The 2011 Memorandum on Dutch Tax Treaty Policy

Theory and practice of the Dutch tax treaties with developing countries

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The Netherlands has laid down its general policy with regard to tax treaties in the Memorandum on Tax Treaty Policy (*Notitie Fiscaal Verdragsbeleid,* or NFV), which was last amended in 2011.[1] The Netherlands has entered into bilateral tax treaties with approximately 100 countries. About one fourth[2] of these are with developing countries.[3] In this paper, SOMO examines whether the Netherlands has provided developing countries with more taxation rights on international investments, as stated in the NFV 2011.

The main question in this study is if the basic principles of the NFV are complied with in tax treaties with developing countries. The NFV recognises these countries as a separate category: (…) '*Dutch tax treaty policy takes into consideration the particular interests of developing countries by enabling them to provide their own resources*'.[4] Broadly speaking, it covers the tax treaties concluded or renegotiated since 2011. Thus, treaties with developing countries concluded before 2011 and not amended since then are outside its scope. In concrete terms, then, this study discusses the tax treaties with: Indonesia[5], Kenya[6], Zambia[7], Malawi[8], Ethiopia[9] and Ukraine[10]. A number of tax treaties have undergone only a limited number of changes since 2011, specifically those with Uzbekistan[11], India[12] and Ghana[13]. These treaties have been amended for several reasons, including (1) on the basis of new OECD guidelines, (2) to widen the scope of the treaty to include Dutch territories outside the EU and (3) to bring the tax treaty in line with relevant changes to national legislation and regulations.[14] The explanatory note of the protocol amending the treaty[15] for these three countries states that it is in agreement with the Netherlands' treaty policy as stated in NFV 2011. It is unclear from NFV 2011 whether the entire treaty or only the amended articles must be in line with the treaty policy. For this reason, these three treaties have been included in this study, but will be discussed separately in the conclusion.

The results of this study were submitted to the Ministry of Finance for review before publication. Any relevant comments have been incorporated in this paper.

Tax treaties

Countries make mutual agreements about taxing persons and companies investing and operating across borders in what are called tax treaties. The purpose of these treaties is to agree which government levies taxes where and when, as well as to avoid double taxation and to exchange information between the two governments.[16]

Countries conclude tax treaties for several reasons. One frequently cited reason for concluding them is an envisaged increase in investments between the two countries.[17] Tax treaties stimulate investment by restricting 'obstacles' to economic movement between the two countries such as the levying of withholding taxes. However, reducing withholding taxes also results in less direct tax revenue for the signatory countries. How this negative budgetary impact (caused by the reduction of withholding taxes) is absorbed by the two countries depends on, among other things, the two countries' net investment positions. The negative budgetary impact of a measure such as reduced withholding-tax rates will be greater for the country that is a net capital importer than for the other country.[18]

Since it is developing countries in particular that often import more capital, in many cases the negative budgetary impact of lower withholding tax rates is more pronounced in developing countries. They will thus collect less tax income as a result of concluding the tax treaty. In many cases, the potential increased economic growth resulting from concluding the tax treaty is not enough to offset the negative budgetary impact. In addition, multiple studies have shown that a tax treaty's effect on economic growth is dependent on several factors (such as having a colonial past, the size of the economy and its geography).[19] Scientific studies that measure the effect of concluding tax treaties on investments and economic growth, present an ambiguous picture. Accordingly, it cannot be unequivocally stated that concluding tax treaties results in an increase in investments and in economic growth[20]; in fact, for developing countries, tax treaties carry a high risk of lower tax revenues.

The 2011 Tax Treaty Policy Memorandum

The most recent Tax Treaty Policy Memorandum is from 2011. The first was published in 1987, and amended in 1996 and 1998.[21] A new Tax Treaty Policy memorandum was announced in 2018 and was sent to the Lower House of Parliament in June 2020.[22] The NFV of 2011 contains, in addition to the general policy, separate treatment for developing countries with regard to tax treaties. It states that '*Dutch tax treaty policy takes into consideration the particular interests of developing countries by enabling them to provide their own resources'.*[23] Thus it states that '*In the coming years as well, the Netherlands, more than other treaty partners [will] continue to show understanding towards developing countries, for instance, for requests for an expansion of the concept of 'permanent establishment' or for relatively high withholding taxes*'. This was explained in more detail in a parliamentary debate[24]: '*in line with treaty policy with regard to developing countries, the Netherlands is prepared to agree to higher withholding taxes than in relation to more developed countries, with the under-standing that the Netherlands wishes to achieve a result more or less equivalent to that in the treaties of that developing country with comparable more developed countries'*.[25]

Treaty shopping

Although bilateral tax treaties apply to the residents of both countries, the treaties may also be used by persons from third countries. The danger of this improper use, also called 'treaty shopping', is described in the UN model convention (article 1)[26] as follows:

'Treaty shopping is a form of improper use of tax treaties that refers to arrangements through which persons who are not entitled to the benefits of a tax treaty use other persons who are entitled to such benefits in order to indirectly access the benefits'.

In 2013 the IBFD (International Bureau of Fiscal Documentation) conducted a study commissioned by the Dutch Foreign Trade and Development Cooperation Minister and State Secretary for Finance.[27] Its aim was to identify the risk of unintended use of Dutch tax treaties with developing countries. In this framework,[28] the tax treaties between the Netherlands and Bangladesh, the Philippines, Ghana, Uganda and Zambia (and to a certain extent Kenya) were compared with the tax treaties between these countries and the reference countries of Belgium, China, Germany, France, Ireland, India, Mauritius, the United Kingdom and Switzerland. On the basis of this selection, it turns out that the five Dutch treaties with the poorest developing countries differ very little from the treaties that these developing countries concluded with the reference countries.

In 2013, on the basis of this IBFD study and other research, the Dutch government pledged to combat treaty abuse: all current and new treaties with developing countries were provided with the opportunity to include an anti-abuse provision.[29]

Purpose of the study

As stated above, the interests of developing countries have been taken into account in two areas: with regard to the concept of 'permanent establishment'[30] and with regard to the 'level of withholding taxes'. This study examined withholding taxes, in particular those for dividends, interest and royalties.[31] These withholding taxes are offset by the withholding taxes agreed by the treaty partner with other OECD countries.[32] The various tax treaties differ with regard to their definitions of withholding taxes. The choices made in this respect are explained hereafter.

Dividend

The most important distinction with regard to dividends made in most tax treaties is between 'portfolio' and 'participating interest'. 'Portfolio' investments generally entail limited investment in a company's share capital. Within the EU, the distinction between portfolio and participation dividend is made at an investment in 5% of a company's share capital. If an investor owns less than 5% of the shares, their dividend is considered 'portfolio', and with a percentage greater than 5% it is seen as participation.[33] Because the definitions of a portfolio dividend differ greatly between countries and their tax treaties, this study does not include any comparative research on portfolio dividends, and thus only looks at the participation dividend, depending on the participation percentage.[34]

Interest

Most tax treaties have a generally applicable withholding tax on interest. However, many provide an exception to this interest rate, depending on the underlying 'assets'[35] or on the receiving party.[36] For this study, we opted to use the generally applicable withholding tax on interest to determine the withholding tax on interest.

Royalties

Many tax treaties also contain exceptions for royalties. Often these exceptions are based on the type of assets on which the royalty is paid.[37] For this study, we opted to use the generally applicable withholding tax on royalties to determine the withholding tax on royalties.

Technical services

One significant withholding tax, which is a particularly important source of revenue for developing countries, is the withholding taxes on technical services. Most treaties do not have a separate clause specifying this withholding tax. In a number of cases the gap has been dealt with by including technical services in the definition of royalties, but most tax treaties do not provide for such a withholding tax.[38] Since technical services are becoming increasingly significant in the current economic model, there is a loud call from developing countries to implement a withholding tax in tax treaties. Accordingly, since 2017, the UN model convention has included an addition (Article 12A) specifically regarding technical services.[39] Since a withholding tax on technical services is not part of the NFV 2011, it has, not been included in this study despite its great relevance for developing countries.

Most-Favored-Nation clause

One important provision sometimes included in tax treaties is the Most-Favored-Nation (MFN) clause. Including this provision means that the (bilaterally) agreed on withholding tax rate will be reduced to the lowest withholding tax rate that this country has in its tax treaties with other countries. This can apply to one or more income categories. It can also apply only to a particular group of countries (e.g. OECD member countries)[40]. In this study the MFN clause appears in a number of cases. Countries with an MFN clause are listed bold in the footnotes to Tables 1 to 3.[41]

- **Indonesia** has an MFN clause in its tax treaties with the following OECD countries: France and the United Kingdom.
- **Zambia** has an MFN clause in its tax treaty with the OECD country of France.
- **Ethiopia** has an MFN clause in its tax treaties with the following OECD countries: France and Italy.
- **India** has an MFN clause in its tax treaties with the following OECD countries: Belgium, Finland, France, Hungary, Nederland, Spain, Sweden and Switzerland.
- **Kenya** has an MFN clause in its tax treaty with France.

To determine the withholding tax rate within a tax treaty that has an MFN clause the currently implemented withholding tax rate has been chosen (in accordance with the MFN clause).

Engagement in negotiations with treaty partners

The NFV 2011 clearly states that the Netherlands will accept higher withholding taxes in treaties with developing countries. This study examines whether the amended or new post-2011 tax treaties with developing countries actually do have higher withholding tax rates. It is important in this regard to remember that a bilateral tax treaty is the result of negotiation between two countries. If the agreed-upon withholding tax rate is lower than the OECD average, it can be partly or wholly based on the preferences of the developing country's negotiating team. This was also observed by the State Secretary of Finance (2019):[42] '*It is our experience in negotiations with* *developing countries that these countries are also willing to agree to a mutual reduction of the withholding taxes; developing countries also generally recognise that high withholding tax rates can be an obstacle to attracting investment'.*

Given that negotiations take place behind closed doors and their content is not made public, it is impossible to ascertain how the withholding tax rates were agreed on. For some treaties, the positions of Netherlands and the country in question can be seen in the explanatory memorandum (*Memorie van Toelichting*) that accompanies the relevant tax treaty when it is presented to the Dutch Parliament, and/or from the questions and answers during the Parliamentary debate. For a detailed analysis of the negotiating positions of the partners of the tax treaties examined in this study, see the annex.

It can be stated based on this analysis that only in the case of Ethiopia was there an explicit desire from the partner country to agree on relatively low withholding taxes. Most of the explanatory memoranda to the tax treaties state that the Netherlands either had an emphatic desire for or insisted on lower withholding tax rates.[43] For a number of developing-country treaty partners, no unambiguous conclusions can be drawn as to their position on the level of the withholding taxes.[44] Before proceeding to the results of the study, the table below shows the withholding tax rates in the tax treaties with developing countries which have been amended or concluded since 2011.

A number of tax treaties with developing countries (Uzbekistan,[45] India,[46] and Ghana[47]) have only been amended in a limited number of areas since 2011. These treaties are included in this study but discussed separately in the conclusion.

Below we compare each treaty's withholding tax rates in its tax treaty with the Netherlands with the withholding tax rates agreed in the tax treaties between that treaty partner and other OECD countries.

For each treaty partner, the number of OECD countries is indicated with a withholding tax rate higher, lower, or equal to that in their tax treaty with the Netherlands. An average withholding tax has also been calculated, based on the tax treaties between the other OECD countries and the treaty partner.

The tables also give the national withholding tax rate. This is the rate that applies if no use is made (or can be made) of a lower withholding tax on the basis of tax treaties. With regard to transactions on passive income, most countries distinguish between resident and non-resident individuals and companies. Given that this study monitors transactions between countries, we have chosen to include the rate that applies to non-residents.

Table 1

Country	Renegotiation	Dividend (%)	Interest (%)	Royalties (%)
Ukraine (2018)	X	5	10	5/10[48]
Indonesia (2015)	X	5	10	10
Kenya (2015)[49]		0	10	10
Zambia (2015)	X	5	10	7.5
Malawi (2015)[50]	X	5	10	5
Ethiopia (2012/2014)		5	5	5

Table 2

Country	Renegotiation	Dividend (%)	Interest (%)	Royalties (%)
Ghana (2018)	X	5	8	8
Uzbekistan (2018)	X	0[51]	0[52]	0[53]
India (2012)	X	5[54]	10	10

Table 3 Tax treaty the Netherlands - Ukraine 2018[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**	15[IV]
Interest – *general (%)*	**10**[II]	15
Royalties *(%)*	**10**[III]	15

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	4[V]	24[VI]	3[VII]	5.6%
Interest – *general*	0	22[VIII]	9[IX]	8.2%
Royalties	0	24[X]	7[XI]	9.1%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Ukraine - Corporate - Withholding taxes,* Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/Ukraine-Corporate-Withholding-taxes

II For both interest and royalties there is a withholding tax of 5% available, if certain conditions are met.

III There is no generally applicable withholding tax on royalties. There is a withholding tax of 10% on royalties for the use of, or for the right to use, a copyright on a work of art or literature (including cinematographic films, and films or tapes for radio or television broadcasts). There is a withholding tax of 5% for the use of, or for the right to use, a copyright on a work in the field of science, a patent, a brand or trademark, a drawing or model, a plan, a secret formula or method, or for information about industrial, commercial or scientific experiences.

IV Transactions with non-resident companies. A rate of 5, 9 or 18% applies to transactions with non-resident individuals (depending on the situation).

V Japan (15%), Portugal (10%), Spain (18%), Turkey (10%).

VI Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Latvia, Lithuania, Mexico, Norway, Poland, Slovenia, Switzerland, UK, US, South Korea.

VII Finland (0%), France (0%), Sweden (0%).

VIII Belgium, Canada, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Lithuania, Latvia, Luxembourg, Mexico, Norway, Poland, Portugal, Sweden, Turkey.

IX Austria (5%), Germany (5%), South Korea (5%), Slovenia (5%) Spain (0%), Czech Republic (5%), Switzerland (5%), UK (5%), US (0%).

X Belgium, Canada, Czech Republic, Denmark, Finland, Estonia, France, Greece, Iceland, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Mexico, Norway, Poland, Portugal, Slovenia, US, Sweden, Turkey.

XI Austria (5%), Germany (5%), Hungary (5%), Italy (7%), South Korea (5%), Spain (5%), UK (5%), Switzerland (5%).

Table 4 Tax treaty the Netherlands - Indonesia 2015[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**	20
Interest – *general (%)*	**10**	20
Royalties *(%)*	**10**	20

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	25[II]	0	0	10.8%
Interest – *general*	3[III]	22[IV]	0	10.5%
Royalties	7[V]	18[VI]	0	11.2%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Indonesia - Corporate - Withholding taxes*, Worldwide Tax Summaries, https://taxsummaries.pwc.com/indonesia/corporate/withholding-taxes

II Australia (15%), Austria (10%), Belgium (10%), Canada (10%), Czech Republic (10%), Denmark (10%), Finland (10%), France (10%), Germany (10%), Italy (10%), Japan (10%), Hungary (15%), South Korea (10%), Luxembourg (10%), Mexico (10%), New Zealand (15%), Norway (15%), Poland (10%), Portugal (10%), Spain (10%), Sweden (10%), Switzerland (10%), Turkey (10%), UK (10%), US (10%).

III Czech Republic (12.5%), Hungary (15%), France (15%).

IV Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Italy, Japan, South Korea, Luxembourg, Mexico, New Zealand, Norway, Portugal, Poland, Spain, Sweden, Switzerland, Turkey, UK, US

V Czech Republic (12.5%), Denmark (15%), Hungary (15%), South Korea (15%), Luxembourg (12.5%), New Zealand (15%), Poland (15%).

VI Australia, Austria, Belgium, Canada, Finland, France, Germany, Italy, Japan, Mexico, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, UK, US.

Table 5 Tax treaty the Netherlands - Kenya 2015[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**0**	10
Interest – *general (%)*	**10**	15
Royalties *(%)*	**10**	20

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	8[II]	0	0	14.1%
Interest – *general*	8[III]	0	0	15.5%
Royalties	6[IV]	2[V]	0	15.6%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Kenya - Corporate - Withholding taxes*, Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/kenya-Corporate-Withholding-taxes

II Canada (15%), Denmark (20%), **France** (10%), Germany (15%), Norway (15%), South Korea (8%), Sweden (15%), UK (15%).

III Canada (15%), Denmark (20%), **France** (12%), Germany (15%), Norway (20%), South Korea (12%), Sweden (15%), UK (15%).

IV Canada (15%), Denmark (20%), Germany (15%), Norway (20%), Sweden (20%), UK (15%).

V **France**, South Korea.

Table 6 Tax treaty the Netherlands - Zambia 2015[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**	20
Interest – *general (%)*	**10**	20
Royalties *(%)*	**7.5**	20

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	3[II]	6[III]	3[IV]	6%
Interest – *general*	2[V]	9[VI]	1[VII]	10%
Royalties	8[VIII]	0	4[IX]	8.75%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Zambia - Corporate - Withholding taxes,* Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/zambia-Corporate-Withholding-taxes
II Canada (15%), Denmark (15%), Ireland (7.5%)
III Finland, Germany, Italy, Norway, Sweden, UK.
IV Japan (0%), Switzerland (5%), France (0%).
V Canada (15%), Finland (15%).
VI Denmark, Germany, Ireland, Italy, Japan, Norway, Sweden, UK, Switzerland (10%).
VII France (0%).
VIII Canada (15%), Denmark (15%), Germany (10%), Ireland (10%), Italy (10%), Japan (10%), Norway (10%), Sweden (10%).
IX Finland (5%), UK (5%), Switzerland (5%), France (0%).

Table 7 Tax treaty the Netherlands - Malawi 2015[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**	15
Interest – *general (%)*	**10**	15
Royalties *(%)*	**5**	15

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	0	1[II]	4[III]	1%
Interest – *general*	0	1[IV]	4[V]	2%
Royalties	0	1[VI]	4[VII]	1%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Malawi - Corporate - Withholding taxes,* Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/malawi-Corporate-Withholding-taxes
II Norway (5%).
III France (0%), Sweden (0%), Switzerland (0%), UK (0%).
IV Norway (10%).
V France (0%), Sweden (0%), Switzerland (0%), UK (0%).
VI Norway (5%).
VII France (0%), Sweden (0%), Switzerland (0%), UK (0%).

Table 8 Tax treaty the Netherlands - Ethiopia 2012[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**	10
Interest – *general (%)*	**5**	10
Royalties *(%)*	**5**	5

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	5[II]	5[III]	0	7.5%
Interest – *general*	7[IV]	3[V]	0	8.25%
Royalties	4[VI]	6[VII]	0	6.75%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database
II Czech Republic (10%), Italy (10%), Poland (10%), Turkey (10%). UK (10%).
III **France** (5%), Ireland (5%), Israel (5%), South Korea (5%), Portugal (5%).
IV Czech Republic (10%), Israel (10%), Italy (10%), Poland (10%), Portugal (10%), Turkey (10%), South Korea (7.5%).
V **France** (5%), Ireland (5%), UK (5%).
VI Czech Republic (10%), Poland (10%), Turkey (10%), UK (7.5%).
VII **France** (5%), Ireland (5%), Israel (5%), **Italy** (5%), South Korea (5%), Portugal (5%).

Table 9 Tax treaty the Netherlands - India 2012[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	**5**[II]	10
Interest – *general (%)*	**10**	20
Royalties *(%)*	**10**	10

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	29[III]	3[IV]	0	11.1%
Interest – *general*	9[V]	23[VI]	0	11.4%
Royalties	8[VII]	24[VIII]	0	11.6%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *India - Corporate - Withholding taxes*, Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/India-Corporate-Withholding-taxes
II There is a Most-Favored-Nation clause for all passive income. Given that the OECD country Slovenia has a withholding tax of 5% on participation dividends, on the basis of the MFN clause the Dutch withholding tax will also be reduced to 5%.
III Australia (15%), Belgium (15%), Canada (15%), Denmark (15%), Italy (15%), South Korea (15%), New Zealand (15%), Spain (15%), Turkey (15%), Austria (10%), Czech Republic (10%), Estonia (10%), **Finland** (10%), Germany (10%), **Hungary** (10%), Iceland (10%), Ireland (10%), Israel (10%), Japan (10%), Latvia (10%), Luxembourg (10%), Mexico (10%), Norway (10%), Poland (10%), Portugal (10%), **Sweden** (10%), **Switzerland** (10%), UK (10%), US (15%).
IV Lithuania, Slovenia, **France**.
V Australia (15%), Belgium (15%), Canada (15%), Italy (15%), Spain (15%), Turkey (15%), US (15%), UK (15%), Denmark (15%).
VI Austria (10%), Czech Republic (10%), Estonia (10%), **Finland** (10%), **France** (10%), Germany (10%), **Hungary** (10%), Iceland (10%), Ireland (10%), Israel (10%), Japan (10%), South Korea (10%), Latvia (10%), Luxembourg (10%), Mexico (10%), Norway (10%), Poland (10%), Portugal (10%), Slovenia (10%), **Sweden** (10%), **Switzerland** (10%) Lithuania (10%), New Zealand (10%).
VII Australia (15%), Canada (15%), Denmark (20%), Italy (20%), Poland (15%), Turkey (15%), UK (15%), US (15%).
VIII Austria (10%), **Belgium** (10%), Czech Republic (10%), Estonia (10%), **Finland** (10%), Germany (10%), **Hungary** (10%), Iceland (10%), Ireland (10%), Israel (10%), Japan (10%), Latvia (10%), Lithuania (10%), Luxembourg (10%), Mexico (10%), New Zealand (10%), Norway (10%), Portugal (10%), Slovenia (10%), **Spain** (10%), **Sweden** (10%), **Switzerland** (10%), South Korea (10%), **France** (10%).

Table 10 Tax treaty the Netherlands - Uzbekistan 2017[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	0[II]	10
Interest – *general (%)*	0[III]	10
Royalties *(%)*	0[IV]	20

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	23[V]	1[VI]	0	6.7%
Interest – *general*	24[VII]	0	0	7.6%
Royalties	23[VIII]	1[IX]	0	7.2%

I International Bureau for Fiscal Documentation, 2020, Tax Treaty Database, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, Uzbekistan - Corporate - Withholding taxes, Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/Republic-of-Uzbekistan-Corporate-Withholding-taxes

II (VII. Ad Article 10): *'Notwithstanding the provisions of subparagraph a) of paragraph 2 of Article 10 of the Convention, as long as, under the provisions of the Netherlands Company Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company which is a resident of Uzbekistan, the percentage provided for in that subparagraph shall be reduced to zero per cent.'* (Kingdom of the Netherlands, 2017, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with protocol, signed on 18 October 2001*, https://verdragenbank.overheid.nl/en/Treaty/Details/012961)

III (X. Ad Articles 11 and 12): *'Notwithstanding the provisions of paragraph 2 of Article 11 and paragraph 2 of Article 12 of the Convention, if and as long as the Netherlands, under its national legislation, levies no withholding tax on interest or royalties paid to a resident of Uzbekistan, the percentage provided for in paragraph 2 of Article 11 or paragraph 2 of Article 12 of the Convention, as the case may be, shall be reduced to zero percent.'* (Ibid).

IV Ibid

V Greece (8%), Hungary (10%), Israel (10%), Italy (10%), Japan (15%), Latvia (10%), Lithuania (10%), Slovenia (8%), Turkey (10%), Austria (5%), Belgium (5%), Canada (5%), Czech Republic (5%), Estonia (5%), Finland (5%), **France** (5%), Germany (5%), Ireland (5%), Luxembourg (5%), Poland (5%), South Korea (5%), Switzerland (5%), UK (5%).

VI Spain (0%),

VII Austria (10%), Belgium (10%), Canada (10%), Greece (10%), Hungary (10%), Israel 10%), Latvia (10%), Lithuania (10%), Luxembourg (10%), Poland (10%), Japan (10%), Turkey (10%), Czech Republic (5%), Estonia (5%), Finland (5%), **France** (5%), Germany (5%), Ireland (5%), Italy (5%), Slovenia (8%), South Korea (5%), Spain (5%), Switzerland (5%), **UK** (5%).

VIII Canada (10%), Czech Republic (10%), Estonia (10%), Hungary (10%), Israel (10%), Japan (10%), Latvia (10%), Lithuania (10%), Poland (10%), Slovenia (10%), Turkey (10%), Austria (5%), Belgium (5%), Finland (5%), Germany (5%), Greece (8%), Ireland (5%), Italy (5%), Luxembourg (5%), South Korea (5%), Spain (5%), Switzerland (5%), **UK** (5%).

IX **France** (0%),

Table 11 Tax treaty the Netherlands - Ghana 2017[I]

	Withholding tax rate tax treaty	National withholding tax rate
Dividend – *participation*	5	8
Interest – *general (%)*	8	8
Royalties *(%)*	8	15

	Number of OECD countries – *higher*	Number of OECD countries – *equal*	Number of OECD countries – *lower*	Average OESO countries
Dividend – *participation*	3[II]	5[III]	0	5.9%
Interest – *general*	6[IV]	1[V]	1[VI]	9.7%
Royalties	4[VII]	4[VIII]	0	9.3%

I International Bureau for Fiscal Documentation, 2020, *Tax Treaty Database*, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database; PriceWaterhouseCooper, 2020, *Ghana - Corporate - Withholding taxes*, Worldwide Tax Summaries, http://taxsummaries.pwc.com/ID/Ghana-Corporate-Withholding-taxes

II France (7.5%), Ireland (7%), UK (7.5%).

III Belgium, Denmark, Germany, Italy, Switzerland.

IV Belgium (10%), France (10%), Germany (10%), Italy (10%), Switzerland (10%), UK (12.5%).

V Denmark (8%).

VI Ireland (7%).

VII Belgium (10%), France (10%), Italy (10%), UK (12.5%).

VIII Denmark, Germany, Ireland, Switzerland.

Analysis

Is the OECD average significantly[55] higher (red), equal (light green) or lower (dark green) than the withholding tax rate agreed with the Netherlands?

Country	Dividend	Interest	Royalties
Ukraine	light green	dark green	light green
Indonesia	red	light green	red
Kenya	red	red	red
Zambia	red / light green	light green	red
Malawi	dark green	dark green	dark green
Ethiopia	red	red	red

Are there more OECD countries that have a higher rate (red), lower rate (dark green) or do most countries have the same rate (light green)?

Country	Dividend	Interest	Royalties
Ukraine	light green	light green	light green
Indonesia	red	light green	light green
Kenya	red	red	red
Zambia	light green	light green	red
Malawi	dark green	dark green	dark green
Ethiopia	light green / red	red	light green

Discussion

Since 2011, new tax treaties have been concluded or renegotiated with a total of six developing countries. A limited amendment protocol was concluded with three countries (Ghana, Uzbekistan and India). The analysis showed that for four of these six tax treaties, the withholding tax rates on interest, royalties and/or participation dividends are lower than the average rate in treaties between OECD countries and the relevant developing country. These four are the tax treaties with Indonesia, Kenya, Zambia and Ethiopia.

The pledge in the NFV 2011 that '*with regard to developing countries [the Netherlands is] willing to agree on higher withholding taxes than in relation to more developed countries, with the understanding that the Netherlands wishes to achieve a result more or less equivalent to that in the treaties of that developing country with comparable more developed countries*' has not been materialised in most of the tax treaties with developing countries concluded since 2011.

There seems to be a double standard in the Netherlands' treaty policy with developing countries. On the one hand, the NFV 2011 states that the Netherlands aims to offer developing countries higher taxation rights. On the other hand, some explanatory notes to the tax treaties show that the Netherlands still urges the lowest possible withholding tax rates, in line with its treaty policy with 'developed countries'. For example, the explanatory memorandum to the tax treaty with Kenya[56] states: '*Withholding tax on participation dividends allowed: no*'.

In addition to these six tax treaties, three other treaties are included in this study, those with Ghana, Uzbekistan and India. It must be noted that these treaties have only slightly been amended, which means that it is still unclear whether the provisions in the NFV 2011 apply, which is particularly important for the tax treaties with Uzbekistan and India.

The tax treaty with Uzbekistan contains a provision which stipulates that as long as the Netherlands does not levy withholding tax on participation dividends, interest and royalties, Uzbekistan may not levy withholding tax either.[57] The tax treaty with India has an MFN clause, according to which the effective withholding tax rate in the treaty between the Netherlands and India must correspond to the lowest agreed rate between India and another OECD country.[58] While the Netherlands ostensibly aims to negotiate tax treaties in the spirit of the NFV 2011, it is worthy to note that these provisions still stand, since they are at odds with the NFV 2011.

The Netherlands is still the leader in the international 'race to the bottom' with regard to withholding taxes. This not only results in very limited taxation rights for developing countries on rewards on investments from the Netherlands, but also increases the risk that Dutch tax treaties are being used for 'treaty shopping'. Next to that, the Dutch tax treaty policy also impacts other countries. France, for example, has an MFN clause in its treaty with Kenya. Because of the 0% withholding tax rate on participation dividends agreed in the tax treaty between the Netherlands and Kenya[59], the applicable withholding tax rate on transactions of participation dividends between France and Kenya will also go from 8% to 0%. The Netherlands' treaties often bring the level of the 'level playing field' even lower, which encourages other countries to do the same.

There is almost no way to democratically monitor the negotiated or renegotiated tax treaties' compliance with NFV 2011. Tax treaties are presented as a 'fait accompli' to the Dutch parliament for approval after already having been signed by the representatives of both countries.

There is also little guidance in the assessment grid for the standard criteria of the tax treaty policy (*Toetsschema Standaardcriteria Fiscaal Verdragsbeleid*) that accompanies the tax treaty. The promise in the NFV 2011 that '*with regard to developing countries [the Netherlands is] willing to agree on higher withholding taxes than in relation to more developed countries, with the understanding that the Netherlands wishes to achieve a result more or less equivalent to that in the treaties of that developing country with comparable more developed countries*' is translated in the assessment grid as follows: 'Withholding tax on participation dividends allowed' and 'Withholding tax on interest & royalties allowed', with 'yes, partially, no or not applicable' as possible answers.[60]

A new NFV will be presented to Parliament in the course of 2020. This NFV also includes the 'special' positions of developing countries: '*the Netherlands expressly takes into account the special position of developing countries. This is expressed in, among other things, the relatively higher withholding taxes on dividends, interest and royalties that the Netherlands is prepared to agree in relation to developing countries*'. Again, it is noted: '*In addition, the general principle applies that what a country agrees with other comparable (Western European) countries in tax treaties is relevant for the Netherlands*'.

Even based on the 2020 NFV, the odds are high that in most cases the Netherlands will continue to conclude tax treaties with lower withholding tax rates than what the other western European countries have agreed with developing countries. To prevent this, the Netherlands must formulate a clearer starting point in its tax policy with regard to developing countries. One way to achieve this could be to take the average withholding tax rate that Western European countries have agreed with developing countries, with regard to interest, royalties and dividends, as the lower limit. In this way the starting points of the Dutch government's policy can be more easily monitored.

Conclusion

The withholding tax rates that the Netherlands has negotiated or renegotiated in the tax treaties with developing countries since 2011 are in most cases below the OECD average. For most of these treaties, developing countries are only allocated very limited taxation rights over the economic transactions between the two countries.

The principle in the NFV 2011 sets forward that the Netherlands '*with regard to developing countries [is] willing to agree on higher withholding taxes than in relation to more developed countries, with the understanding that the Netherlands wishes to achieve a result more or less equivalent to that in the treaties of that developing country with comparable more developed countries*' has not materialised in many cases. This allows the Netherlands to allocate very limited taxation rights to developing countries, which accelerates the 'international race to the bottom'. At the same time it maintains the attractiveness for international investors of using the Dutch tax treaties to avoid taxation.

If the Netherlands wishes to take into account the particular wishes of developing countries it must:

- not insist on withholding-tax rates in treaty negotiations with developing countries that are lower than the average rate in the treaties that Western European countries have concluded with this developing country.
- use the UN Model Convention as the basis for negotiations with developing countries. This convention provides more taxation rights for the developing country than the OECD Model Convention currently used by the Netherlands.
- actively approach developing countries about renegotiating unbalanced and restrictive tax treaties concluded in the past, such as its tax treaties with Uzbekistan and India. The Netherlands will then have to offer these countries higher and more extensive taxation rights.

While it is laudable that the Netherlands offers anti-abuse provisions to developing countries, it is largely a partial solution as long as the Netherlands continues to push for low withholding tax rates. Rather than addressing this imbalance, an anti-abuse provision places the onus of detecting and tackling abuse on the developing country, which often lacks the capacity to combat these abuses itself.

IBFD study 2013

The introduction to this study mentioned a study done by the IBFD in 2013 on the risks of unintended use of Dutch tax treaties with developing countries. The IBFD study[61] compared the tax treaties between the Netherlands and Bangladesh, the Philippines, Ghana, Uganda and Zambia (and to a certain extent Kenya) with the tax treaties between these countries and the reference countries Belgium, China, Germany, France, Ireland, India, Mauritius, the United Kingdom and Switzerland. On the basis of this selection, the authors came to the conclusion that the Dutch treaties with the five poorest developing countries differ little from the treaties that these developing countries have concluded with the reference countries.

The two main reasons why the conclusions in this report differ from the IBFD report are given below.

The first of the two main reasons has to do with the selection of countries for the IBFD study. The IBFD report examined the tax treaties with the five poorest countries. This study examines all the tax treaties with developing countries negotiated or renegotiated since 2011, in connection with NFV 2011. This means that of the five tax treaties between the Netherlands and developing countries examined by IBFD, only those with Ghana and Zambia are included in this study.

The 'reference group' for this study also differs considerably from the reference group used by the IBFD. The IBFD study used a select reference group that is quite different from the reference group for this study. The IBFD selected many countries generally known to be links in the international chain of tax avoidance (Ireland, Mauritius, the United Kingdom and Switzerland).[62] Thus it is not remarkable that the Netherlands, as a conduit for multinationals, differs little with other commonly known conduit countries.

A second reason why the conclusions differ is the main research question. The purpose of the IBFD study was 'to identify the risk of unintended use of Dutch tax treaties with developing countries'. The purpose of this study is to compare the withholding tax rates in the tax treaties with developing countries negotiated or renegotiated since 2011 with the treaty policy as set out in the NFV 2011.

Annex

Engagement of treaty partners during negotiations[63]

Ukraine: '*It was also noted that the main desire of Ukraine was to include higher withholding tax rates in the Treaty, in line with Ukraine's current treaty policy'.* [64]

Indonesia: *'It is standard practice in Dutch treaties to push for an exemption for dividend tax in corporate structures, in order to avoid double taxation on profits within a concern. The Netherlands also pushes for an exemption for pension funds, so as not to thwart Dutch pension fund 'exempted accrual, taxed benefits' policy. The NFV 2011 does note, however, that the Netherlands is prepared to give developing countries more scope to withhold taxes. The results achieved fit within this scope'.* [65]

Kenya: '*Withholding tax on participation dividends allowed: no'*.[66]

'Section a is in line with the policy formulated in subsection 2.7.1. of the NFV 2011 to avoid economic double taxation at company level. Kenya also foresaw the problem of economic double taxation and therefore agreed to this provision'.[67]

'At the suggestion of the Netherlands, Kenya has therefore kept open the possibility of making agreements in the future at the level of competent authorities about a source-state exemption for the use of agricultural or environmentally friendly technologies. This is laid down in article XVI of the Protocol'.[68]

Zambia: '*Seen from this perspective, Zambia has agreed to a (modest) reduction of the withholding tax rate from 10% to 7.5%'*.[69]

Malawi: '*The thrust of Malawi's argument was retaining withholding taxes, for which the Malawian treaty model was mainly in line with the 2011 UN model convention'*.[70]

'On the grounds of the third article, the maximum percentage that the source country may levy is 5% if the final beneficiary is a company domiciled in the other state which directly holds at least 10% of the shares in the company distributing the dividend. An additional reduction to a zero rate, in conformance with subsection 2.7.1. of the NFV 2011, was not acceptable to Malawi and given Malawi's background as a developing country, the Netherlands did not insist further. The agreed rate of 5% corresponds to the rate for participation dividends that Malawi tends to include in treaties, in conformance with its current treaty policy'.[71]

Ethiopia: *'The agreed rate of 5% corresponds to the rate for participation dividends that Ethiopia tends to include in treaties, in conformance with its current treaty policy'*.[72]

'The inclusion of the maximum percentage of 5% in the second paragraph guarantees that Ethiopia can continue to apply its national withholding tax of 5% on interest payments to beneficial owners in the Netherlands'.[73]

Eindnoten

1 A new Tax Treaty Policy Memorandum was announced in 2018 and sent to the Lower House in June 2020.
2 Ministry of Finance, *Verdragen op het gebied van directe belastingen per 1 april 2020*, https://www.rijksoverheid.nl/onderwerpen/belastingverdragen
3 Developing countries: There is no unambiguous definition of developing countries. To determine developing countries in the context of the Tax Treaty Policy Memorandum the list of countries receiving 'Official Development Assistance' (category 'upper middle-income countries' excluded) was referred to. This is in line with the definition used by the Ministry of Finance for developing countries for NFV 2011.
4 Ministry of Finance, 2011, *Notitie Fiscaal Verdragsbeleid 2011*, https://zoek.officielebekendmakingen.nl/blg-99875
5 Kingdom of the Netherlands, 2015, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and its Protocol, signed at Jakarta on 29 January 2002*, https://verdragenbank.overheid.nl/en/Treaty/Details/012535
6 Kingdom of the Netherlands, 2015, *Treaty Between the Kingdom of the Netherlands and the Republic of Kenya for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, https://verdragenbank.overheid.nl/en/Treaty/Details/009961
7 Kingdom of the Netherlands, 2015, *Treaty Between the Kingdom of the Netherlands and the Republic of Zambia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012948
8 Kingdom of the Netherlands, 2015, *Treaty Between the Kingdom of the Netherlands and the Republic of Malawi for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012876
9 Kingdom of the Netherlands, 2014, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Federal Democratic Republic of Ethiopia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012963
10 Kingdom of the Netherlands, 2018, *Protocol Amending the Convention between the Kingdom of the Netherlands and Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012960
11 Kingdom of the Netherlands, 2017, *Protocol Amending the Convention Between the Kingdom of the Netherlands and the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with protocol, signed on 18 October 2001*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012961
12 Kingdom of the Netherlands, 2012, *Protocol amending the Convention between the Kingdom of the Netherlands and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with Protocol, signed at New Delhi on 30 July 1988*, https://verdragenbank.overheid.nl/en/Treaty/Details/012534
13 Kingdom of the Netherlands, 2017, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Ghana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012951
14 Orbitax (no date), *Ghana - Netherlands: Protocol to Tax Treaty between Ghana and the Netherlands has Entered into Force*, https://www.orbitax.com/news/archive.php/Protocol-to-Tax-Treaty-between-35231; Orbitax (no date), *Netherlands – Uzbeksitan, Protocol to Tax Treaty between the Netherlands and Uzbekistan to Enter into Force*, https://orbitax.com/news/archive.php/Protocol-to-Tax-Treaty-between-29623; Orbitax (no date): *India – Netherlands: Protocol to treaty between the Netherlands and India – details*, https://www.orbitax.com/news/archive.php/Protocol-to-treaty--between-Ne-2675
15 Kingdom of the Netherlands (2012), *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with Protocol, signed at New Delhi on 30 July 1988; 's-Gravenhage, 10 May 2012*, https://verdragenbank.overheid.nl/nl/Verdrag/Details/012534; Kingdom of the Netherlands (2017), *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with protocol, signed on 18 October 2001; 's-Gravenhage, 6 February 2017*, https://verdragenbank.overheid.nl/en/Treaty/Details/012961; Kingdom of the Netherlands (2017), *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Ghana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains; Accra, 10 March 2017*, https://verdragenbank.overheid.nl/en/Treaty/Details/012951
16 Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau), 2013, *De economische betekenis van bilaterale belastingverdragen, CPB Policy Brief 2013/07*, https://www.cpb.nl/sites/default/files/publicaties/download/cpb-achtergronddocument-de-economische-betekenis-van-bilaterale-belastingverdragen.pdf
17 Hearson, M., 2018, "When Do Developing Countries Negotiate Away Their Corporate Tax Base?", Journal of International Development, 30 (2), Special Issue: Fiscal Policy, State Building and Economic Development, 233-255, https://onlinelibrary.wiley.com/doi/abs/10.1002/jid.3351
18 McGauran, K., 2013, Should the Netherlands Sign Tax Treaties with Developing Countries? SOMO, https://www.somo.nl/should-the-netherlands-sign-tax-treaties-with-developing-countries/
19 Egger, P., Larch, M., Pfaffermayr, M., & Winner, H., 2006, "The impact of endogenous tax treaties on foreign direct investment: Theory and evidence", Canadian Journal of Economics, 39(3), 901–931.; Egger, P., & Merlo, V., 2011, "Statutory corporate tax rates and double-taxation treaties as determinants of multinational firm activity", *FinanzArchiv: Public Finance Analysis*, 67(2), 145–170.; Blonigen, B. A., Oldenski, L., & Sly, N., 2014, "The differential effects of bilateral tax treaties", *American Economic Journal: Economic Policy*, 6(2), 1–18.
20 The Platform for Collaboration on Tax, 2020, Draft Toolkit on Tax Treaty Negotiations, p. 8, https://www.tax-platform.org/publications/draft
21 Ministry of Finance (Ministerie van Financiën), 2011, *Notitie Fiscaal Verdragsbeleid 2011*, https://zoek.officielebekendmakingen.nl/blg-99875
22 Ministerie van Financiën, 2020, Notitie Fiscaal Verdragsbeleid 2020, https://www.rijksoverheid.nl/documenten/rapporten/2020/05/29/notitie-fiscaal-verdragsbeleid
23 Ministerie van Financiën, 2011, *Notitie Fiscaal Verdragsbeleid 2011*, https://zoek.officielebekendmakingen.nl/blg-99875
24 Ministerie van Financiën, 2016, *Goedkeuring belastingverdrag met Malawi, Wetsvoorstel*, https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A34424
25 We consider the OECD's 36 member countries to comprise the category of 'comparable developed countries'. This is in line with the definition used by the Ministry of Finance for 'comparable developed countries' in the context of NFV 2011.

26 United Nations, 2011, *United Nations Model Double Taxation Convention between Developed and Developing Countries,* https://www.un.org/development/desa/capacity-development/tools/tool/united-nations-model-double-taxation-convention-between-developed-and-developing-countries-2011/

27 International Bureau for Fiscal Documentation, 2013, Onderzoek belastingverdragen met ontwikkelingslanden, https://zoek.officielebekendmakingen.nl/blg-247787.pdf

28 Other facets are addressed in this study: Anti-abuse provisions, analysis of investment and capital flows between the Netherlands and developing countries and an analysis of a number of selected reports within this subject.

29 Netherlands Ministry of Trade and Development Cooperation & Ministry of Finance *(Ministerie van Buitenlandse Handel en Ontwikkelingssamenwerking & Ministerie van Financiën), 2013, Kabinetsreactie op SEO-rapport Overige Financiële Instellingen en IBFD-rapport ontwikkelingslanden,* https://zoek.officielebekendmakingen.nl/kst-25087-60.html

30 The reason for looking purely at withholding taxes is for the sake of comparability. A different type of investigation is required to examine the agreed concept 'permanent establishment' and to compare the results with other tax treaties concluded by the Netherlands.

31 Some tax treaties also have specific withholding taxes for 'technical or management service fees', 'branch profit' and 'rent'. Given that this involves a very small number of countries, these categories have not been included in the study.

32 In a few cases, there are no specific withholding taxes concluded in tax treaties. These tax treaties have not been considered here.

33 Tax administration *(Belastingdienst)* (2020), *Ontvanger dividend in het buitenland: teruggaaf dividendbelasting,* https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/winst/dividendbelasting/als_u_dividend_ontvangt/ontvanger_dividend_in_buitenland_teruggaaf_dividendbelasting/

34 In many cases, the participation percentage is set between 5% and 25% of the share capital.

35 The Netherlands' tax treaty with Indonesia includes such a provision. The withholding tax is reduced (from 10% to 5%) if the interest is paid on a loan with a term of more than two years or is paid in connection with the sale on instalment credit for industrial, commercial or scientific equipment (Kingdom of the Netherlands, *2002, Treaty Between the Kingdom of the Netherlands and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, with Protocol; Jakarta, 29 January 2002,* https://zoek.officielebekendmakingen.nl/trb-2002-33.HTML).

36 The Netherlands' tax treaty with Indonesia includes an exception for interest payments made to government institutions (Ibid).

37 One example of this is the tax treaty between Spain and Algeria, which has a generally applicable withholding tax of 7%. However, this withholding tax is increased to 14% if the royalties are paid for the use of, or the right for the use of, a copyright for a literary, artistic or scientific work, including cinematographic films, or films, tapes and other media for image or sound reproduction (Government of Spain, date unknown, Convention Between The People´s Democratic Republic Of Algeria And The Kingdom Of Spain For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And On Capital, https://www.hacienda.gob.es/Documentacion/Publico/NormativaDoctrina/Tributaria/CDI/BOEIN_Argelia.pdf)

38 Ibid.

39 United Nations (2020), Taxation of Services, Department of Economic and Social Affairs Financing, https://www.un.org/esa/ffd/tax-committee/taxation-of-services.html

40 OECD, 2004, *Most-Favoured-Nation Treatment in International Investment Law,* OECD Working Papers on International Investment, 2004/02, OECD Publishing. http://dx.doi.org/10.1787/518757021651

41 International Bureau for Fiscal Documentation, 2020, Tax Treaty Database, https://www.ibfd.org/IBFD-Products/Tax-Treaties-Database

42 Lower House of Parliament (Tweede Kamer), 2019, *Verslag van een schriftelijk overleg over het Verdrag tussen het Koninkrijk der Nederlanden en de Democratische Volksrepubliek Algerije tot het vermijden van dubbele belasting met betrekking tot belastingen naar het inkomen naar het vermogen en het voorkomen van het ontduiken en ontwijken van belasting; Algiers, 9 May 2018,* https://www.tweedekamer.nl/kamerstukken/detail?id=2019Z02518&did=2019D05541

43 Algeria, Ukraine, Indonesia, Kenya, Zambia and Malawi.

44 Ghana, Uzbekistan and India.

45 Kingdom of the Netherlands, 2017, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with protocol, signed on 18 October 2001,* https://verdragenbank.overheid.nl/en/Treaty/Details/012961

46 Kingdom of the Netherlands (2012), *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of India for the Avoidance of Double Taxation and for the prevention of fiscal evasion with respect to taxes on Income and on Capital, with Protocol signed at New Delhi on 30 July 1988; 's-Gravenhage, 10 May 2012,* https://verdragenbank.overheid.nl/en/Treaty/Details/012534

47 Kingdom of the Netherlands (2017), *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Ghana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains; Accra, 10 March 2017,* https://verdragenbank.overheid.nl/en/Treaty/Details/012951

48 There is no generally applicable withholding tax on royalties. A withholding tax Is 10% levied on royalties for the use of, or the right to use, a copyright to a literary or artistic work (including cinematic films and films or tapes for radio or television broadcast). A withholding tax of 5% applies to the use of, or the right to use, a copyright to a scientific work, patent, brand or trademark, drawing or model, a plan, secret formula or method, or for information regarding experiences in industry, trade or science.

49 Not yet in effect

50 Not yet in effect

51 The protocol provisions with Uzbekistan do not allow it to tax participation dividends (as long as the Netherlands applies the participation exemption), interest or royalties (as long as the Netherlands does not levy withholding tax on interest and royalty payments from the Netherlands to Uzbekistan (Kingdom of the Netherlands, 2017, *Protocol Amending the Convention between the Kingdom of the Netherlands and the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with protocol, signed on 18 October 2001,* https://verdragenbank.overheid.nl/en/Treaty/Details/012961)

52 Ibid

53 Ibid

54 There is a Most-Favored-Nation clause for all passive income. Given that the OECD country Slovenia has a withholding tax of 5% on participation dividends, on the basis of the MFN clause, the Dutch withholding tax will also be lowered to 5%.

55 Range (+1% versus -1%)

56 Kingdom of the Netherlands, 2015, *Treaty Between the Kingdom of the Netherlands and the Republic of Kenya for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,* https://verdragenbank.overheid.nl/en/Treaty/Details/009961

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58 Kingdom of the Netherlands, 2012, *Protocol amending the Convention between the Kingdom of the Netherlands and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, with Protocol, which was signed at New Delhi on 30th July 1988,* https://verdragenbank.overheid.nl/en/Treaty/Details/012534

59 This tax treaty was signed in 2015, but is not yet in effect.

60 In the tax treaty between the Netherlands and Kenya, the withholding tax rate on participation dividends is 0. The assessment grid with this treaty accordingly includes: 'Withholding tax on participation dividends allowed: No'.

61 Other facets are addressed in the study as well: the presence of anti-abuse provisions, analysis of investment and capital flows between the Netherlands and developing countries and an analysis of a number of selected reports on this topic.

62 Jannick Damgaard, Thomas Elkjaer, and Niels Johannesen, 2019, *The rise of phantom investments: Empty corporate shells in tax havens undermine tax collection in advanced, emerging market, and developing economies,* IMF, Finance & Development, September 2019, vol. 56, no. 3; https://www.imf.org/external/pubs/ft/fandd/2019/09/the-rise-of-phantom-FDI-in-tax-havens-damgaard.htm; Javier Garcia-Bernardo, Eelke Heemskerk, Frank Takes, Jan Fichtner, 2017, *These five countries are conduits for the world's biggest tax havens,* https://theconversation.com/these-five-countries-are-conduits-for-the-worlds-biggest-tax-havens-79555

63 There are no notes on the negotiations with regard to withholding taxes on basis of the Explanatory Memorandum to the tax treaty and/or the discussion in Parliament with regard to the limited amendment protocols in the tax treaties for the following countries: *India, Ghana and Uzbekistan*.

64 Kingdom of the Netherlands, 2018, *Schriftelijk overleg wijzigings-protocol belastingverdrag tussen Nederland en Oekraïne,* https://www.tweedekamer.nl/kamerstukken/detail?id=2018Z22312&did=2018D56856

65 Kingdom of the Netherlands, 2016, *Schriftelijk overleg belastingverdrag tussen Nederland en Indonesië,* https://zoek.officielebekendmakingen.nl/kst-34431-2.html

66 Rijksoverheid 2016, *Memorie van Toelichting - Goedkeuring van het op 22 juli 2015 te Nairobi tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Kenia tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen (Trb. 2015, 114 and Trb. 2016, 58),* https://zoek.officielebekendmakingen.nl/kst-34492-3.html

67 Ibid.

68 Ibid.

69 Kingdom of the Netherlands, 2016, *Memorie van toelichting - Goedkeuring van het op 15 juli 2015 te Addis Abeba tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Zambia tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen (Trb. 2015, 113 and Trb. 2016, 47),* https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk55mv7gfaz4

70 Kingdom of the Netherlands, 2016, *Memorie van toelichting - Goedkeuring van het op 19 april 2015 te Washington tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Malawi tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen (Trb. 2015, 75 and Trb. 2016, 16),* https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vko0gm4v4mzl

71 Ibid.

72 Kingdom of the Netherlands, 2016, *Toelichtende Nota - Verdrag tussen het Koninkrijk der Nederlanden en de Federale Democratische Republiek Ethiopië tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen, met Protocol; Addis Abeba, 10 August 2012,* https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vj9zix1elmsm

73 Ibid.

Colofon

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The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment.

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Power in People
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