

## Memorandum

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### The NL tax climate charitable foundations

#### Charitable foundations

In the Netherlands (NL), charities -mostly foundations- enjoy a favourable tax regime. On top of that, the NL legal system and the infrastructure for legal entities (notably foundations) in general can be characterized as being liberal and flexible. Generally speaking, a foundation ("*stichting*") can be incorporated at relatively very short notice, while at the same time it is often possible to enter into advance rulings with the NL Tax Authorities regarding the tax position and corresponding treatment of the foundation concerned. The NL tax regime is not only generous for charitable foundations but for companies and individuals making gifts to an NL charity as well.

#### *Different types of NL charities*

There are special tax privileges for ANBIs (registered charities which with a purpose that qualifies as a public benefit) and Cultural Institutions (an ANBI focusing exclusively or almost exclusively (at least 90%) on culture that been qualified as such at its request by the Tax Authorities).

#### *Inheritance and gift tax (IGT)*

Gifts and legacies made to NL charities are not subject to IGT. Gifts made by a NL charity are not subject to IGT, provided the gift was made for the public benefit. Normally, if the gifts are made to either a charitable project or an entity which itself is a (NL) charity, this requirement will be met. Especially in view of these full exemptions, the use of an NL charity may be very suitable as a vehicle within a cross-border charitable structure. But there is more to it.

#### *Corporate income tax*

NL foundations are not subject to NL corporate income tax (CIT) by mere operation of law, but only to the extent they conduct a business (economic activity). Consequently, NL foundations which are truly charitable, i.e. not engaging in any economic activity, are not subject to CIT. However, even if a NL charity would be involved in any economic activity and hence be subject to CIT, it may still benefit from a number of exemptions and special allowances/deductions. Effective 2012, an exemption of CIT for profit up to EUR 15.000 annually or EUR 75.000 for the relevant year and the four preceding years aggregately will apply to all foundations and associations.

#### *Withholding taxes*

Exempt NL charities are entitled to a refund of NL dividend withholding tax (other exempt organizations also, if established in the EU). Besides, NL exempt charitable organizations can in many cases enjoy a refund of foreign withholding taxes, either based on EU-legislation or on one of the many favourable tax treaties that the Netherlands has concluded with a large

number of countries. Sometimes it may also be based on domestic policy in the country of origin, e.g. if the Netherlands grant a refund to a foreign exempt organization in the basis of reciprocity. To mention just one example of a favourable tax treaty: under the US-NL tax treaty, NL organizations which are exempt for the CIT, are also exempt from any dividend withholding taxes in the US.

### **Donations to NL resident charities**

To give a full picture of the many aspects of the favourable NL tax regime, we will address the favourable treatment that NL resident individuals and companies may enjoy when making gifts to a NL charity.

#### *Individuals*

NL resident individuals, being subject to Personal Income Tax (PIT), may deduct gifts to ANBI's. The deduction is subject to a relatively small annual threshold. To the extent the gift is in excess of this threshold, it may be deducted, with a maximum of 10% of the taxable income (annually). In addition, annual payments (annuities) to an ANBI or a cultural institution for a minimum period of 5 years are deductible. For the deduction of these gifts no maximum and no threshold apply.

When individuals receive a gift from a NL charity, normally this gift is not a subject to PIT.

#### *Companies*

Companies, which are subject to NL corporate income tax (CIT) by nature, may deduct gifts from the taxable profit unlimited, provided these gifts are related to the interest of the business. Gifts with no (apparent) relation to business interests may be deductible if made to qualifying charities. Effective 2012 gifts made to ANBIs are deductible up to 50% of the profits, subject to a maximum of EUR 100.000.

As mentioned, this only applies to resident tax payers. Depending on domestic tax legislation also non-resident individuals or companies could be entitled deducting gifts to a NL charity from income in their country of origin.

#### *Gifts made to cultural institutions*

A "multiplier" will apply to the deduction from personal and corporate income tax of gifts made to Cultural Institutions. For personal income tax purposes, this tax allowance will be increased by 25% of the gifts, subject to a maximum of EUR 1,250. For corporate income tax purposes, the allowance will be increased by 50% of the gifts, subject to a maximum of EUR 2,500. The multiplier facility will be valid until 1 January 2017.

### **Conclusion**

The Netherlands tax and legal system perfectly fits into the demands of both international businesses and internationally operating charities and, more generally, those of NGO's (non governmental organizations). The related infrastructure is very well established, which may be demonstrated by the fact that many NGO's and international charities have their offices in the Netherlands, often in The Hague (area). Naturally, the legal and financial industry is very well adapted to servicing both these institutions and individuals or companies intending to set up a cross border fund raising or otherwise charitable structure.