The Netherlands investment climate

Main tax features

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Preface

When you close your eyes and think of the Netherlands, a field of colourful tulips will almost certainly come to mind. Maybe even the slowly rotating wings of a wind-mill, while stacked clouds pass by in the background. Typical Dutch sceneries like this attract vast numbers of visitors. Among them international investors, although they will probably be more interested in another attraction: the Dutch investment climate.

This booklet is meant for investors and their advisers. To inform them about the main features of the investment climate in the Netherlands – what makes an investment in the Netherlands worthwhile? We do so in general, by setting out the main benefits of operating your business from the Netherlands. And, being a firm of lawyers and tax advisers, we specifically focus on the main tax aspects of investing in the Netherlands. Not by giving a (theoretical) overview of Dutch tax law, but by explaining in practical terms what other investors have done. In other words, we describe Dutch tax in its applied form – how it works in action. Having read this booklet, also gives you sufficient background to help you talk with confidence to Dutch tax counsel (presumably, Loyens & Loeff).

Our home markets are in The Netherlands, Belgium, Luxembourg and Switzerland. Which is why we have similar publications for our other home markets, Luxembourg, Belgium and Switzerland. We present each country without a bias for one particular country. If you want to compare specific countries, we recommend you get them. That allows you to take an informed decision on which country best fits your business and market.

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Enjoy the read!

Willem Jarigsma
Managing Partner, Loyens & Loeff

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Introduction

The open and accessible nature of the Netherlands dates back to the Dutch Golden Age, roughly spanning the 17th century, when the Dutch already acknowledged that international trade and investment are of key importance for sustaining economic growth. Today the Netherlands remains among the world's largest suppliers of investment capital in terms of outward and inward foreign direct investment. The government of the Netherlands maintains liberal policies toward foreign direct investment and adheres to OECD investment codes.

The Netherlands offers a highly competitive business and investment climate. Several contributing features are its strategic location to serve markets within Europe, the Middle East and Northern Africa, superior logistics and technology infrastructure, an open innovation approach, and a solid workforce. Last but not least, the Dutch fiscal climate adds significantly to the attractiveness of the Netherlands.

This booklet provides a snap-shot of a part of the Dutch tax system, which in itself greatly contributes to the attractiveness of the Dutch international investment climate. The respective tax features are touched upon in a high-level fashion with the aim of providing quick insights and facilitating communication with Dutch counsel. For a high-level overview of Dutch corporate income tax aspects, miscellaneous taxes and legal forms of doing business in the Netherlands, please refer to the Annex.

Before focussing on the compelling main Dutch tax features, the first chapter *(Doing Business in the Netherlands)* addresses crucial non-tax related features that form the backbone of the attractive business and investment climate the Netherlands maintains to date.

Doing Business in the Netherlands

The Netherlands offers a stable economy, a reliable and equitable tax regime (see Tax features 1 through 10), a sophisticated and internationally oriented infrastructure and a society and culture of openness – to both outsiders and to new ideas in general. Such openness equally applies to foreign direct investments. The Dutch economy is innovation-driven and highly productive. It is known for its stable industrial relations, its productive and highly-skilled workforce, its excellent information technology connectivity, and its vital role as a European transportation hub. The following sections touch on these and more elements in more detail.

1 Ease of doing business

For decades, international businesses have chosen the Netherlands to base their operations, whether as European headquarters, a shared service centre, a customer care centre, a distribution and logistics centre or an R&D facility. The pro-business environment and supporting policies implemented by the Dutch government have greatly increased the international popularity of the Netherlands as an investment location.

Various international surveys rank the Netherlands among the countries in the industrialized world with the most competitive economies and the most favourable business and investment climates. The World Economic Forum Global Competitiveness Index places the Netherlands in the number eight position among the world's most competitive economies; and the World Bank Group ranks the Netherlands 27th out of 189 in terms of the ease of doing business in its Doing Business 2015 report.

2 Flexible, reliable and enforceable legal framework

The Dutch legal framework is very flexible and user-orientated. To a considerable extent, it is possible to shape the Dutch entity and its surrounding contractual agreements in a manner which caters to the requirements and concepts preferred by parties from different jurisdictions. Importantly, the Dutch court system is reliable and functions in a transparent manner.

Recently, various (listed) multinationals have incorporated a Dutch entity as ultimate holding, often a result of the flexible nature of Dutch corporate law. For example, Dutch corporate law prides various options to prevent hostile takeovers and to safeguard the voting power of major shareholders.

3 Superior logistics: A gateway into Europe

The Netherlands has a long tradition of transport and as such provides for world-class infrastructure. Its geographical location has helped it develop into the gateway to Europe and beyond, and as a result many distribution centres are located in the Netherlands. Seagoing vessels annually carry hundreds of millions of tons of cargo in and out of Rotterdam, Europe's largest seaport (ranked 11th globally in 2014). Schiphol Airport, near Amsterdam, is Europe's third and fifth busiest airport in terms of cargo and passengers (2014) respectively.

4 Solid workforce

The Netherlands features a highly skilled, flexible and productive workforce. Strong university-industry links increasingly contribute to this growing pool of well-educated workers. Dutch professionals are also among the most multilingual in the world, enabling them to successfully operate within a vast range of industries that are engaged in cross-border trade and services.

5 Stable political climate

The Dutch society is highly consensus-oriented, of which the partnership between unions, employers' organizations and the government is sound evidence. This strongly contributes to the existing stable political environment. Strikes are rarely regarded as the primary means to settle labour disputes and as such have been historically very rare.

6 Transparent and firm regulatory framework

Specific markets, industries, consumer rights, and competition behaviour of individual firms are firmly regulated by national and European institutions. Financial markets are supervised by the national regulators, the Dutch Central Bank and the

Netherlands Authority for the Financial Market, as well as their European counterparts the European Central Bank and the European Securities and Markets Authority.

7 Technology infrastructure

The Netherlands is classified as one of the most ‘wired’ countries in the world and hosts the largest data transport hub in the world. Virtually every Dutch household can be reached via broadband infrastructure. For decades, focus has been put on information communications and technology (ICT) investment, as a result of which the Netherlands is internationally considered one of the most popular locations for foreign ICT businesses in Europe. Increased investment in high-speed internet, communication systems, state-of-the-art computer and cell-phone technology have created a formidable base for international businesses relying on – and active in the field of – modern technology.

8 Exceptional quality of life

The Dutch standard of living, while very high, remains affordable. The cost of living, housing, education and cultural activities are lower than in most Western-European countries, and an enormous amount of these activities are open to both Dutch residents and visitors alike. The openness of Dutch society and its wide variety of leisure activities makes the Netherlands a welcoming environment – and indeed a welcoming new home – to expatriates.

Tax feature 1: Holding regime

Companies with holding activities in the Netherlands can benefit from the participation exemption regime for benefits derived from qualifying shareholdings, thus resulting in a full exemption from corporate income tax. Combined with the extensive tax treaty network and approachable Dutch tax authorities, the Netherlands has been tried and tested as an internationally accepted and widely used jurisdiction to establish investment holding platforms.

1 Introduction

The Netherlands is widely known as a favourable location to establish an investment platform from where investments can be held and managed. Business rationale and the commercial reality are leading factors when choosing the Netherlands, but the Dutch tax environment does add to the attractive investment climate from an international perspective.

Dutch tax laws have not codified an explicit 'holding regime' to facilitate such activities, although a combination of factors effectively contribute to a conducive environment: the extensive bilateral tax treaty network (see Tax feature 7) combined with favourable domestic tax features like the participation exemption for corporate income tax purposes (CIT) and the absence of several withholding taxes (see below). Importantly, the Dutch tax authorities are a reliable and knowledgeable partner that provides a high degree of customer service to foreign investors. An open and approachable attitude together with the possibility of obtaining certainty in advance (see Tax feature 8) greatly contribute to the attractiveness of the Dutch investment climate, making it a prime location for holding multiple investments.

2 Participation exemption for CIT purposes

Pursuant to the participation exemption regime, benefits derived from a qualifying shareholding, including dividends and capital gains, are exempt from CIT.

Generally, the participation exemption applies to an interest in a subsidiary:

i) if the subsidiary has a capital divided into shares;

ii) of which the taxpayer owns at least 5% of the nominal paid-up share capital; and

iii) if the subsidiary does not qualify as a 'portfolio investment', or if it is in fact a portfolio investment – or simply deemed as one – the subsidiary is considered a *'qualifying portfolio investment'.*

A subsidiary is considered to be a *'portfolio investment'* if the taxpayer holds the subsidiary as a passive investment – i.e. if the subsidiary is held with the motive of obtaining a return that may be expected from normal asset management and not with a business intention (the 'motive test'). Even if there is a business intention, a subsidiary would still qualify as a 'portfolio investment' (i.e. passive investment) if (i) more than half of its assets consist of small shareholdings (i.e. less than 5%) or (ii) the subsidiary predominantly carries out a group financing and/or licensing function.

A subsidiary is considered a *'qualifying portfolio investment'* if it is or is deemed to be a portfolio investment and meets either of the two following tests: (a) the 'subject-to-tax test' or (b) the 'asset test'. The 'subject-to-tax test' is met if the subsidiary is subject to a profit tax that results in a 'realistic levy' based on Dutch tax principles (a profit tax with a statutory rate of at least 10% and no special deviations in the tax base). The asset test is met if the (direct and indirect) assets of the subsidiary generally consist of less than 50% of so-called 'low-taxed free portfolio investments'.

3 Withholding tax, stamp duties, net wealth tax, lump-sum tax

The Netherlands does not levy withholding tax on interest and royalty payments (unless interest and royalties are reclassified to dividend). Furthermore, there is no net wealth tax, stamp-duty and lump-sum tax in the Netherlands.

Dividends distributed by a Dutch company (i.e. NVs, BVs and non-transparent limited partnerships) are subject to 15% Dutch dividend withholding tax (in Dutch: *'dividendbelasting'*). However, an exemption applies for qualifying EU (or EEA) companies (i.e. companies that hold at least 5% of the shares in the Dutch distributing entity). Non-EU/EEA companies will often be entitled to a reduced tax treaty rate as the Dutch tax treaty policy aims to minimize withholding taxes on outbound payments in treaties. Profit distributions made by Dutch cooperatives (a special form of association with a separate legal personality) are generally not subject to dividend withholding tax (unless in abusive situations).

Dividend withholding tax can also be due if a company repurchases its own shares and the repurchase price exceeds the amount of the average fiscally recognized capital. Liquidation distributions, insofar as they exceed the amount of the average fiscally recognized capital, are also subject to dividend withholding tax. However, older tax treaties limit the Dutch domestic taxing rights so that the price paid for repurchased shares or a liquidation distribution may not effectively be subject to Dutch dividend withholding tax.

Reimbursement of paid-in share capital and share premium is, in principle, not subject to Dutch dividend withholding tax unless the company avails of ‘real or potential profits’ (i.e. retained earnings, hidden reserves and/or anticipated profit). However, following a formal reduction of the nominal value of the shares (including amendments to the articles of association), an exemption from Dutch dividend withholding tax applies.

Tax feature 2: Dutch substance requirements and transparent policy

The Dutch Ministry of Finance is transparent in its policy towards substance for tax purposes, as this is an increasingly global hot topic. Clear cut rules by way of a decree have been in place for a number of years, and recent codification as of 1 January 2014 provides Dutch tax residents with ample legal security.

1 Introduction

Fuelled by ongoing global discussions in the field of international taxation concerning base erosion and profit shifting (BEPS) and aggressive tax planning, it is to be expected that countries will increasingly revisit domestic laws and tax treaties to introduce or broaden general anti-avoidance rules (GAARs) and/or specific anti-avoidance rules (SAARs). In most cases, such GAARs and SAARs will be aimed at counter-abusive situations, whereby usually no or hardly any substance is retained.

As such, international business should be ready to further adapt to the amended international tax order, which includes checking whether the 'business substance' remains adequate. Fortunately, the Dutch Ministry of Finance has gone to great lengths to apply transparency in the field of taxation – in particular where it concerns the level of substance that should be retained by Dutch entities under certain conditions.

2 Place of effective management

A company incorporated under the laws of the Netherlands will, in principle, be considered to be a resident of the Netherlands for CIT and Dutch dividend withholding tax purposes. However, such a company will not be considered a tax resident of the Netherlands if another jurisdiction rightfully claims that the company is tax resident in that other jurisdiction under a tax treaty with the Netherlands. Such a claim would be based on the condition that the place of effective management of the company is located in that other jurisdiction.

Similarly, a company not incorporated under the laws of the Netherlands will be a tax resident in the Netherlands for Dutch tax purposes if its place of effective management is located in the Netherlands.

3 Dutch minimum substance requirements

Certain companies based in the Netherlands with intra-group financing, licensing or leasing activities (Service Companies) that are using the benefits of the Dutch tax treaty network or the EU Interest and Royalty Directive (2003/49/EG) (IR Directive), including national rules for implementation of the IR Directive, should meet a number of minimum substance requirements in order to prevent a spontaneous exchange of information by the Netherlands with relevant foreign tax authorities, as further detailed below.

The Dutch regulations regarding the so-called *'minimum substance requirements'* (Substance Regulations) are aimed at avoiding the use of Dutch entities in pure 'letter box' situations. The Substance Regulations serve to assist source countries in assessing whether service companies should properly be entitled to tax treaty or IR Directive benefits. Such benefits would generally consist of lower or no withholding tax on interest, royalty, rent and lease payments.

The Substance Regulations form part of the reaction of the Dutch government to initiatives of the OECD BEPS and similar initiatives within the EU. The Netherlands continues to endorse the BEPS discussion as a multilateral issue which must be resolved at an international level. Hence, the Netherlands announced that any BEPS measures should be implemented through "hard law" at an EU or global level rather than standalone by individual countries. Nevertheless, due to criticism and pressure from certain non-governmental organisations and Dutch political parties, the Dutch government has decided to focus more on substance, transparency and exchange of information, and has codified the Dutch minimum substance requirements in the Substance Regulations in 2014.

In large part, the same list of substance requirements (see paragraph 5 below) is imposed if a taxpayer wants to conclude an advance pricing agreement (APA) and/or an advance tax ruling (ATR). Intermediate holding companies and top holding companies within international structures forming part of a group with operational activities in the Netherlands or genuine plans to engage in such activities do not have to meet all of the requirements when seeking an ATR.

4 Definition of service companies

Pursuant to the regulations, the Dutch minimum substance requirements apply to service companies (in Dutch: *'dienstverleningslichamen'*). Service companies are companies with tax residency in the Netherlands whose activities in a year predominantly (i.e. 70% or more) consist of receiving and on-paying interest, royalties, rent or lease amounts from and to group companies based outside the Netherlands. Dutch NVs and BVs, cooperatives, non-tax transparent limited partnerships (so-called open CVs) and non-Dutch law governed legal entities with a similar legal form can qualify as a service company.

5 List of minimum substance requirements

The Dutch minimum substance requirements can be summarised as follows:

i) At least half of the total number of directors and other persons with decision-making power qualify as director tax residents in the Netherlands;
ii) The directors resident or located in the Netherlands have the required professional knowledge to properly perform their duties. The duties of the board include decision-making in respect of transactions to be entered into by the service company – on the basis of the responsibility of the service company and within the ordinary course of group involvement – and a proper handling of the transactions entered into;
iii) The service company avails of qualified employees for proper implementation and registration of the transactions to be entered into by it;
iv) The management decisions are taken in the Netherlands;
v) The main bank accounts of the service company are maintained in the Netherlands;
vi) The bookkeeping of the service company is conducted in the Netherlands;
vii) The office address of the service company is in the Netherlands;
viii) The service company is – to the best of its knowledge – not considered a resident for tax purposes in a country other than the Netherlands;
ix) The service company runs real risk in connection with the loans and legal relationships and the related borrowings and legal relationships underlying the received and paid interest, royalties, lease and/or rent payments;
x) The service company has an equity level appropriate to run real risks.

Tax feature 3: International financing activities

Companies carrying out international financing activities in the Netherlands can benefit from reduced foreign interest withholding taxes due to the high-quality tax treaty network and IR Directive (subject to retaining sufficient substance – see Tax feature 2). Combined with the absence of interest withholding tax on outbound interest payments and advance certainty in the form of a mature and efficient APA procedure applied by the Dutch tax authorities, the Netherlands remains an attractive jurisdiction in which to carry out (intra-group) financing and/or treasury activities.

1 Introduction

The holding activities of a Dutch investment platform (see Tax feature 1) are frequently combined with financing activities. Apart from non-tax driven factors which greatly contribute to the combining of such activities, the Dutch tax environment does its part in attracting the same. Over time, the Netherlands has proven to be a favourable location to carry out financing / treasury activities.

2 No interest withholding tax and thin-capitalization rules

The Netherlands does not levy withholding tax on interest payments and, as a general rule, paid or accrued interest is tax deductible – with the exception of certain restrictions aimed to counter specified situations (see paragraph 5). As of 1 January 2013, the thin-capitalization rules have been abolished so that it is no longer required to maintain a certain debt-to-equity ratio for interest deduction purposes.

3 Functional currency

Dutch companies are allowed to file their tax returns in a foreign currency other than the Euro if their annual reports are drawn up in the same foreign currency (see Annex). In this way, foreign exchange results on outstanding debt and/or receivables due to fluctuations between the Euro and the ‘functional currency’ in question will not lead to taxable profits.

4 Debt classification

A loan must possess certain qualities in order for the loan to be considered debt for Dutch tax purposes. In summary, this is the case if: (i) the debtor is contractually obliged to repay the full amount; (ii) at the time of granting the loan, the creditor could reasonably assume that repayment would occur; (iii) in reality, the purpose of both parties was not to contribute/distribute capital; and (iv) the loan has not been granted under such circumstances that the creditor de facto participates in the enterprise of the debtor.

5 Arm's length principle and interest deduction limitations

Pursuant to the Dutch Corporate Income Tax Act 1969 (CITA) (in Dutch: *'Wet op de vennootschapsbelasting 1969'*), deductible costs include interest on loans and annual depreciations on assets used in the business enterprise of the taxpayer. Interest, however may be precluded from deduction in certain instances, as described below. This includes interest on loans that are considered equity for tax purposes (see paragraph 4), and interest paid in the form of shares or options on shares in the company or a related entity.

Article 8b CITA

The Dutch government fully adheres to the OECD Transfer Pricing Guidelines and the prescribed 'at arm's length principle'. The latter has been explicitly codified in article 8b CITA, pursuant to which the terms and conditions of transactions between affiliated entities have to align with open market conditions that apply between third parties. Consequently, only an 'at arm's length' interest rate can be taken into account for CIT purposes.

Article 8c CITA

This provision is the Dutch answer to pre-BEPS discussions between the EU and OECD on harmful tax competition. The Dutch tax environment was geared to attract real economic activity and discourage activities with no economic reality, such as pure conduit situations. Article 8c CITA was introduced to counter certain back-to-back financing and licensing activities. In short, the provision provides that royalties and interest paid to and received from entities or individuals that form part of the group to which the taxpayer belongs are not taken into account if the taxpayer does not run, on balance, any real risk with regard to these loans or legal relationships. In financing situations, the taxpayer is considered to run sufficient risk if the equity at risk related to the on-lending at least amounts to the lower of (i) 1% of the outstanding group receivables and (ii) € 2,000,000. Unfortunately, no specific guidance has been provided with respect to licensing activities. However, in practice, our experience with the ATR/APA team teaches us that retaining equity at risk equal to 50% of the annual royalty receipts is considered sufficient to obtain certainty in advance.

Insofar as no real risk is run, the interest and/or royalties will be disregarded for Dutch tax purposes, as a result of which no credit can be claimed for foreign withholding tax. In addition, the source country may not apply a beneficial tax treaty rate as the respective income is not subject to tax in the country of residence (i.e. the Netherlands).

Other interest deduction limitations

The CITA prescribes additional interest deduction limitation rules that may reduce or fully limit the deductibility of interest payments. These provisions are not specifically aimed at international financing activities, but still may have an impact. The following descriptions are extremely high-level and solely aimed at providing a brief insight.

Article 10aCITA: Interest payments relating to certain specifically defined group transactions are not deductible, unless the taxpayer can demonstrate valid business reasons or a compensatory levy takes place at the level of the affiliated creditor.

Article 10b CITA: Losses or expenses in relation to affiliated loans that bear no interest, or bear an interest that is significantly below market rates and that have a term of longer than ten years, are precluded from deduction.

Article 13l CITA: ‘Excessive interest’ payments relating to acquired or increased shareholdings that qualify for the participation exemption are targeted. Only financing costs incurred in excess of €750,000 are targeted. A rebuttal rule prescribes that an acquisition or contribution relating to an increase of operational activities will not be targeted.

Article 15ad CITA: Targets the deductibility of interest payments in excess of €1,000,000 made by a Dutch acquisition holding company relating to a loan taken up for the acquisition of a Dutch target company that would be included in a fiscal unity (see Tax feature 4) for CIT purposes post-acquisition.

Tax feature 4: Fiscal unity regime

Group companies can be consolidated for Dutch CIT purposes, thus potentially leading to substantial tax savings and administrative relief.

1 Introduction

The Netherlands provides for a tax consolidation regime, known as a ‘fiscal unity’, pursuant to which CIT is levied from Dutch group entities on an integrated basis. Amongst other advantages, the fiscal unity allows for horizontal loss compensation between group companies. Furthermore, a single CIT return is filed on behalf of the entire group, which provides for an administrative relief.

2 Fiscal unity application

A parent company must own at least 95% of the shares of a subsidiary (of each class of shares and the shares must represent 95% of the voting and equity interests) in order to form a fiscal unity. Various other detailed requirements must be met to form a fiscal unity (e.g. book years, legal form, etc.).

Application of the fiscal unity is optional and requires a prior request. The parent company and respective subsidiaries file a joint written application with the Dutch tax authorities. The application and formation can take place throughout the entire financial year and formation of the fiscal unity can have retroactive effect up to three months prior to filing the application.

The fiscal unity regime does not have a minimum or maximum term. However, the formation of a fiscal unity will be disregarded if termination takes place within the same financial year. Upon request, a fiscal unity can be terminated at any given time during the financial year. If one or more of the enumerated eligibility criteria is not satisfied, the fiscal unity will immediately terminate.

3 Effect of fiscal unity

The fiscal unity constitutes a true consolidation for CIT purposes. Consequently, CIT is levied on all companies on their consolidated taxable profit as if they were a single taxpayer. The fiscal unity has one fiscal balance sheet and one profit and loss account. Each member of the fiscal unity is in principle jointly and individually liable for the CIT liability of the entire fiscal unity. However, CIT assessments for this fiscal unity are only imposed on the parent company.

Transactions within the fiscal unity are disregarded for CIT purposes. This requires that remunerations with respect to obligations between the fiscal unity companies, such as interest or rent, are eliminated from the fiscal result. Assets can be transferred exempt from CIT within the fiscal unity, although they will become 'tainted' so that a tax liability may arise upon deconsolidation.

One of the main advantages of the fiscal unity is horizontal loss compensation (i.e. within one financial year) between the companies included in the fiscal unity. Income generated by profitable companies will be offset by incurred losses from other companies within the fiscal unity, thus reducing the overall taxable profit.

4 Cross-border fiscal unity

Following the ECJ judgement of 12 June 2014, the Amsterdam Court of Appeal confirmed the ECJ judgement on 11 December 2014 and also found that the Dutch fiscal unity rules are in violation with (higher) ranking EU law because they do not allow (i) a fiscal unity between a Dutch parent company and an indirect Dutch subsidiary held through an EU or EEA intermediate subsidiary; or (ii) a fiscal unity between two Dutch 'sister' companies held through a joint EU or EEA parent company.

The Dutch Ministry of Finance has indicated that the fiscal unity regime will be amended and a corresponding legislative proposal is expected in the course of 2015. Meanwhile, to accommodate taxpayers during this intervening period, the Dutch Ministry of Finance has indicated that it will approve the formation of fiscal unities between Dutch companies with a parent company and/or intermediary company in another EU or EEA state.

Tax feature 5: IP incentives and licensing activities

Companies carrying out international licensing activities in the Netherlands can benefit from reduced foreign interest withholding taxes due to the high-quality tax treaty network and IR Directive (subject to retaining sufficient substance – see Tax feature 2). Combined with the absence of royalty withholding tax on outbound royalty payments and advance certainty in the form of a mature and efficient APA procedure applied by the Dutch tax authorities, the Netherlands remains an attractive jurisdiction to carry on (intra-group) licensing activities. In addition, the Dutch government has devoted itself to stimulating IP development, and so related activities can achieve substantial tax savings pursuant to domestic tax incentives such as the 'innovation box'.

1 Introduction

The Netherlands contributes ample resources to the attraction and development of IP. Leveraging the knowledge-based economy will continue to be a key strategy for economic growth in the years to come. The Dutch government realizes that creating an environment that boosts innovative power is of key-importance in increasing the competitiveness of Dutch companies. Important external drivers have been leveraged, including strong university-industry linkages and a large pool of highly trained scientists and engineers.

Coordination and support is provided at different levels, ranging from the Ministry of Finance to regional development agencies such as the Netherlands Enterprise Agency (in Dutch: *'Rijksdienst voor Ondernemend Nederland'*) to encourage R&D investments and stimulate entrepreneurs in sustainable, agrarian, innovative and international business.

The Netherlands has traditionally been an attractive location to carry on international licensing activities. Commercial factors and the Dutch government's compliance to international standards on protection of real property and in particular IP have contributed greatly. Today, IP rights holders have multiple instruments at their disposal to enforce rights in civil court. The Dutch tax environment has played an equally significant role in attracting such activities.

To further stimulate the knowledge-based economy, three domestic tax incentives have been introduced that focus on actively attracting R&D activities to the Netherlands:

i) the R&D wage tax credit;
ii) the innovation box for CIT purposes; and
iii) the research & development deduction for CIT purposes.

2 International licensing activities

Dutch based companies are frequently engaged in international licensing activities. A combination of factors are conducive to this fact: (i) the IP tax incentives described in the following paragraphs may reduce domestic tax exposure; (ii) royalty receipts are subject to reduced or no withholding tax due to the tax treaty network or the IR Directive; (iii) foreign withholding tax on royalty receipts (if any) can be credited against the CIT basis; and (iv) no Dutch withholding tax is levied on outbound royalty payments. It should be noted that retaining sufficient levels of substance is imperative when aiming to benefit from the aforementioned conducive factors (see Tax feature 2).

Generally, royalty payments are tax deductible in the Netherlands. However, as the Dutch government fully adheres to OECD transfer pricing principles, payments made between affiliated companies should be at arm's length and sufficient equity at risk should be retained to avoid non-deductibility (i.e. article 8c CITA set out in Tax feature 3).

3 R&D wage tax credit

The R&D wage tax credit is a tax benefit on R&D-oriented employment costs. Companies that have obtained an 'R&D statement' from the Netherlands Enterprise Agency (in Dutch: *'WBSO verklaring'*) are allowed to pay less wage tax and thus receive a rebate on part of their tax costs related to employees (it is, in fact, a reduction of labour costs). This incentive is particularly interesting for start-ups that are not (yet) making taxable profits and do not pay CIT.

The R&D statement is only granted for specific R&D activities. For start-ups the rebate is set at 50%, while for other companies it is 35% (if their employment costs are below €250,000). Above that threshold, the rate is 14%, with a cap of €14,000,000 per company or fiscal unity.

Qualifying R&D activities

The scope of eligible activities is limited to those that are systematically organised, carried out within the EU, and which can be ranked under one of the following categories:

i) Technical/scientific research which is intended to explain certain phenomena. The research must result in new theoretical or practical knowledge. It is not necessary for the outcome of the research to result in a technically new product or production process;
ii) The development of technically new physical products, physical production processes, software or parts thereof. An important requirement is that the development item be technically new within the taxpayer's business. The business must focus on finding a new solution for a technical problem;
iii) A systematic analysis of the technical feasibility study of an R&D project as referred to under i) or ii) above;
iv) Technical research aimed at significant improvement of a physical production process or software that is used in the business.

Activities carried out for the account and risk of a third party (contract R&D) can still qualify as R&D activities for which an R&D statement can be obtained.

Procedure and administration

The application for an R&D statement may relate to more than one R&D project. The application will have to contain a detailed description of the planned R&D projects with a realistic assessment of the necessary corresponding R&D hours. The project period of an R&D project should range between three and six months (the 'application period') and no more than three R&D statements can be requested annually.

4 Innovation box

The innovation box ensures that a company's income resulting from innovation is taxed at a reduced corporate tax rate of 5% instead of the standard CIT rate of 25% (20% for the first €200,000). Qualifying innovation profit consists of net income derived from self-developed intangible fixed assets for which a patent or plant breeder's right was obtained or which have been developed on the basis of R&D statements. Qualifying income comprises both current income and capital gains.

Qualifying intangible assets

The innovation box does not apply to profits from intangible assets which have already been created before 1 January 2007.

One of the most important conditions is that the intangible asset is developed by the taxpayer itself. This will usually be the case if employees of the taxpayer have developed the intangible asset. The notion of 'self-developed' intangibles requires that there is a certain substance and nexus with the Netherlands. Hence, the development activities of the Dutch company that will apply for innovation box treatment should be initiated and managed in and from the Netherlands.

Assets will also be deemed to have been developed by the taxpayer itself – provided the relevant conditions are met – in the following cases:

i) The taxpayer has an intangible asset that was developed before 2007 or in the period before 2008 (on the basis of R&D statements) and there has also been a significant further development for which the taxpayer has obtained a patent, R&D statements or a plant variety right; or
ii) The taxpayer has acquired an intangible asset and there has been a significant further development for which the taxpayer has obtained a patent, R&D statements or a plant variety right; or
iii) The taxpayer has received intangible assets as a result of an internal reorganisation (e.g. a merger or demerger) and the internal reorganisation was effectuated using a tax rollover facility for reorganizations and the intangible assets were developed by the taxpayers legal predecessor; or
iv) (in sum) less than 50% of the development of the intangible asset is outsourced to a third party (contract R&D); or
v) (i) (in sum) more than 50% of the development of the intangible asset is outsourced to a third party; (ii) the taxpayer has a coordinating and directing role in relation to the outsourced R&D activities; and (iii) R&D statements have been obtained by the taxpayer for this coordinating and directing role; or
vi) The intangible assets have been developed on the basis of a cost contribution agreement and the taxpayer is a co-owner.

As indicated above, the application of the innovation box is not limited to intangibles represented by formal patents. Intangibles that have been accepted by the Dutch authorities on the basis of R&D statements are eligible. Currently, there is pressure from the OECD and the EU to limit favourable IP tax regimes to self-developed intangibles represented by patents. Moreover, the OECD and the EU have proposed rules to ascertain that IP related tax incentives can only be given to a company that has substantially developed the IP itself in the country where it is located (so-called 'modified nexus approach'). Within the international debates, the Dutch government is holding on to the 'innovation box concept', as qualifying innovation is not always a question of registering formal patents.

Profit allocation and 'lump-sum' approach

To apply for the innovation box it is important that the taxpayer's own R&D activities for which he or she has obtained a patent, R&D statements or a plant variety right, must significantly contribute to the expected net proceeds from the intangible assets. In practice, this means that the taxpayer must demonstrate that the R&D activities are 'significant' within the taxpayer's business enterprise.

Subsequently, attributing profits to the self-developed qualifying intangible assets is generally based on a functional analysis in alignment with transfer pricing principles. The exact method of profit allocation is usually discussed in advance with the Dutch tax authorities and the result is laid down in an agreement, which generally applies for four years.

Since 1 January 2013, a new rule has been introduced on the basis of which qualifying innovation profits can also be determined on a flat-rate basis ('lump-sum innovation box'). In brief, 25% of a taxpayer's taxable profits are regarded as innovation profits (capped at €25,000) which are effectively taxed at a CIT rate of 5%. The new rule incentivises SMEs in the start-up phase as the scheme can be used for a maximum of three years.

5 R&D deduction for CIT purposes

The research & development deduction (RDD) offers an additional tax deduction in determining a taxpayer's taxable profits and is aimed at facilitating costs (other than employment costs and financing costs) and capital expenditure which is attributable to R&D activities. The RDD increases the amount of deductible costs and capital expenditure attributable to R&D by a certain percentage. The RDD is linked to the abovementioned R&D wage tax credit. To qualify for the RDD, companies must already have obtained R&D statements. The RDD is a budgeted incentive and as such the rate of deduction for 2015 is set at 60%. This amounts to a net tax saving of 15% of the amount of the qualifying costs and capital expenditure.

Qualifying costs and capital expenditure

Qualifying costs are costs which (i) are for the account of the taxpayer, (ii) have been paid, (iii) are directly attributable to R&D carried out by the taxpayer and (iv) have not been previously eligible for an RDD certificate. Apart from these costs, capital expenditure is also recognised. In addition to the already mentioned requirements regarding costs, capital expenditure must relate to the acquisition of new, previously unused business assets. Capital expenditure of €1,000,000 or more are not taken into consideration as a lump-sum but are taken into consideration over a five-year period.

Procedure and administration

To qualify for the RDD, an RDD application must be submitted to the Netherlands Enterprise Agency. The RDD application includes an estimate of the future costs and expenses attributable to R&D activities. The RDD application is linked to the application for the R&D wage tax credit (‘WBSO’) and both applications have to be submitted simultaneously to the Netherlands Enterprise Agency.

Following approval of the RDD application, an RDD certificate is issued on the basis of which deduction of estimated costs or lower actual costs against the taxable profits may take place in the financial year in which the RDD certificate is issued.

Integration R&D wage credit and RDD

In July 2015, the Dutch Minister of Economic Affairs announced that the RDD for CIT purposes will be integrated with the R&D wage credit for purposes of procedural efficiency. It is expected that this will take effect as from 1 January 2016.

Tax feature 6: Dutch investment vehicle – FBI regime

The Dutch FBI regime is a "flow through" regime for qualifying investment funds. Income and capital gains from qualifying investment will be treated as tax neutral, provided the FBI is distributing its income to its shareholders (and certain other conditions are met). An FBI is entitled to the application of the Dutch tax treaties.

1 Introduction

The CITA provides for a specific CIT regime: the so-called fiscal investment institution (in Dutch: *'fiscale beleggingsinstelling'* or FBI). Corporate taxpayers which operate as an investment fund are eligible for this regime, provided they meet the conditions as required by the law. The Dutch legislator introduced the FBI regime to provide for a tax neutral vehicle through which individual investors can pool their portfolio investments without suffering a tax disadvantage in comparison to investors who hold their investments directly.

2 FBI features

The basic features of the FBI can be summarised as follows:

i) In practice, the FBI takes the legal form of a BV, NV or a Dutch mutual investment fund (in Dutch: *'fonds voor gemene rekening'*). An entity comparable to the aforementioned may also apply if it is incorporated under the laws of another territory within the Kingdom of the Netherlands, another country within the EU or a tax treaty country.
ii) Pursuant to the FBI regime a flow through character for CIT purposes is established. The proceeds from investments should be distributed to its shareholders without any additional tax exposure.
iii) This flow through character is secured by applying a CIT rate of 0% on the FBI. As such, the FBI is technically subject to tax, albeit against a 0% rate, thus allowing it to invoke tax treaty benefits insofar as remaining tax treaty requirements are satisfied.

iv) To maintain the flow through nature of the FBI, the regime has been constructed so that tax neutral accumulation of investment proceeds at the level of the FBI is not possible. A distribution obligation requires the FBI to distribute 100% of its profits to its shareholders on an annual basis. This should be done within eight months following the end of the accounting period.

Certain requirements are imposed on (i) the type of shareholders participating in the FBI and (ii) on the composition of the board of directors of the FBI. Furthermore, a corporate shareholder holding an interest of 25% or more in an FBI is obliged to value such interest at the fair market value.

Over the years a number of changes have been made to the FBI regime, which were mainly done for the purpose of relaxing the requirements to obtain FBI status and to ensure the regime was compliant with EU law.

Tax feature 7: Tax treaty network

The Dutch tax treaty network is comprised of more than 90 high-quality double tax conventions that aim to avoid double taxation by, among others, providing for beneficial allocation of capital gains taxing rights and reduced withholding tax rates.

1 Introduction

As the Dutch economy is a very open and internationally oriented economy, it has always been one of the objectives of the Dutch government to remove any obstacles that could hinder the international flow of goods and capital. As such, the Dutch government's policy has been to encourage international investment by way of minimizing withholding taxes on dividend, interest and royalty income. In line with this policy, the Netherlands does not withhold any tax on interest and royalty payments leaving the Netherlands.

2 Overview of Treaties

Based on the above, the Netherlands has concluded a large number of high-quality bilateral tax treaties for the avoidance of double taxation with respect to taxes on income and on capital. The Dutch tax treaty network is the world's largest of its kind and currently contains treaties with the following jurisdictions:

Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bosnia and Herzegovina (former Yugoslavia), Brazil, Bulgaria, Canada, China, Croatia, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia, Malawi, Malaysia, Malta, Mexico, Moldova, Mongolia, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, the Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, the United States of America, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Vietnam, Zambia, Zimbabwe.

Furthermore, the Dutch Trade and Investment Office in Taipei and the Taipei Representation Office in the Netherlands have entered into an agreement pursuant to which avoidance of double taxation is also provided. In addition, the Netherlands, the Netherlands Antilles and Aruba have entered into the Tax Agreement of the Kingdom of the Netherlands (in Dutch: *'Belastingregeling voor het Koninkrijk der Nederlanden'*), pursuant to which their fiscal relationship is regulated. Recently, the Netherlands and Curacao agreed on a new tax treaty, expected to enter into force on 1 January 2016.

Tax feature 8: ATR / APA ruling practice

Dutch companies engaged in both national and international business can obtain advance certainty from the Dutch tax authorities by requesting a tax ruling (ATR/APA), which is a written interpretation on how a provision applies to a specific taxpayer and a proposed arrangement. The Dutch ruling practice is mature and the entire process is generally very efficient by international standards.

1 Introduction

The Netherlands is well known for the cooperative attitude of the Dutch tax authorities and the opportunity to resolve uncertainties in advance. The Dutch tax ruling and APA practice has traditionally been an integral part of the Dutch (international) tax practice. A separate department within the tax authorities (i.e. the ruling team) is responsible for practically all matters relating to APAs and ATRs.

2 ATRs/APAs

An ATR can be obtained for advance certainty regarding the CIT consequences of certain categories of income (and expenses), such as the application of the participation exemption.

For transfer pricing issues, APAs can be concluded with the Dutch tax authorities to confirm the 'at arm's length' character of conditions applied in related party transactions. Such agreements are often entered into by entities engaged in group financing activities. Both ATRs and APAs are concluded on a case-by-case basis and require that certain conditions with respect to substance and risk (exposure for APAs) are met (see Tax feature 2).

ATRs/APAs are not a pre-condition for obtaining a specific tax result but are, rather, a confirmation of the views and interpretation of the Dutch tax authorities regarding a specific body of facts in light of legislation in force and applicable case law. As such, ATRs/APAs may not be aimed at deviating from Dutch tax legislation in force.

The ATR/APA practice is laid down in various decrees published by the Under Minister of Finance. These decrees set out the technical and administrative guidelines that both taxpayers and the Dutch tax authorities have to abide by.

3 Application

Requests for ATRs/APAs are filed in writing with the Dutch tax authorities (usually directly addressed to the ruling team). Requests are generally filed in Dutch, although English requests are usually allowed. According to the administrative guidelines, an ATR/APA request should comprise: (i) a detailed description of the facts; (ii) details of the applicant's identity including entities and permanent establishments involved; (iii) other states that may fall within the scope of the request; (iv) information concerning the global organisational structure and history of the group; and (v) the financial years that should be covered by the request. With respect to APAs, additional information should be shared relating to the specifics of the transaction(s), suggested transfer pricing methodologies (including comparisons) and general descriptions of the market conditions.

4 Issuing ATRs/APAs

Unless the tax authorities have queries, their written approval of an ATR/APA can generally be expected within six to eight weeks after filing the request. The turnaround period may, however, exceed this range in highly complex situations. There are no statutory deadlines for issuing ATRs/APAs. A negative ruling or a refusal cannot be appealed in court. No fees are charged by the tax authorities for issuing ATRs/APAs.

5 Publication and exchange of information

ATRs/APAs are not publicly disclosed. However, in certain cases automatic exchange of rulings may take place with respective foreign tax authorities. For example, when it concerns an APA request for service companies (see Tax feature 2) without corporate group companies that have any other activities in the Netherlands nor have genuine plans to engage in such activities. On this front, action has also been taken at an EU level with the proposed automatic exchange of information between member states on their tax rulings. The proposal introduces an amendment to the EU directive on administrative cooperation between member states (Directive 2011/16/EU) on the basis whereof automatic exchange of rulings should take place as of 1 January 2016. During the composition of this booklet the proposal remained subject to formal proceedings.

6 Binding effect

ATRs/APAs take the form of a settlement agreement, which is binding upon both the taxpayer and the tax authorities for the term of the settlement agreement. The binding effect of ATRs/APAs should continue as long as the facts on the basis of which the ruling was obtained continue to be correct and no relevant statutory provisions have changed for which grandfathering rules are no longer applicable (if any).

7 Term

The period for which ATRs/APAs are granted depend upon the facts and circumstances of the case. Obtaining certainty for a longer period of time is generally favourable from a commercial point of view. However, especially in the case of APAs, predictions of future circumstances that form the basis of the request may be inaccurate when dealing with greater maturities. Therefore, as a rule of thumb, the term for ATRs/APAs amounts to four or five years, after which a renewal request can be filed.

Tax feature 9: Expatriate tax incentive – 30% ruling

The 30% ruling is a tax-free reimbursement of 30% of the employee's salary, provided that the employee has been recruited or assigned from abroad and has specific expertise that is difficult to find in the Dutch labour market.

1 Introduction

The Netherlands is internationally renowned as a knowledge economy. The fact that the Netherlands has one of the world's most educated populations and the high level of the Dutch academic research all contribute to this reputation. A knowledge economy requires bright minds – not only national but also international. For this reason, the Dutch government enacted a special tax regime for expatriates known as the 30% ruling.

2 30% ruling

The 30% ruling is a tax facility for foreign employees who come from abroad to work in the Netherlands on a temporary basis, and who meet specific conditions. As these foreign employees are expected to incur extra expenses as a consequence of their temporary stay outside of their country of origin, they may qualify for a tax free allowance for these extra expenses (i.e. the so-called 'extra-territorial expenses').

If a number of specific conditions are met, the foreign employee will be entitled to a predetermined (tax exempt) compensation for the extra-territorial expenses amounting to a maximum of 30% of the gross remuneration, the 30% allowance. In such a case it is not necessary to produce evidence of the actual costs incurred. If the 30% ruling is not applicable, it should be noted that the actual extra-territorial expenses should equally be compensated without incurring tax exposure. However, the actual costs will need to be evidenced.

3 Extra-territorial expenses

The 30% ruling provides for a lump sum allowance to cover the extra expenses as a consequence of the temporary stay outside the country of origin. These expenses thus have a cross-border character, meaning that they would not have been incurred if the employee would have stayed in the country of origin (e.g. expenses for house hunting, expenses for double housing, expenses for language training, legal charges for working permits and residence permits).

If the 30% ruling is applicable, actually incurred extra-territorial expenses cannot be reimbursed without tax exposure. However, a tax exempt relocation allowance of €7,750 may be granted if the employee moves to the Netherlands. The actual costs incurred for transportation may also be reimbursed without tax exposure and the same applies to school fees for qualifying international schools.

4 Conditions

As mentioned, the 30% ruling is meant for *foreign employees who come from abroad* to work in the Netherlands on a *temporary basis* and have a *specific expertise* that is not – or is only scarcely – available on the Dutch labor market. These conditions have to be fulfilled on a continuous basis during the term of the 30% ruling.

Foreign employees

In principle, only foreign employees who come to the Netherlands from abroad will qualify. The employee should either be posted to the Netherlands or recruited from outside the Netherlands. In addition, the eligible employee should have lived at least 150km from the Dutch border during more than two-thirds of the 24-month period prior to the commencement of employment in the Netherlands.

Temporary basis

The 30% ruling requires that the employee must be employed in the Netherlands on a temporary basis. The concept of 'on a temporary basis' is broadly defined. As such, employees with a permanent residence in the Netherlands may still qualify for the 30% ruling.

Specific expertise

The requirement of specific expertise is based on a salary standard. If the taxable annual salary of the employee exceeds an amount of €36,705 (amount for 2015, exclusive of the 30% allowance), the employee is deemed to have a specific expertise. It is furthermore required that a check be performed to determine that the specific expertise is in fact scarce in the Dutch job market. The latter scarcity standard aims to prevent those employees who earn more than the salary standard from automatically qualifying for the 30% ruling.

Scarcity, to the extent relevant, is tested on the basis of the following aspects:

- The level of education;
- The experience of the employee relevant to the job;
- The remuneration level of the job in the Netherlands compared to the remuneration level in the employee's country of origin

It is the Dutch employer who must demonstrate that a person with the required level of expertise could only be found outside the Netherlands. For young foreign masters (under 30 years) a decreased salary standard of €27,653 will apply. For a/o scientists and researchers with tuition institutions and subsidized research institutions, there will be no salary standard.

Written agreement
In order for the 30% ruling to apply, the employer and the employee must agree (in writing) that a separate tax exempt allowance amounting to 30% of the remuneration will be paid in addition to the gross salary. If the employer wishes to prevent an increase in the costs of employment, the contractual gross salary must be reduced with the 30% allowance. Note that a reduction of the gross salary might have an impact on certain other fringe benefits.

5 Term of the 30% ruling

Maximum period
The 30% ruling can in principle be applied for a maximum period of eight years. The actual term can be shorter if the reduction rule applies.

Reduction rule
All earlier periods of presence or employment in the Netherlands will be deducted from the maximum period of eight years, unless an intertwining period of at least 25 years has passed between being present and/or employed.

6 Application of the 30% ruling

In order to apply the 30% ruling a formal request has to be submitted to the Dutch tax authorities. The request has to be filed by the employer and the employee jointly within four months after commencement of the employment activities. In such a case, the 30% ruling, if granted, will have effect as of the day activities commence. Applications filed beyond this four-month period, if granted, will have effect as of the beginning of the month following the month in which the application was filed. Employees who benefit from this special expat regime and relocated to the Netherlands may also opt to be treated as a partial non-resident for Dutch personal income tax purposes. This means that part of the income and net wealth of the employee will not be taxed in the Netherlands.

7 Change of employer

If the employee changes employer, he or she can once again apply for the 30% ruling. If granted, the 30% ruling will then apply for the remaining term. The new employer must separately prove that the conditions are fulfilled. The period between both employment relationships cannot exceed three months, and the four month application deadline equally applies.

Tax feature 10: Internationally oriented VAT/ customs regime

The Netherlands has a long tradition of transportation given its geographical location. It has developed into the gateway to Europe and beyond, and as such the Dutch VAT and customs regime have adapted to an environment in which efficiency and speed are essential for success.

1 Introduction

The pro-business Dutch government has established a favourable operating environment through business-friendly policies on customs procedures and taxation. Furthermore, Dutch customs and tax authorities are known for their practical, efficient and proactive approach towards facilitating international trade and customs procedures. A key differentiator of the Netherlands is the Dutch customs authorities' efficiency in customs procedures.

The Dutch customs and tax authorities have created dedicated teams of specialists which have a great deal of experience with logistics processes given the central geographical position of the Netherlands, the Port of Rotterdam and Schiphol Airport. Furthermore, specific client managers are assigned to individual companies to ensure efficient and adequate communication and interaction between the authorities and the businesses concerned. The processes are highly computerized to ensure the utmost efficiency. In many cases, the officers of the Dutch customs and tax authorities are able to accommodate foreign companies by communicating in English.

2 Rates

The standard VAT rate is 21%. A reduced VAT rate of 6% applies to goods and services listed in Table I of the Dutch Turnover Tax Act 1968 (e.g. vital goods and services such as foodstuffs, medical supplies, etc.). A 0% VAT rate applies to exportation of goods and certain supplies of goods and services related to international trade.

3 Exemptions

Several types of transactions are exempt from VAT in the Netherlands. An exemption means that no VAT should be charged on these transactions. As a result, in some cases corresponding input VAT cannot be deducted. This is, for example, the case in a lease of immovable property and for a number of financial transactions/services.

4 VAT deferment upon importation

Upon the importation of goods into the Netherlands, customs duties and VAT are due. Unlike in most other EU member states, Dutch VAT legislation provides for a deferment system for VAT under which import VAT is declared on the periodic return but deducted on the same form. As a result, no VAT is actually paid.

5 Advance rulings practice

VAT

Advance rulings can be obtained from the Dutch tax authorities in case businesses desire advance certainty with respect to the VAT aspects of an envisaged transaction or structure beforehand (see Tax feature 8). In addition, the Netherlands is also one of the pioneer countries participating in the EU pilot project for VAT treatment of complex cross-border transactions that commenced in June 2013.

Customs

The Dutch customs authorities may be approached by enterprises that intend to import and export through the Netherlands to discuss real-life scenarios at a preliminary stage. Such early communication allows companies to present and explain their specific situations and ascertain whether the envisaged scenario is acceptable to the Dutch customs authorities up front – as opposed to being confronted with adverse assessments at a later stage. Entrepreneurs may obtain upfront rulings from the Dutch customs authorities on, among other issues, customs valuation and retroactive price adjustments resulting from APAs.

Abbreviations and Definitions

APA	Advance pricing agreement.
ATR	Advance tax ruling.
BEPS	Base erosion and profit shifting, the G20/OECD initiative to counter perceived harmful tax competition and aggressive tax planning on a multilateral scale.
BV	A Dutch private limited liability company (in Dutch: *'besloten vennootschap')*.
CIT	Dutch corporate income tax, levied at a general rate of 25% (the first €200,000 of annual taxable profit at 20%).
CITA	The Dutch Corporate Income Tax Act 1969 (in Dutch: *'Wet op de vennootschapsbelasting 1969'*).
EEA	The European Economic Area, which consists of all 28 member states together with Norway, Liechtenstein and Iceland.
EU	The European Union, which currently comprises the following 28 member states: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.
FBI	Dutch fiscal investment institution (in Dutch: *'fiscale beleggingsinstelling'*).

GAAR	General anti-avoidance rule.
ICT	Information communications technology.
IP	Intellectual property.
Interest and Royalty (IR) Directive	EU Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states.
Member State	A country belonging to the EU.
NV	A Dutch public limited liability company (in Dutch: *'naamloze vennootschap')*.
OECD	The Organisation for Economic Co-operation and Development.
Parent Subsidiary (PS) Directive	EU Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states.
PE	Permanent establishment.
R&D	Research and development.
RDD	Research and development deduction.
SAAR	Specific anti-avoidance rule.
Service Company	Dutch tax resident companies whose activities in a year predominantly (i.e. 70% or more) consist of receiving and on-paying interest, royalties, rent or lease amounts from and to group companies based outside the Netherlands.

Substance Regulations	The decrees of the Dutch Ministry of Finance, dated 11 August 2004 (nr. IFZ 2004 / 124M, 125M, 126M and 127M), updated as per 12 June 2014 (DGB 2014 / 3098, 3099, 3101, 3102) and the codification pursuant to article 3a Implementation Decree International Assistance for the Levying of Taxes Act.
Tax treaty	A treaty for the avoidance of double taxation with respect to taxes on income and on capital concluded between the Netherlands and another state.
VAT	Value added tax (in Dutch: *'omzetbelasting'*).

Annex – General overview Dutch CIT, miscellaneous taxes and legal forms of doing business

Please find below a high level overview of certain aspects of the Dutch corporate tax system, miscellaneous taxes and some of the legal forms of business mostly used in the Netherlands. Although the following provides a quick general overview, it by no means aims to be exhaustive.

1 Corporate income tax (CIT)

General

CIT (in Dutch: *'vennootschapsbelasting'*) is levied on entities that are resident in the Netherlands and from foreign resident entities on certain types of Dutch source income. CIT has two tax brackets: the first €200,000 of annual taxable profit is taxed at a rate of 20% and the annual profit exceeding this amount is taxed at a rate of 25%.

Subject to tax

CIT is levied from, among others, NVs and BVs, cooperatives, funds for joint account and non-transparent limited partnerships (in Dutch: *'open commanditaire vennootschap'*). A transparent limited partnership (in Dutch: *'besloten commanditaire vennootschap'*) is not subject to CIT. A limited partnership is, in principle, considered to be 'transparent' if unanimous and unconditional prior consent is required from all partners for admission of a new limited partner or the transfer of a limited partnership interest.

Foreign entities are subject to CIT if they derive income from (i) a business carried on through a permanent establishment or a permanent representative in the Netherlands; or (ii) if they derive income from a substantial shareholding (as a general rule, 5% or more in the share capital or membership interest in a cooperative) held in a company established in the Netherlands. Income from the Netherlands includes interest income on a loan granted to a company established in the Netherlands in which the foreign entity holds a substantial interest, as well as income from real estate.

A foreign entity that derives income from a substantial shareholding will not be subject to CIT if (i) its substantial shareholding can be attributed to a business enterprise carried on by the foreign entity; or, alternatively, (ii) the substantial interest is not held with the main purpose (or one of the main purposes) of avoiding Dutch personal income tax and/or Dutch dividend withholding tax.

Taxable profits

CIT is levied over the net amount of worldwide taxable profits. No CIT is due to the extent that an exemption applies (see Tax feature 1, paragraph 2). Determination of annual profits takes place according to the principle of 'sound business practice'. This principle is very general and has been widely developed in case law. The starting point for determining the annual taxable profit is the reported profit in the commercial accounts. This commercial profit is then adjusted for CIT purposes with the necessary corrections based on statutory or case law.

Deductible costs for CIT purposes include interest on loans and annual depreciations on assets used in the business enterprise of the taxpayer. Interest, however, may be precluded from deduction pursuant to one or more deduction limitation provisions (see Tax feature 3). In this light, it should be noted that thin-capitalisation rules have been abolished since 1 January 2013.

Various systems of depreciation are allowed provided that they are used consistently and in accordance with sound business practice. The annual amount of depreciation depends on the historic cost price, the economic life of the asset, and the residual value. For acquired goodwill, the annual depreciation cannot exceed 10% of the acquisition price. Goodwill paid for the acquisition of shares in a subsidiary that qualifies for the participation exemption cannot be depreciated, nor can self-generated goodwill. Depreciation of real estate is restricted. Real estate made available to non-affiliated parties cannot be depreciated to a value below the market value of the property as regularly assessed by municipal authorities. For real estate outside this category, the limit for depreciation is set at 50% of the market value thus assessed.

Exemption of foreign business results

With effect as of 1 January 2012, the method for the avoidance of international double taxation for qualifying non-Dutch permanent establishments (PEs) was amended. As of 2012, profits and losses of qualifying PEs are excluded from the Dutch taxable base (object exemption), with the exception of final losses upon permanent wind-up of a PE. Under the current rules, losses of a non-Dutch PE are included in the Dutch taxable income and immediately reduce the Dutch taxable base. According to Parliamentary documents, the introduction of the object exemption does not intend to change the calculation method of profits allocable to a PE.

Functional currency

Dutch companies are allowed to file their tax returns in a foreign currency other than the Euro if their annual reports are drawn up in the same foreign currency. In this way, fluctuations between the Euro and the 'functional currency' in question will not lead to taxable profits. In order to file returns in a foreign currency, the taxpayer will have to file a request with the Dutch tax authorities in the financial year preceding the year in which the taxpayer wants to begin filing tax returns in the functional currency. An exception applies to newly established companies, which have until the end of their first financial year to file such requests. Upon approval, the taxpayer is obliged to file tax returns in the functional currency for a minimum term of ten years.

Mergers

Dutch civil law provides for three kinds of mergers: the stock merger (in Dutch: *'aandelenfusie'*), the enterprise merger (in Dutch: *'bedrijfsfusie'*) and the legal merger (in Dutch: *'juridische fusie'*). Under certain conditions, Dutch tax law facilitates these mergers by allowing a rollover of book values for the assets and shares transferred, thus not recognizing any taxable profit.

Losses

Losses may be carried back one year and carried forward nine years. To avoid the trading of tax losses, a significant change in the company's (ultimate) ownership (30% or more) in principle impedes carrying forward losses. In certain cases, however, exceptions to this rule apply. Specific restrictions apply for the compensation of losses incurred by 'pure' holding and financing companies.

Controlled foreign corporations

An annual mark-to-market revaluation applies to a substantial (25% or more) investment in a low-taxed subsidiary of which the assets comprise, directly or indirectly, for 90% or more of so-called 'low-taxed free passive investments'.

2 Dividend withholding tax

Dividends distributed by a Dutch company (i.e. NVs, BVs and non-transparent limited partnerships) are subject to 15% Dutch dividend withholding tax (in Dutch: *'dividendbelasting'*). However, an exemption applies for qualifying EU (or EEA) companies (i.e. companies that hold at least 5% of the shares in the Dutch distributing entity). Non-EU/EEA companies will often be entitled to a reduced tax treaty rate as the Dutch tax treaty policy aims to minimize withholding taxes on outbound payments in treaties. Profit distributions made by Dutch cooperatives (a special form of association with a separate legal personality) are generally not subject to dividend withholding tax (unless in abusive situations).

Dividend withholding tax can also be due if a company repurchases its own shares and the repurchase price exceeds the amount of the average fiscally recognized capital. Liquidation distributions, insofar as they exceed the amount of the average fiscally recognized capital, are also subject to dividend withholding tax. However, older tax treaties limit the Dutch domestic taxing rights, so that the price paid for repurchased shares or a liquidation distribution may not effectively be subject to Dutch dividend withholding tax.

Reimbursement of paid-in share capital and share premium is, in principle, not subject to Dutch dividend withholding tax, unless the company avails of ‘pure profit’ (i.e. retained earnings, hidden reserves and/or anticipated profit). However, following a formal reduction of the nominal value of the shares (including amendment of the articles of association) an exemption from Dutch dividend withholding tax applies.

3 Withholding tax on interest / royalties, stamp duties, net wealth tax, lump-sum tax

The Netherlands does not levy withholding tax on interest and royalty payments (unless interest and royalties are reclassified to dividend). Furthermore, there is no net wealth tax, stamp-duty and lump-sum tax in the Netherlands.

4 Real estate transfer tax

The acquisition of the legal title to – or the economic ownership of immovable property or rights relating to such property – located in the Netherlands, is subject to real estate transfer tax (RETT). RETT is due by the acquirer at a rate of 6%. With regard to the acquisition of residential properties and certain rights on residential properties, a rate of 2% applies.

5 VAT

Value added tax (in Dutch: *‘omzetbelasting’*) is levied at each stage in the chain of production and distribution of goods and services. The tax base is the total amount charged for the transaction excluding VAT, with certain exceptions. The Netherlands applies a standard VAT rate of 21% and a reduced rate of 6% for certain specified goods and services. The taxable person can deduct the VAT on costs insofar as these costs related to goods or services are used for VAT-taxed purposes. On balance, due to the deductions in the previous stages of the chain, VAT should in principle not be cumulative, implying that the end consumer ultimately pays the VAT.

6 Legal forms of doing business

One subject to consider when establishing a business in the Netherlands is the legal framework. It is possible (for example, for cost reasons) to perform the contemplated business activities through a branch office of an existing legal entity. Most foreign investors, however, prefer to establish a separate legal entity or to enter into a partnership. Although there are a wide variety of legal forms available under Dutch law, by far the most commonly used are:

i) the public limited liability company (in Dutch: *‘naamloze vennootschap’* or *‘NV’*), shares of which can be listed on a stock exchange. It is the required form for banking or insurance businesses, but it is not restricted to such use;
ii) the private limited liability company (in Dutch: *‘besloten vennootschap met beperkte aansprakelijkheid’* or *‘BV’*), frequently used for financing, setting up joint ventures and group holdings;
iii) the cooperative (in Dutch: *‘coöperatie’* or *‘coöperatief’*), a special form of association with a separate legal personality, which is governed by certain specific rules and, to a large extent, the general rules applicable to Dutch associations (in Dutch: *‘verenigingen’*). The statutory framework is not extensive and very flexible in comparison to that of NVs and (to a lesser extent) BVs, so that the articles of association can be tailored to individual needs; and
iv) the limited partnership (in Dutch: *‘commanditaire vennootschap’* or *‘CV’*), i.e. a partnership between one or more managing partners (having unlimited liability) and one or more limited partners (liability limited to the amount of their capital contribution).

A company is incorporated by means of execution of a notarial deed of incorporation (in Dutch: *‘Akte van oprichting’*) by a civil law notary. This deed of incorporation contains the articles of association. Unlike the NV, for a BV and cooperative there is no requirement of a minimum paid-in capital, and as a result, no bank statement and auditors certificate is required. This allows the incorporation procedure, including registration with the Trade Register of the Dutch Chamber of Commerce to be completed within a few days.

A Dutch partnership is formed by an agreement between two or more partners, each of which may be an individual or a corporation, either for a limited or unlimited period of time. The partners are not required to be Dutch citizens, a corporation in or resident of the Netherlands. A partnership agreement must be entered into in writing. No additional formal requirements (such as a notarial deed, government approval or minimum paid-in capital) apply with respect to the formation of a Dutch partnership. As such, the timespan of formation can be very limited.

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