

*Netherlands*

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**For: The Netherlands**  
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**Questionnaire for National Reporters**

**Private Client and Immigration Working Session**

**Movement of High Net Worth Individuals  
Localisation et Délocalisation des Clients Privés Fortunés**

General Reporters/Rapporteurs généraux: Michael Wells-Greco (Speechly Bircham) and Firuza Ahmed (Kingsley Napley)

## **Background**

As certain governments around the world struggle with fiscal deficits, their attention has turned to international tax evasion (illegal) and the perceived shortcomings of the international tax system from the point of view of tax avoidance (legal). In other regions we have seen unsettled economies combined with civil unrest. Families are seeking safer, more stable jurisdictions not just for themselves but for future generations as they look for long term security and are increasingly looking overseas for a solution.

How do our immigration, legal and tax systems cope with the realities and complexities of 21st century aging family life and the demand for economic security/stability? What are the particular challenges for practitioners in assisting these families? How does increasing governmental exchange of information and compliance requirements affect strategies for investment, tax planning and personal security. How does the global citizen manage a world of overlapping, often conflicting regulation?

## **1. PRELIMINARY MATTERS**

We would ask that you return completed the Questionnaire and your answers to the case studies below by **Friday, 28 February 2014** (earlier if possible please).

Prior to dealing with the legal problems thrown up by the case studies, could you please deal with the following questions with reference, where relevant, to any recent case law or general practice. If you need to clarify the answer to a question, please do so. If a question is not an issue in your country, please provide an explanation as to why it is not.

If you are a delegate responding as part of the Immigration Commission, please respond **only** to sections 1.1 and 2.1.

## 1.1 **Immigration and Nationality [for Immigration Commission only]**

1.1.1 Briefly outline any immigration, residency or citizenship programmes your jurisdiction has to attract high net-worth individuals (HNWIs).

- In the Netherlands the so called Highly Skilled Migrant Program for resident- and work permits was introduced to attract educated foreigners. This in combination with a very advantageous tax ruling, the 30% ruling (including a full tax exemption of non-Dutch income from assets, savings and investments), creates a very interesting fiscal and social climate for HNWI's in the Netherlands. Quite recently, on October 1<sup>st</sup> 2013, a new rule was introduced that allows non-EU citizens to reside here on a temporary residence permit, provided they invest an amount of EUR 1,25 Million in our economy. It was introduced to attract mainly wealthy Russian and Chinese people.

1.1.2 Are there any proposed changes to the programmes outlined in 1.1.1?

- There are constantly minor changes on both the immigration and the tax rules. These are getting more and more strict. For example, with regard to the tax ruling, the duration of the ruling has gone from 10 to 8 years, there are higher salary requirements, if someone moves to the Netherlands from within a certain distance from the Dutch border, the facility is not applicable, etc.

1.1.3 Is there a dichotomy between your Government's wish to attract HNWIs as against public perception of immigration?

- Not really, the public perception seems to be that this is good for our economy. The only question that remains is whether all the aspects of the tax ruling and immigration facilities can pass the test of non-discrimination under EU law.

## 1.2 **Cross-border succession**

1.2.1 Is testamentary freedom a right recognised by national law or public policy?

- Yes, both

1.2.2 Can those entitled to the reserved portion (heirship entitlement), during the life of the donor, waive their rights to a reserved share?

- Yes. An heir can waive his or her rights to a reserved share (in Dutch legitieme portie), provided that this statement of consciously accepting that nothing will be acquired is registered officially. However, the total amount of inheritance tax due does not change after a reserved share is waived.

1.2.3 Can an individual resident in your country elect the law applicable to his/her succession? If relevant/applicable, please consider your answer in the context of Brussels IV (Regulation (EU) 650/2012) and/or the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons.

- Yes. Either the law of the country of residence can be elected, or the Netherlands in case of an individual with the Dutch nationality. This should be confirmed in a will with a public notary. If no choice is made, the Hague Convention on the Law Applicable to the Estates of Deceased Persons is applicable, in which case it depends whether the Dutch individual has lived in the other country for five years or less at the moment of his or her passing away.

If yes, is this election limited to the law of the deceased's:

(A) Nationality (B) Habitual Residence (C) Other

- Nationality and (habitual) residence

### 1.3 **Personal taxation and compliance**

1.3.1 Please provide a brief summary on the current rules as to liability to tax (e.g. residence, nationality, domicile (if applicable)).

- In the Netherlands, residency is the basis for taxation. A person is a resident here if the centre of his or her personal life is in the Netherlands, based on facts and circumstances. There is no minimum day requirement. There is one exception in the Inheritance and Gift Tax Act, where nationality is the basis. This is the case if an individual with the Dutch nationality deceases or makes a donation within 2, respectively 10 years after he or she has left the Netherlands as a resident. Non-residents are taxable on a limited number of Dutch source assets and income only. The concept of domicile is not known to us.

- 1.3.2 Have there been any changes introduced in the last 24 months to the definition of who is a “taxpayer” e.g. “resident”, “habitually resident” or “domiciled” in your country?
- Yes, whereas before the definition of a state of residence was the place that is the centre of an individual’s social and economic life, it has early 2013 in case law been changed to the centre of one’s personal life.
- 1.3.3 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for residents?
- No, many reporting requirements were already in place (Tax law, KYC legislation etc.)
- 1.3.4 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for non-residents with assets located in your country?
- Yes, with respect to trusts and similar vehicles, on January 1<sup>st</sup> 2014 a new rule was introduced to tax the value of shares in a Dutch company that would otherwise be attributed to a trust.
- 1.3.5 Has your country undertaken (or proposed the introduction of) any legislative steps in the last 24 months to promote transparency in tax reporting obligations and to combat international tax evasion in the context of private wealth?
- Yes, trusts and similar vehicles (called apv’s) are more and more under attack. These are considered transparent for tax purposes and the assets are deemed to be the assets of the settlor. There are even specific expertise groups in place within the tax authorities to fight this kind of constructions.
- 1.3.6 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for holding structures with assets or “beneficiaries” located in your country?
- No, many reporting requirements were already in place (Tax law, KYC legislation etc.)

#### 1.4 **Mental capacity of adults**

- 1.4.1 What system is in place in your country to deal with an individual who has lost capacity?
- Powers of attorney or representation would be in place.

- 1.4.2 Does your country provide for Powers of Representation/Lasting Powers of Attorney/Mandats de protection future in relation to an incapacitated adult's personal welfare and/or property and affairs?
- Yes.
- (A) Personal welfare only (B) Property and affairs only
- Yes (C) Both personal welfare and property and affairs
- 1.4.3 Will your country recognise and enforce a form of Power of Representation or Attorney intended to have effect after the onset of mental incapacity valid in the state in which it is prepared?
- Most probably yes.
- 1.4.4 Are there proposals for legislative change in the field of mental capacity?
- Yes, the so called 'life testament' or 'life will' is in place since a couple of years. This is a will that not only deals with what should be done in case of death, but also in case of mental incapacity. This is of relevance because statistics show that the chance of a man getting demented is 20% nowadays and for a woman this is even 33%.
- 1.4.5 Is your country a party to the Hague Convention XXXV for the International Protection of Adults of 13 January 2000?
- (A) Yes
- 1.4.6 Is your country a party to the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol 2006?
- (A) Yes, the Netherlands have signed but not ratified the Convention. The Netherlands have made a reservation and interpretative declaration to their application of the Convention. More specifically, the Netherlands interprets the right to life in Article 10 within the framework of its domestic laws, it also interprets article 25 (f) which bars the discriminatory denial of health care, as permitting a person to refuse medical treatment, including food or fluids.

Please return by email to:

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