made is deemed to have been acquired by the consolidated member that disposed of the asset and to have been transferred to the other consolidated member immediately thereafter.

**Article 15ai, Paragraph 5  
Reinvestment reserve**

For purposes of article 3.54 of the Personal Income Tax Act 2001, the reinvestment reserve of the tax consolidated group may be set off against the acquisition or production costs of the first subsequent reinvestment made by the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) that disposed of the asset relating to which the provision was formed, in stead of the costs of the first subsequent reinvestment by a consolidated member in the tax consolidated group.

**Article 15ai, Paragraph 6  
Reinvestment reserve**

The first and second paragraphs are not applicable with regard to an asset on which [article 15c](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15c.htm) applies.

## Article 15aj, Maximum investment reserve

### Paragraph 1, Reinvestment reserve at deconsolidation time

At the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a subsidiary, the reinvestment reserves as meant in article 3.54 of the Personal Income Tax Act 2001 do not exceed that which these would have been under article 3.54 with the parent and the deconsolidated subsidiary together if the subsidiary did not form part of the tax consolidated group.

### Paragraph 2, Intercompany debt after deconsolidation time

The receivables on another [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) belonging to the equity of a consolidated member are marked to their nominal value or, if it is lower, their market value at the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm). At that first mentioned time, the liabilities of the other consolidated member relating to these receivables, are set at the nominal value. If a receivable is set at a lower value than nominal value, then the future increase in value of this receivable is not included in the profit of the creditor, to the extent that it proves that the decrease in value below nominal value took place during the time that both consolidated members formed part of the same tax consolidated group, or has already been taken into account through article [13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm), [13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm) or [15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm), sixth paragraph.

### Paragraph 3, Deconsolidation in anticipation of liquidation

If a subsidiary is deconsolidated in anticipation of its liquidation, then at the time immediately preceding its [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) and consecutively:

1. the debts of the subsidiary are set at market value if this is lower than the nominal value of the debt, and
2. the equalisation reserve as meant in article 3.53, first paragraph, letter a, of the Personal Income Tax Act 2001 and the reinvestment reserves as meant in the first paragraph, letter b of that article are added to the profit.

### Paragraph 4, Allocation of reserve upon deconsolidation

The provisions as meant in article 3.53, first paragraph, letters a and b, of the Personal Income Tax Act 2002 present at the time directly preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) are divided as follows between the parent and subsidiary at the deconsolidation time:

1. an equalisation reserve is allocated to the different companies to the extent in which the costs related to the reserve, will be carried by the companies;
2. a reinvestment reserve is allocated to the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) that have disposed of the asset with regard to which the reserve has been formed.

### Paragraph 5, Continuation positions after deconsolidation

From the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) it will take the place of the tax consolidated group with regard that which it continues after the deconsolidation, except to the extent that it is determined otherwise by or through this law.

### Paragraph 6, Valuation participation at deconsolidation

The shares in a subsidiary are marked to the historic cost price under [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), eighth paragraph, at the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm).

### Paragraph 7, Passive participation transferred before deconsolidation

If at the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), a participation forms part of the assets of that consolidated member, which participation has an enterprise which has been discontinued completely or almost completely, or if it has been decided to do so, and if the participation has been acquired from another consolidated member during the existence of the tax consolidated group, then, at the deconsolidation moment, the cost price of the participation is not set higher than the fair market value of the participation at the time of acquisition of the participation by that consolidated member.

## Article 15aj, Maximum investment reserve

### Paragraph 1, Reinvestment reserve at deconsolidation time

At the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a subsidiary, the reinvestment reserves as meant in article 3.54 of the Personal Income Tax Act 2001 do not exceed that which these would have been under article 3.54 with the parent and the deconsolidated subsidiary together if the subsidiary did not form part of the tax consolidated group.

### Paragraph 2, Intercompany debt after deconsolidation time

The receivables on another [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) belonging to the equity of a consolidated member are marked to their nominal value or, if it is lower, their market value at the time immediately preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm). At that first mentioned time, the liabilities of the other consolidated member relating to these receivables, are set at the nominal value. If a receivable is set at a lower value than nominal value, then the future increase in value of this receivable is not included in the profit of the creditor, to the extent that it proves that the decrease in value below nominal value took place during the time that both consolidated members formed part of the same tax consolidated group, or has already been taken into account through article [13b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13b.htm), [13ba](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13ba.htm) or [15ab](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15ab.htm), sixth paragraph.

### Paragraph 3, Deconsolidation in anticipation of liquidation

If a subsidiary is deconsolidated in anticipation of its liquidation, then at the time immediately preceding its [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) and consecutively:

1. the debts of the subsidiary are set at market value if this is lower than the nominal value of the debt, and
2. the equalisation reserve as meant in article 3.53, first paragraph, letter a, of the Personal Income Tax Act 2001 and the reinvestment reserves as meant in the first paragraph, letter b of that article are added to the profit.

### Paragraph 4, Allocation of reserve upon deconsolidation

The provisions as meant in article 3.53, first paragraph, letters a and b, of the Personal Income Tax Act 2002 present at the time directly preceding the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) are divided as follows between the parent and subsidiary at the deconsolidation time:

1. an equalisation reserve is allocated to the different companies to the extent in which the costs related to the reserve, will be carried by the companies;
2. a reinvestment reserve is allocated to the [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) that have disposed of the asset with regard to which the reserve has been formed.

### Paragraph 5, Continuation positions after deconsolidation

From the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) it will take the place of the tax consolidated group with regard that which it continues after the deconsolidation, except to the extent that it is determined otherwise by or through this law.

### Paragraph 6, Valuation participation at deconsolidation

The shares in a subsidiary are marked to the historic cost price under [article 13d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13d.htm), eighth paragraph, at the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm).

### Paragraph 7, Passive participation transferred before deconsolidation

If at the [deconsolidation moment](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm) of a [consolidated member](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aa.htm), a participation forms part of the assets of that consolidated member, which participation has an enterprise which has been discontinued completely or almost completely, or if it has been decided to do so, and if the participation has been acquired from another consolidated member during the existence of the tax consolidated group, then, at the deconsolidation moment, the cost price of the participation is not set higher than the fair market value of the participation at the time of acquisition of the participation by that consolidated member.

## Article 15c, Paragraph 1 Termination of Dutch tax residence

If the taxpayer ceases to be treated as a resident of the Netherlands for the purposes of this law or a tax treaty or the Tax Arrangement for the Kingdom of the Netherlands, then the elements of its assets and liabilities from which the income and gains consequently are no longer included in the taxable profit, are deemed to have been disposed of at their fair market value at the time directly preceding the termination of the said residence.

## Article 15c, Paragraph 2 Application to tax consolidated groups

The first paragraph is also applicable with regard to the assets of a tax consolidated group which come from a subsidiary if a circumstance as described in the first paragraph takes place with regard to that subsidiary.

## Article 15d Allocation of other benefits upon termination of Dutch tax residence

Income and gains which have not yet been taken into account otherwise, are allocated to the profit of the year in which the taxpayer ceases to enjoy Dutch taxable profit. In that case and for purposes of the claw back of investment grants, its assets are deemed to have been disposed of at their fair market value the application of the claw back of investment grants.

## Article 16, Paragraph 1 Deductible gifts

Deductible gifts are the gifts made during the year to institutions as meant under article 6.33, first paragraph, letter b, of the Personal Income Tax Act 2001 and evidenced by written documents, to the extent that the total exceeds Euro 227. The deduction can not be more than 10 percent of [the profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm).

## Article 16, Paragraph 2 Definition of gifts

Gifts are charitable donations and contributions, whether or not compulsory, to the extent that they do not result in rights which can be monetised.

**Chapter III, Taxable object for non-resident taxpayers**

**Article 17, Paragraph 1  
Non resident taxpayers - General introduction**

Non resident taxpayers are taxed on the taxable Dutch amount; [article 7, fifth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/07.htm) is applicable.

**Article 17, Paragraph 2  
Taxable Dutch amount**

The taxable Dutch amount is the Dutch income received in a calendar year, less the losses from Dutch income available for compensation under [chapter IV](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm).

**Article 17, Paragraph 3  
Dutch income**

The Dutch income is the total of:

1. the taxable profit from an enterprise run in the Netherlands, being the amount of the total proceeds which are made from an enterprise, or part of an enterprise that is run through a permanent establishment in the Netherlands or a dependent agent in the Netherlands ([Dutch enterprise](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17a.htm));
2. the taxable income from a substantial interest in the sense of chapter 4 of the Personal Income Tax Act 2001 in a company resident in the Netherlands, if that substantial interest does not form part of the assets of an enterprise.

**Article 17, Paragraph 3  
Substantial interest**

The Dutch income is the total of:  
....  
b. the taxable income from a substantial interest in the sense of chapter 4 of the Personal Income Tax Act 2001 in a company resident in the Netherlands, if that substantial interest does not form part of the assets of a business.

**Article 17, Paragraph 4  
Cooperatives & substantial interests**

For purposes of the third paragraph, letter b, sub chapter 4.2 of the Personal Income Tax Act 2001 is equally applicable.

**Article 17a, Paragraph 1  
Elements of a Dutch enterprise**

The following forms part of a Dutch enterprise:

1. real estate located in the Netherlands, including:
   1. rights directly or indirectly related to real estate located in the Netherlands;
   2. rights related to the exploration and exploitation of natural riches in the Netherlands, or rights to which they are subject;
2. rights to a share in the profit or the equity of an enterprise of which the management is situated in the Netherlands to the extent that these rights do not stem from securities;
3. receivables on a company resident in the Netherlands if the beneficiary of the receivable has a substantial interest in that company in the sense of [article 17, third paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm), letter b;
4. activities which are being performed as a director or member of an advisory board of an entity resident in the Netherlands in the sense of the General Tax Act, also if that authority is limited to parts of that entity's enterprise located outside the Netherlands;
5. activities which are being performed during a continuous period of at least 30 days in, on or above the North Sea exploration area. The North Sea exploration area consists of the territorial waters of the Netherlands as well as the ocean bed and below to the extent that the Kingdom of the Netherlands may exercise its rights there in accordance with international law;
6. activities as meant in letter e, if these are continued by the entity that performed these activities or a related party after a break and if the total term of these activities are at least 30 days during a period of 12 months. In that case each of these entities are deemed to have fulfilled the condition of 30 days set in that letter.

**Article 17a, Paragraph 2**

**Exemption for EU entities**

The first paragraph, letter c, is not applicable if the beneficiary of the receivable is resident in another member state of the EU and the following conditions are satisfied:

1. the beneficiary of the receivable ~~and the Dutch company have~~ has one of the legal forms included in the appendix to Directive nr. 2003/49/EC of the Council of the European Union of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (Pb L 157);
2. the beneficiary of the receivable holds at least 25 percent of the par value of the paid share capital of the company resident in the Netherlands, the company resident in the Netherlands holds at least 25 percent of the par value of the paid up share capital of the beneficiary of the receivable or someone else holds at least 25 percent of the par value of the paid up share capital of beneficiary of the receivable and the company resident in the Netherlands;
3. the beneficiary of the receivable and the company resident in the Netherlands are subject to an income tax, without being exempt, levied in their countries of residence as meant in article 3, letter a, under 3, of the before mentioned Directive;
4. in its member state of residence, the beneficiary of the receivable is not deemed to be resident outside the EU on the basis of a tax treaty with a third State;
5. the receivable does not form part of the assets of a permanent establishment outside the EU of the beneficiary of the receivable.

## Article 18, Paragraph 1 Non resident taxpayers - Profit determination

The taxable profit is determined on the basis of article 8, [first](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm) through seventh paragraphs, tenth and twelfth paragraphs, as well as articles [8b](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08b.htm) through [15aj](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15aj.htm) and [15d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15d.htm) and 15e. Article 3.66 of the Personal Income Tax Act 2001 is also applicable.

## Article 18, Paragraph 2 Relation to chapter 4, Personal Income Tax Act 2001

The taxable income from a substantial interest is understood and determined under the measures of chapter 4 of the Personal Income Tax Act 2001.

**Article 19  
International transport**

If the country where the enterprise is situated adopts a similar view, then the following are not deemed to constitute the running of a Dutch enterprise by a non resident entity:

1. the transport by water or through the air of persons or goods between places outside the Netherlands and inside the Netherlands; or places outside the Netherlands only, unless the management of the enterprise is situated in the Netherlands;
2. the exploitation of rail tracks of railways and tram lines between the border and the station closest to the border.

## Chapter IV, Loss compensation Article 20, Loss compensation

### Paragraph 1, Compensation of losses

If the calculation of the [taxable profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/07.htm) or of the [Dutch income](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm) is negative, this is treated as a loss.

### Paragraph 2, Loss carry back and carry forward

A loss is set of against the [taxable profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/07.htm) or [Dutch income](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm) of the previous year and the following nine years\*, provided that the tax inspector has determined the loss in a decision against which a notice of objection can be filed.

\**(Please note that until 2011,* [*grandfathering*](http://www.dutchtax.net/Dutch/Abon/TransR/BillsR/30572/VIII.htm) *rules apply for loss carry forwards - Dutchtax.net)*

### Paragraph 3, Fiscal investment funds

Contrary to the second paragraph, the losses made during a period in which the taxpayer was treated as a fiscal investment fund (status period), can not be set off against taxable profit or Dutch income, which have been made outside the status period. Likewise, the losses made outside the status period can not be set off against the taxable profit or Dutch income made during the status period.

### Paragraph 4, Limitation holding/financing companies

If the actual activity of a taxpayer during whole year or almost the whole year consists exclusively or almost exclusively of the holding of participations or the direct or indirect financing of related entities, then, contrary to the second paragraph, the loss of that year can only be set off against taxable profit, or Dutch income, of years in which:

1. the actual activity of the taxpayer during whole year or almost the whole year consisted exclusively or almost exclusively of the holding of participations or the direct or indirect financing of related entities, and
2. the book value of the receivables on entities related to the taxpayer less the book value of debts to such entities during the whole year or almost the whole year does not exceed the bookvalue of similar receivables less the bookvalue of similar debts at the end of the year in which the loss was realised.

### Paragraph 5, Exemption from 20'4

The condition under the fourth paragraph, letter b, is not applicable if the taxpayer shows it to be likely that the change of the total meant under that letter has not been primarily aimed at the extension of loss compensation.

### Paragraph 6, Definition actual activity

The actual activity of the taxpayer meant in the fourth paragraph, is in any case not deemed to consist exclusively or almost exclusively of the holding of participations or the direct or indirect financing of entities related to it, if at least 25 employees, calculated on a full time basis, exercise other activities.

### Paragraph 7, Order of loss compensation

The compensation takes place in the order in which the losses were made and the taxable profit or Dutch income was made.

## Article 20a, Limitations loss compensation

### Paragraph 1, Change of ownership

If it is likely that the ultimate interest in the taxpayer has undergone an important change when compared to the ultimate interest in the oldest year from which losses are carried forward, then - in spite of what is said in [article 20](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/20.htm) - losses carried forward from years before the beginning of the year of the change can not be set off against profits from after that beginning.

### Paragraph 2, Disregarded changes of ownership

For purposes of the first paragraph a change of ultimate interest in the taxpayer is disregarded to the extent that:

1. the change stems from a change under general legal title in inheritance law or matrimonial law, or
2. a change relates to an extension of the ultimate interest of an individual or legal person which already had at least one third of the ultimate interest in the taxpayer at the beginning of the oldest year mentioned in the first paragraph.

### Paragraph 3, No knowledge of change of interest

The first paragraph is not applicable if the taxpayer does not know and could not have known that there has been an important change in the ultimate interest in the taxpayer, provided that this change is not out of the ordinary in its dimension.

### Paragraph 4, Exemption for active enterprises

The first paragraph is also not applicable to losses made in years in which the assets of the taxpayer did not mostly consist of investments for at least nine months, provided that:

1. the total size of the activities of the taxpayer directly preceding the change mentioned in the first paragraph has not been reduced to less than thirty percent of the total activities at the beginning of the oldest year mentioned in the first paragraph, and
2. the intention does not exist at the time of the change to reduce the total size of the activities within three years to less than thirty percent of the total activities at the beginning of the oldest year mentioned in the first paragraph.

### Paragraph 5, Disregarding certain start-up activities

For purposes of the fourth paragraph, activities which have been started in connection with the change mentioned in the first paragraph are disregarded.

### Paragraph 6, Compensation of losses under the fourth paragraph

A loss under the fourth paragraph can only be set off against the taxable profit or Dutch income from a year in which for at least nine months, the assets of the taxpayer did not mostly consist of investments.

### Paragraph 7, Start-up entities

If the largest activity of the taxpayer of the oldest year mentioned in the first paragraph is started or acquired in that year or one of the three preceding years, then, for purposes of the fourth paragraph, letters a and b the oldest year is deemed to be the year in which the loss has not been completely off set at the time of the change and the activities have been the largest.

### Paragraph 8, Investments

For purposes of this article:

1. investments include liquid assets as well as real estate intended to be directly or indirectly made available to others than entities related to the taxpayer as meant in [article 10a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), fourth paragraph;
2. investments made by a taxpayer which runs an enterprise of which the activities necessitate that monies entrusted to it (other than as equity) by unrelated individuals or entities as meant in article 10a, fourth paragraph and fifth paragraph are invested, are not treated as investments, provided that they directly concern the entrusted monies.

### Paragraph 9, Loss carry back

The first, second and third paragraphs are equally applicable with regard to setting off losses against taxable profit or Dutch income of the previous year, unless:

1. the activities of the taxpayer have not been terminated or almost completely terminated in the meantime, and
2. the assets of the taxpayer does not mostly consist of investments during at least nine months of the year in which the loss is made and the year in which the taxable profit or Dutch income was made. To that end, the oldest year as meant in the first paragraph, is substituted by the year preceding the year in which the change took place.

### Paragraph 10, Requesting advance certainty

The taxpayer that would like certainty with regard to the following questions, may request a decision from the tax inspector against which a notice of objection can be filed. The questions concern:

1. if there is a situation in which there is or was an important change in the ultimate interest in the taxpayer;
2. do the assets not mostly consist of investments for at least nine months of the year in which the loss was made;
3. are the conditions mentioned in the fourth paragraph, letters a or b fulfilled;
4. are the activities of the entity terminated or almost completely terminated as meant in the ninth paragraph; or
5. did the assets not mostly consist of investments during at least nine months in the year in which the taxable profit or Dutch income was made which would be offset by losses carried back.

### Paragraph 11, Compensation in spite of fourth paragraph

If the conditions mentioned in the fourth paragraph, letters a or b have not been fulfilled, but the condition in the heading of that paragraph has, then, at the request of the taxpayer, losses can be carried forward and set off against taxable profits or Dutch income to the extent that these profits and income can be allocated to the activities already present directly before the change meant in the first paragraph.

### Paragraph 12, Taking profits before losing right to loss compensation

If the taxpayer can not offset its losses anymore against future profits due to this article, then at the time directly preceding that moment, it can include its reinvestment provisions in its profit and increase the book value of its assets, but not higher than their fair market value, except to the extent that such an increase must be accompanied by an increase of the book value of a liability.

# Article 22, Tax rate

### Paragraph 1, Tax rate

The tax is levied on the basis of the following table.

|  |
| --- |
| tax = column III + (column IV x (taxable amount  or Dutch taxable income less column I)) |
| I | II | III | IV |
| - | Euro 25.000 | - | 20 percent |
| Euro 25.000 | Euro 60.000 | Euro 5.000 | 23.5 percent |
| Euro 60.000 | - | Euro 13.225 | 25.5 percent |

# Article 23c, Participation credit

### Paragraph 1, Introduction

The tax calculated under chapter V is reduced by the participation credit meant in [article 13aa](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13aa.htm).

### Paragraph 2, Participation credit

The amount of the participation credit is the lower of the following amounts:

1. five percent of the amount of the combined grossed up proceeds, meant under article 13aa, fifth paragraph;
2. the amount of tax under chapter V divided by the combined grossed up proceeds after it has been reduced by the costs in connection with low taxed portfolio investments times the taxable amount.

### Paragraph 3, EC participations

To the extent that the combined grossed up proceeds consist of a profit distribution and for purposes of the application of the second paragraph, letter a, the taxpayer may request not to apply the five percent, but the actual amount of profit tax on that profit distribution, if the following conditions are satisfied:

1. the entity in which the taxpayer has a low tax portfolio investment is resident in a member state of the European unionis subject to an income tax as meant in article 2, subpart c of the [Parent Subsidiary Directive](http://europa.eu.int/eur-lex/en/consleg/main/1990/en_1990L0435_index.html), nr. 90/435/EEC of 23 July 1990, without having the choice to be taxed or not, without being exempt and without the application of a special regime;
2. the taxpayer and the entity in which the taxpayer has a low tax portfolio investment have one of the legal forms listed in the annex to the directive;
3. in their countries of residence, the taxpayer and the entity in which the taxpayer has a low tax portfolio investment are not deemed to be resident outside the EU on the basis of a tax treaty concluded with a third State.

### Paragraph 4, EC participations

The actual amount of profit tax on a profit distribution as meant in the third paragraph concerns profit tax of which the taxpayer shows that it can be allocated to the profit distribution and that it is paid by the entity in which the taxpayer has a low taxed participation, or by entities in which the entity in which the taxpayer has a low taxed portfolio investment, has an interest satisfying the following conditions:

1. the entity in which the taxpayer has a low tax portfolio investment has a direct or indirect interest in the entity where the interest in each link of the chain equals at least five percent;
2. the entity is resident in a member state of the European unionis subject to an income tax as meant in article 2, subpart c of the [Parent Subsidiary Directive](http://europa.eu.int/eur-lex/en/consleg/main/1990/en_1990L0435_index.html), nr. 90/435/EEC of 23 July 1990, without having the choice to be taxed or not, without being exempt and without the application of a special regime;
3. the entity has one of the legal forms listed in the annex to the directive;
4. in its member state of residence, the entity is not deemed to be resident outside the EU on the basis of a tax treaty concluded with a third State.

### Paragraph 5, Excess participation credits

If the amounts of profit distributions which in received in one year from a low taxed portfolio investment which satisfy the conditions meant in the third paragraph, are not taken into account or not fully taken into account when determing the amount of the combined grossed up proceeds of that year, but in reality in that of a previous year (proceed has been taxed already in a preceding year), then the amount meant in the second paragraph under letter a is increased upon the taxpayer's request by 74.5/100 of the actual amount of profit tax levied from that earlier taxed benefit to the extent that that amount exceed five percent of the previously taxed grossed up proceeds.

### Paragraph 6, Maximum participation credit

The reduction under this article, taking into consideration the reductions under measures for the prevention of double taxation, can not exceed the amount of tax calculated under chapter V, and is taken into consideration after all other reductions.

### Paragraph 7, Carry forward of excess participation credits

To the extent that the amount calculated under the second paragraph, letter a, or the third paragraph, does not lead to a reduction of the tax for that year calculated under chapter V, due to application of the second paragraph letter b, or the sixth paragraph, it is transfered to the next year and taken into account in that year when calculating the participation credit by adding it to the amount under the second paragraph, letter a. The carry forward only takes place if the amount to be carried forward to the following year has been determined by the tax inspector in a decision against which a notice of objection can be filed.

### Paragraph 8, Carry forward of excess participation credits

If any fact gives rise to the suspicio that the amount to be carried forward under the seventh paragraph has been set too high, the tax inspector can review that decision by a decision against which a notice of objection can be filed. A fact known to the inspector or which reasonably could have been known can not constitute a ground for revision, except in cases where the taxpayer has been in bad faith with regard to this fact. Article 16, third and fourth paragraphs of the General tax act are equally applicable.

## Article 24, Paragraph 1 Tax assessments

The tax is levied by tax assessment.

## Article 24, Paragraph 2 Tax consolidated groups

If [article 15](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15.htm) or [article 15a](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/15a.htm) is applicable, then the assessment is made in the name of the parent or the central cooperation.

**Chapter VI, Manner of levying taxation**

**Article 25, Paragraph 1  
Advance levy of tax**

Advance levies of tax are dividend withholding tax, except for the tax levied on the basis of [article 12, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div12.htm) of the Dividend Withholding Tax Act 1965, and betting tax levied on prizes from games of chance, except to the extent that these taxes have been levied on income or prizes which do not form part of the [taxable profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/08.htm) or the [Dutch income](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm) for that year.

**Article 25, Paragraph 2  
Ultimate beneficiary**

Contrary to the first paragraph, dividend tax is not treated as an advance levy of tax if the taxpayer for whose account the dividend tax is withheld is not also the beneficial owner of the proceeds on which the dividend tax was withheld. The person who provided compensation in connection with the proceeds received as part of [a combination of transactions](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/25.htm) is not treated as the beneficial owner, where it is likely that:

1. those proceeds have been enjoyed, in whole or in part, directly or indirectly, by an individual or legal person which is entitled to a smaller refund or reduction of dividend withholding tax than the person providing the compensation; and
2. this individual or legal person directly or indirectly holds or acquires a position with regard to the shares, profit sharing certificates or loans as meant in [article 10, first paragraph, letter d](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm) of the Corporate Income Tax Act 1969 which resembles its position in similar shares, profit sharing certificates or loans before the combination of transactions has started.

**Article 25, Paragraph 3  
Combination of transactions**

For purposes of the second paragraph:

1. a combination of transactions include transactions made over a regulated stock exchange or market;
2. a transaction regarding the simple acquisition of one or more dividend receipts or short term rights of enjoyment (*kortlopende genotsrechten*) on shares is also treated as a combination of transactions.

**Article 25, Paragraph 4  
Preservation of credit rights**

The dividend withholding tax which is not creditable under article 9.2, fourth paragraph, of the Personal Income Tax Act 2001, is creditable with the credit institution, meant in article 19g, third paragraph, of the Wage Tax Act 1964, if that institution transfers an amount equal to the dividend tax to a blocked account of the person with whom the dividend tax is not creditable. The dividend tax which is not creditable under article 9.2, fourth paragraph, of the Personal Income Tax Act 2001, is creditable with the manager of the investment fund meant in article 19g, third paragraph, of the Wage Tax Act 1964, if the manager uses an amount equal to the dividend tax for the acquisition of one or more blocked rights of participation in that institution for the account of the person with whom the dividend tax is not creditable.

**Chapter VII, Additional measures**

**Article 28, Paragraph 1  
Fiscal Investment Funds**

We reserve the right to arrange the following by general decree of government:

1. regulations deviating from this law with regard to the levy of taxation from fiscal investment funds;
2. regulations according to which fiscal investment funds are facilitated with regard to withholding taxes from outside the Netherlands on the proceeds of securities and receivables up to the amount for which direct holders of shares or certificates of participation resident or situated in the Netherlands would have gotten credits against personal income tax under a tax treaty or the tax arrangement for the Kingdom of the Netherlands.

**Article 28, Paragraph 2  
Conditions for being a fiscal investment fund**

Paragraph 3, ...

**Article 28, Paragraph 2, Letter b  
Fiscal Investment Funds - Compulsory profit distributions**

NV's, BV's and [mutual investment funds](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) resident in the Netherlands of which the purpose and actual activities consist of the investment of assets are treated as fiscal investment funds if they fulfill the following conditions:  
....  
b. that part of the profit determined by general decree of government is made available to the shareholders and holders of certificates of participation no later than eight months after year end the profit made available should be distributed evenly over all shares and certificates of participation.

# Dividend Withholding Tax Act Chapter I, Tax liability

## Article 1, Paragraph 1 General introduction

Under the name "dividend withholding tax" a direct tax is levied from those who - directly or through certificates - are entitled to income from shares in, profit participating certificates of and loans as meant in [article 10, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), letter d, of the Corporate Income Tax Act 1969 to NV's, BV's, [taxable limited partnerships](http://www.dutchtax.net/Dutch/Abon/TransR/OtherR/AWR03.htm) (*also referred to as "open limited partnerships" - Dutchtax.net*) and other companies with an equity wholly or partly divided into shares which are resident in the Netherlands.

## Article 1, Paragraph 2 Mutual Investment Funds

For the application of this law, certificates of participation in mutual investment funds as meant in [article 2, second paragraph of the Corporate Income Tax Act 1969](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) are equal to shares in companies with an equity wholly or partly divided into shares and these funds are equal to companies.

## Article 1, Paragraph 3 Place of residence

If the company meant in the first paragraph has been incorporated under Dutch law, then that company is always deemed to be resident in the Netherlands. A European NV which is governed by Dutch law at its incorporation is deemed to be incorporated under Dutch law for purposes of the first sentence.

# Chapter II, Taxable object

## Article 2 Taxable object

The tax is levied on the proceeds of the shares, profit sharing certificates and loans mentioned in [article 1](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div01.htm).

**Article 3, Paragraph 1  
Definition taxable proceeds**

The proceeds include:

1. direct or indirect distributions of profit, under any name or any form whatsoever including payments made upon the redemption of shares to the extent they exceed the average contributions made on those shares, unless the shares are redeemed as a temporary investment;
2. payments made upon liquidation, to the extent they exceed the average contributions made on those shares; except to the extent that the liquidation proceeds are allocated to assets with which those entitled to the liquidation proceeds continue the enterprise of the company under [article 14c of the Corporate Income Tax Act 1969](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/14c.htm);
3. the par value of shares issued to share holders, to the extent that no contribution has been made or will be made; increasing the par value of shares equals the issue of shares;
4. partial repayment of contributed share capital, if and to the extent that profits are available; unless the general meeting of shareholders has decided on such a repayment in advance and the par value of the relevant issued shares has been reduced by an equal amount through a change in the articles of association;
5. payments made upon profit sharing certificates, including payments received in connection with the redemption or repurchase thereof;
6. compensations on loans as meant in [article 10, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), letter d, of the Corporate Income Tax Act 1969;
7. full or partial repayment of contributions made on the certificates of participation in a [mutual investment fund](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) is treated as a distribution, to the extent that the fund's equity exceeds the contributions of the outstanding certificates of participation;
8. the amount that is allocated as a contribution to each of the certificates of participation in a [mutual investment fund](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm), to the extent that the profits of that fund are allocated to be used as contribution on certificates of participation issued or to be issued to participants.

**Article 3, Paragraph 2  
Distributions in kind**

Proceeds in kind are taken into account for their fair market value.

**Article 3, Paragraph 3  
Redemption in connection with employee stock options**

The redemption of shares with the purpose of fulfilling the liabilities under a stock option towards an employee of the company or a related company as meant under article 10a, seventh paragraph of the Wage Tax Act 1964\* is a temporary investment. If these shares still belong to the company three months after the liabilities under the stock option expired, then they are deemed to have been repurchased at that time at the fair market value of the shares then. For purposes of this paragraph, liabilities under a stock option are the liabilities which are the complement of a right to acquire one or more shares or similar rights, or a right equal to that.

\*Article 10a, seventh paragraph of the Wage Tax Act 1964  
For purposes of this law, a company related to the withholding agent means:

1. a company in which the withholding agent has an interest of at least one third;
2. a company which has an interest in the withholding agent of at least one third;
3. a company in which a third party has an interest of at least one third, whilst this third party also has an interest of at least one third in the withholding agent.

## Article 3a, Paid up share capital

### Paragraph 1, Basis for contributed shares

If the contribution on shares in a company consists of shares in another company, then all the shareholders are deemed to have contributed only that which has been treated as being contributed on the latter shares, less any extra payments in cash.

### Paragraph 2, Legal demergers

In case of a transfer under general legal title in connection with the demerger of a legal person, only a proportionate part of the amount of the contribution made to the share capital of the demerging legal person is treated as contributed share capital on the shares issued by the acquiring legal persons in the demerger with regard to all the shareholders; in case of a demerger in which the demerging legal person continues to exist, the amount of the contribution to the share capital in the demerging legal person is reduced accordingly.

For purposes of the previous sentence, the contributed share capital of the demerging legal person is reduced by any payment made in cash in connection with a demerger.

### Paragraph 3, Legal mergers

In case of a transfer under general legal title in connection with the legal merger of a legal person, a maximum equal to the amount of the contribution made to the share capital of the disappearing legal person is treated as contributed share capital on the shares issued by the acquiring legal persons in the merger with regard to all the shareholders.

For purposes of the previous sentence, the contributed share capital of the disappearing legal person is reduced by any payment made in cash in connection with a merger.

### Paragraph 4, Anti-abuse provision

If the transfer under general legal title in connection with a demerger is primarily motivated by the avoidance or deferral of taxation, then the second paragraph is not applicable; in that case, the benefits received by a shareholder as such in connection with the demerger is treated as a profit distribution by the demerging legal person. Unless the opposite is shown to be likely, a demerger is deemed to be primarily motivated by the avoidance or deferral of taxation, if the demerger does not take place on the basis of business reasons, such as a restructuring or rationalisation of the business activities of the demerging and the acquiring legal persons. Business reasons are also not deemed present if the assets transferred in the merger to the other legal person largely consist of direct or indirect investments - including liquid assets - or if that which remain with the demerging legal person largely consists of direct or indirect investments, unless the investments which are transferred or remain do not represent an isolation of the profit reserves.

### Paragraph 5, Proportionate part

For purposes of the second paragraph a proportionate part means: a part which is proportionate to the relation between the fair market value of the assets of the demerging legal person transferred to the acquiring legal person at the time of the demerger and the fair market value of the total assets of the demerging legal person at the time of the demerger.

### Paragraph 6, Advance certainty

Before the demerger, the demerging legal entity which wishes advance certainty about the question whether the demerger is not deemed to be primarily motivated by the avoidance or deferral of taxation can file a request with the tax inspector, which will make a determination in a decision against which a notice of objection can be filed.

## Article 3b, Paragraph 1 Reinvestment reserve fiscal investment fund

The reinvestment reserve which is formed under [article 28](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/28.htm) of the Corporate Income Tax Act 1969 with regard to the levy of corporate income tax from [fiscal investment funds](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/28.htm), is treated as share capital contributed on the shares of the fund.

**Article 4, Paragraph 1  
Participation Exemption**

No tax needs to be withheld on the proceeds of shares, profit sharing certificates and loans as meant in [article 10, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), letter d, of the Corporate Income Tax Act 1969 if the participation exemption as meant in [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm) of the Corporate Income Tax Act 1969 is applicable to the proceeds which the beneficiary receives from the shares, profit participating certificates or loans and if the participation forms part of the assets of its business in the Netherlands. The first sentence is not applicable with regard to proceeds to which the beneficiary is not the beneficial owner.

**Article 4, Paragraph 2  
Exemption for green investment entities**

No tax needs to be withheld on the proceeds of shares in, profit sharing certificates in and loans as meant in [article 10, first paragraph, letter d of the Corporate Income Tax Act 1969](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm) extended to appointed credit institutions and fiscal investment funds as meant article 5.14 of the Personal Income Tax Act 2001 (*Environmentally friendly investments - Dutchtax.net*).

**Article 4, Paragraph 3  
Mutual investment fund**

A mutual investment fund as meant under [article 28](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/28.htm) of the Corporate Income Tax Act 1969 may refrain from withholding tax on the proceeds of blocked rights of participation in that institution as meant under article 19g, third paragraph, of the Wage tax act 1964.

**Article 4, Paragraph 4  
Ultimate beneficiary**

For purposes of not withholding dividend tax under this article, a refund of dividend withholding tax under [article 10](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div10.htm), as well as a reduction or refund of dividend withholding tax under the Tax Agreement for the Kingdom of the Netherlands or a treaty for the prevention of double taxation concluded by the Netherlands, the person who provided compensation in connection with the proceeds received as part of a combination of transactions is not treated as the beneficial owner, where it is likely that:

1. those proceeds have been enjoyed, in whole or in part, directly or indirectly, by
   1. an individual or legal person with regard to whom a dividend tax must be withheld, while it does not need to be withheld with regard to the person providing the compensation; or
   2. an individual or legal person which is entitled to a smaller refund or reduction of dividend withholding tax than the person providing the compensation; and
2. this individual or legal person directly or indirectly holds or acquires a position with regard to the shares, profit sharing certificates or loans as meant in [article 10, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10.htm), letter d of the Corporate Income Tax Act 1969 which resembles its position in similar shares, profit sharing certificates or loans before the combination of transactions has started.

**Paragraph 5  
Combination of transactions**

For purposes of the fourth paragraph:

1. a combination of transactions include transactions made over a regulated stock exchange or market;
2. a transaction regarding the simple acquisition of one or more dividend receipts or short term rights of enjoyment (*kortlopende genotsrechten*) on shares is also treated as a combination of transactions.

**Article 4c, Paragraph 1  
Redemption of Shares**

No tax needs to be withheld with regard to the proceeds from shares at their redemption, provided that the total amount of the redemption in that calendar year is not ten times more than the amount of the average cash distributions in the previous five calendar years, as determined on the basis of the second paragraph, less the previous four years' amounts of redemptions according to this article, provided that the following conditions are met:

1. the redeemed shares belong to a class listed on the official market of Euronext in Amsterdam or a similar foreign exchange as indicated by Ministerial Decree and the withholding agent is not an entity of which the principal business largely consists of the direct or indirect investment of equity or a similar activity;
2. during the calendar year the dividends distributed at least equals the amount of the average cash distributions in the previous five calendar years, as determined on the basis of the second paragraph; and
3. the par value of the paid up share capital of the withholding agent has not been increased during the calendar year up until the time of the redemption or in the four preceding calendar years, unless the redemption has been primarily driven by business reasons.

**Article 4c, Paragraph 2  
Average cash distributions in past five years**

The amount of average cash dividends paid out in the five previous calendar years mentioned in the first paragraph, is calculated by taking the amounts of the previous seven calendar years, applying an inflation correction factor and eliminating the two years with the highest and the lowest adjusted amounts.

**Article 4c, Paragraph 3  
Different classes of shares**

If the withholding agent has different classes of share capital, then this article is applied per class of redeemed shares.

**Article 4c, Paragraph 4  
Ministerial decrees**

Measures are set by Ministerial Decrees :

1. for the application of this article in situations in which the size of the withholding agent has increased or decreased due to a merger or demerger;
2. with regard to the inflationary correction mentioned in the second paragraph.

**Article 4c, Paragraph 5  
Advance certainty**

The withholding agent that wishes certainty as to the extent to which no withholding has to be made on the basis of this article, can file a request with the inspector, which will make a decision against which a notice of objection can be filed.

The request is made at least six weeks before the intended redemption.

## Article 5, Tax rate

The tax equals 15 percent of [the proceeds](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div03.htm).

## Article 6, Tax paid by distributing company

### Paragraph 1, Introduction

If the taxes are for the account of the company liable for the proceeds, then the tax is calculated by multiplying the proceeds by 100/85.

### Paragraph 2, Redemption of shares

If it is apparent at the end of the calendar year, that the conditions under [article 4c](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div04c.htm), first paragraph, letters b or c have not been fulfilled, the tax is calculated as it is in situations in which the withholding tax is for the account of the company.

# Chapter IV, Way of levying

## Article 7, Paragraph 1 Withholding and transfer

The tax is levied through withholding part of the proceeds.

## Article 7, Paragraph 2 Withholding agent

The withholding agent is the company liable for the proceeds.

## Article 7, Paragraph 3 Timing of withholding

The withholding agent must withhold the tax at the time that the proceeds are made available.

## Article 7, Paragraph 4 Remittance by filing a return

The withholding agent must remit the dividend tax withheld by filing a tax return.

## Article 7, Paragraph 5 Tax due exceeds cash distribution

If the tax due exceeds the cash distribution, then the deficit is deemed to have been withheld at the time described in the third paragraph, based on the understanding that the withholding agent may collect the deficit from those entitled to the distribution. The withholding agent may defer the transfer of the distribution in kind until the collection of the deficit is completed.

## Article 9, Paragraph 1 Dividend slip

As soon as the proceeds are paid, transferred, settled or issued, the withholding agent, the one with whom the proceeds are made available, the administration office which pays the proceeds through to share certificate holders, or the one whose profession it is to purchase or cash dividend receipts must issue to the beneficiary a dated receipt in a form determined by Ministerial Decree.

## Article 10, Paragraph 1 Refund of Dividend Withholding Tax

At its request, a legal person resident in the Netherlands, which is not subject to Corporate Income Tax can get a refund of the dividend withholding tax withheld from it during a calendar year, provided that this exceeds Euro 23. A notice of objection can be filed against the tax inspector's decision in this regard.

The first sentence is not applicable with regard to dividend withholding tax on proceeds to which the legal person is not the [beneficial owner](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div04.htm).

The request is made by filing a return within a period to be determined by Ministerial Decree.

## Article 10, Paragraph 2 Fiscal investment funds

At the request to the tax inspector by a company which is treated as a fiscal investment fund for the levy of corporate income tax, a refund is made of the dividend withholding tax levied from it during a year; a notice of objection can be filed against the decision of the tax inspector. The first sentence is not applicable with regard to dividend withholding tax on proceeds to which the company is not the [beneficial owner](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div04.htm). The request is made in a return which is filed no later than six months after the end of the year to which the refund relates.

## Article 10, Paragraph 3 Refund of dividend tax

An entity resident in the Netherlands as meant in [article 2](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/02.htm) of the Corporate Income Tax Act 1969 which is subject to corporate income tax and an entity not resident in the Netherlands as meant under [article 3](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/03.htm) of the Corporate Income Tax Act 1969, gets a refund of the dividend tax withheld for its account during a calendar year if this tax is withheld on the proceeds of shares, profit sharing certificates, or loans which do not form part of the [taxable profit](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/07.htm) for purposes of the Corporate Income Tax Act 1969 or of the [Dutch income](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/17.htm) of the beneficiary and if the shares, profit sharing certificates or loans form part of the assets of an enterprise run in the Netherlands, if this tax is more than Euro 23; the refund is granted upon request and a notice of objection can be filed regarding the tax inspector's decision upon that request. The first sentence is not applicable to dividend tax on proceeds with regard to which the entity is not the [ultimate beneficiary](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div04.htm). The request is done by tax return which must be filed within a period to be determined by ministerial decree.

**Article 11, Paragraph 1  
Reduction in remittance dividend withholding tax re. foreign dividend withholding taxes**

The tax to be remitted upon filing a return under [article 7, fourth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div07.htm), can be reduced as indicated in the second paragraph regarding profit distributions on shares and profit sharing certificates which the withholding agent received from an entity that is resident in the Netherlands Antilles or Aruba, or a State with which the Netherlands have concluded a treaty for the prevention of double taxation, provided that the following conditions are fulfilled:

1. at the time that the entity makes the distribution available, the withholding agent must - alone or together with with a related withholding agent resident in the Netherlands as meant in [article 10a, fourth paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/10a.htm), of the Corporate Income Tax Act - have been a shareholder for at least 25 percent of the par value of the paid up share capital or, in case the treaty so dictates, 25 percent of the voting rights in that entity;
2. the profit distributions have been subject to a withholding tax of at least 5 percent in the Netherlands Antilles or Aruba or the State where the entity is resident;
3. the profit distributions are exempt from taxation in the hands of the withholding agent on the basis of [article 13](http://www.dutchtax.net/Dutch/Abon/TransR/CITR/13.htm) of the Corporate Income Tax Act 1969.

Article 11, Paragraph 2  
Reduction

The reduction under the first paragraph equals 3 percent of the distribution made available by the withholding agent from which it withheld dividend tax, but not more than 3 percent of the profit distributions - before deducting the dividend tax withheld - meant in the first paragraph that it received in the calendar year up to the withholding as well as the two preceding calendar years, to the extent that these profit distributions have not been taken into account in determining a previous reduction.

The profit distributions are taken into account in the order in which they are received by the withholding agent.

**Article 11, Paragraph 3  
Disregarded distributions**

The distributions upon which the withholding agent withheld dividend tax which has been completely refunded do not form part of the distributions mentioned in the second paragraph, unless they were made available to:

1. a legal person as meant in [article 10, first paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div10.htm) or a similar entity resident outside the Netherlands, which holds less than 5 percent of the par value of the paid up share capital of the withholding agent; or
2. a company as meant in [article 10, second paragraph](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div10.htm).

**REDO 11'4**

**Article 11, Paragraph 5  
Equal treatment for other taxes**

For purposes of this article profits from States with which the Netherlands concluded a treaty for the prevention of double taxation which are exempt from taxation in the Netherlands according to the relevant treaty and which have been subject to an additional tax of at least 5 percent on top of an income tax, are also treated as profit distributions on shares and profit sharing certificates to which a reduction can be applied.

**Article 11, Paragraph 6  
Further regulations**

Further measures regarding the application of this article can be set by Ministerial Decree.

## Article 12, Right to full withholding

### Paragraph 1, Introduction

If the withholding agent received profit distributions which could lead to a reduction under [article 11](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div11.htm), it may, contrary to [article 4](http://www.dutchtax.net/Dutch/Abon/TransR/DWTR/div04.htm), first and second paragraph, nonetheless withhold an amount equal to the reduction.

## Article 13 Determining contributions on shares

At the request of the withholding agent, the tax inspector determines what has been contributed on the shares in an NV or a BV not being an investment fund with a variable share capital (*beleggingsmaatschapppij met veranderlijk kapitaal*), as well as the average contributions made on the relevant shares; a notice of objection can be filed against the inspector's decision. Further regulations regarding the request can be made by Ministerial Decree.

# Chapter V, Final measures

## Article 15 Average contribution mutual investment funds

In determining the average contribution on certificates of participation in a mutual investment fund to which the Corporate Income Tax Act 1969 is applicable as of 1 January 1970, the equity present at that time, is treated as being contributed at that time. This equity does not include proceeds realised and distributed after 1 January 1968, which, would have been treated as investment income, had they been distributed before that time to resident taxpayers not entitled to the equity of an enterprise.

## Article 16 Grandfathering article 3a'1

Article 3a, first paragraph, is not applicable with regard to contributions on shares made before 1 January 1964

## Article 17 Entry into force

This law enters into force on 1 January 1966.

# General Tax Act Chapter I, General measures

## Article 2, Paragraph 3, letter c Definition Taxable Limited Partnership

The tax acts use the following definitions  
...  
c. taxable limited partnership (*also referred to as "open limited partnership" - Dutchtax.net*): the limited partnership in which the admittance or replacement of limited partners can take place without the permission of all partners, general as well as limited partners; this does not apply to inheritance or bequest;  
...  
f. share: also the right of participation of a limited partner in a [taxable limited partnership](http://www.dutchtax.net/Dutch/Abon/TransR/OtherR/AWR03.htm) (*also referred to as "open limited partnership" - Dutchtax.net*);

## Article 4, Paragraph 1 Residence

Where someone is resident and where an entity is resident, is determined on the basis of circumstances.