



October 23, 2026

Dutch Ministry of Finance
Korte Voorhout 7, 2511 CW
Den Haag, Netherlands

**Re: National Foreign Trade Council Comments on the Consultation to modify Wijziging
Notitie Fiscaal Verdragsbeleid 2020**

The National Foreign Trade Council (the “NFTC”) is writing to provide comments on the Dutch Ministry of Finance’s (“Finance Ministry”) consultation on changes to tax treaty policy regarding payments for services (based on gross income) (“the Consultation Document”), which proposes to modify the *2020 Memorandum on Tax Treaty Policy (Notitie Fiscaal Verdragsbeleid 2020)*, released on September 9, 2026.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

Overview

The *Notitie Fiscaal Verdragsbeleid 2020* sets out the Netherlands’ approach to tax treaty negotiations, including policy considerations. That document provides the starting point for these positions is the OECD model treaty, and notes that the United Nations (“UN”) has a separate UN model tax treaty. In the 2020 commentary, the Dutch government states in section 2.6 that the OECD Model is generally more effective at preventing double taxation. It further delineates that the UN Model permits additional source-country taxation on certain gross payments, such as royalties and technical service fees. It acknowledges that the UN treaty provision often does not include deductions for relevant expenses, and that the residence state may not always provide full relief, since it typically taxes net income. It concludes that as a result, the UN policies can adversely affect cross-border trade and investment. The NFTC agrees with the Finance Ministry’s 2020 position that source country taxation on gross payments adversely impacts cross-border trade and investment. We urge the Finance Ministry to reconsider modifying this position as proposed in the Consultation Document, as proceeding may result in double taxation and deter U.S. investment.

Comments

The Consultation Document represents a departure from the established international constructs regarding business profits and the concepts of Permanent Establishment (“PE”). Moreover, these

concepts also underlie the OECD framework. We recognize that the UN debate questions this approach; however, the UN has yet to produce an agreed international consensus on source rules for cross-border services. Normalizing such an approach via a unilateral change in Dutch treaty policy will likely lead other nations to leverage the approach on Dutch and EU service exporters. This may lead to taxation that is disproportionate to the economic activity and profit attributable to the source jurisdiction.

The Consultation Document presents an extremely broad scope which represents a material expansion of the source state's taxing jurisdiction over non-resident business income. By permitting source-country taxation on almost all service payment the Consultation Document establishes a concerning precedent that appears to conflict with the stance EU Member States have taken at the UN. The approach is contemplated even in the case of services performed entirely outside the source state simply because the payer is resident there or a local PE bears the cost. Furthermore, dropping the requirement that the least-developed-country list apply broadens the list of potential treaty partners.

As gross-basis taxation fails to account for the costs associated with providing a service, it places a disproportionate burden on low-margin operations, risks double taxation, and threatens the commercial viability of certain transactions. These challenges are especially acute for start-ups, small and medium-sized enterprises, and businesses attempting to enter new international markets. Consequently, imposing a gross-basis withholding tax on cross-border services threatens to cause economic distortions and raise compliance burdens. Additionally, as noted in the 2020 commentary, foreign tax credits may prove insufficient to mitigate these added tax burdens.

The withholding tax is imposed formally on the non-resident recipient, but in many commercial settings the cost will be borne by the local customer through gross-up provisions, contractual repricing or reduced supply. The result can be increased costs for domestic businesses that procure specialized cross-border services, which is difficult to square with the Netherlands' wider competitiveness and investment objectives.

Withholding taxes frequently fail to be fully creditable the withholding tax often exceeds the tax due on the associated profits in the provider's State of residence; therefore double taxation ensues. This can be further exacerbated by timing mismatches, when documentation and procedural barriers prevent crediting, and where credits are denied because the tax is considered inconsistent with an applicable treaty. We also note that many service activities are low-margin or loss-making, thus withholding taxes on gross receipts may overtax the payment. These concerns are heightened for U.S. taxpayers, who are subject to the U.S. foreign tax credit limitation system. A credit that is unavailable, deferred, or limited under domestic law does not relieve double taxation.

Implementing such an expansive source-country withholding tax rule would affect more than just inbound service providers. Rather than impacting them exclusively, it exposes Dutch and EU entities exporting high-value services—including professional, financial, engineering, technology, software, cloud, management, and shared services—to reciprocal measures. Treaty counterparties would likely demand matching taxing rights, exposing Dutch resident service providers to the risk of unrelieved foreign withholding taxes.

Conclusion

In sum, the proposed change in the Consultation Document is premature given the ongoing international tax negotiations and should not be adopted as a general treaty-policy position. Multilateral negotiations regarding the source taxation of services should not be preempted or prejudged by Dutch bilateral treaty policy. Under the current proposal, source states would gain the authority to tax non-resident business income even when the service provider maintains no personnel, assets, operations, or permanent establishment in that jurisdiction, and despite generating minimal or zero net profit from the engagement. Any deviation from the established international tax framework requires a clear policy justification, narrow scope, restriction to objectively identifiable scenarios, and robust mechanisms for net-basis relief and double-taxation avoidance. The framework set forth in the Consultation Document falls well short of satisfying these critical criteria. Tax treaties are designed to prevent double taxation and thereby facilitate cross-border economic activity; proceeding with the proposal may result in the opposite by incurring double taxation and deterring foreign investment.