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Tax legislation

The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Dutch government is that the tax system may under no circumstances form an impediment for companies wishing to incorporate in the Netherlands. In that framework, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings. In addition, the Netherlands has also signed tax treaties with many other countries to prevent the occurrence of double taxation. At the same time, its vast network of tax treaties offers instruments for international tax planning.

The following are a few of the benefits offered by the Dutch tax system:

- The Netherlands does not charge tax at source on interest and royalties;
- In most cases all the profits that the Dutch parent company receives from foreign subsidiaries are exempted from tax in the Netherlands (participation exemption);
- The Netherlands offers attractive tax-free compensation in the form of the 30% rule for some foreign personnel who are temporarily employed in the Netherlands.

The Dutch tax system can be divided into taxes based on income, profit and assets, and cost price increasing taxes.

Corporate income tax

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples of such legal entities are the Dutch NV and BV. Companies based in the Netherlands are taxed on the basis of the companies‟ local revenues. The question as to whether a company is in effect based in the Netherlands (resident companies) for tax purposes is assessed on the basis of the factual circumstances. The relevant criteria are issues such as where the actual management is based, the location of the head office and the place where the annual General Meeting of shareholders is held. Entities set up under Dutch law are deemed to be established in the Netherlands. A resident company is in principle subject to Dutch corporate income tax for its profits received worldwide. Non-resident companies may be subject to corporate income in the Netherlands on Dutch-source income.

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Tax base and rates

Corporate income tax is charged on the taxable profits earned by the company in any given year less the deductible losses. The following are the applicable corporate income tax rates for 2013:

Profit from	Profit up to and including	Rate
-	€ 200,000	20.0%
More than € 200,000		25.0%

If a company incurred a loss in any given year, that loss can be deducted from the taxable profit of the previous year or from the taxable profit over 9 subsequent years. This loss set-off has been temporarily extended. Losses may be carried back 3 years. In exchange for this the loss carry forward of 9 years is cut to 6 years. This temporary measure applies for the tax years 2010 and 2011. Losses for the years up to and including 2002 can be carried forward until 2011.

In principle all business expenses are deductible when determining corporate profits. There are however a number of restrictions with respect to what qualifies as business expenses.

Participation exemption

Participation exemption or substantial holding exemption is one of the main pillars of corporate income tax. The scheme was introduced to prevent double taxation. Profit distribution between group companies is exempted from tax.
A participation refers to a situation where a company (the parent company) is the owner of at least 5% of the nominal paid-up capital of a company that is based either in the Netherlands or abroad (the subsidiary).
Under the participation exemption, all benefits derived from the participation are tax exempt. The benefits include dividends, revaluations, profits and losses in the sale of the participation and acquisition and sales costs. The participation exemption also applies to revaluations of assets and liabilities from earn-out and profit guarantee arrangements. If the value of the participation falls due to losses incurred, devaluation by the parent company is in principle not permitted. Losses arising on liquidation of a participation can under certain conditions be deducted.

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Tax declarations

The corporate income tax declaration must be submitted to the tax authorities in principle within 5 months of the end of the company‟s financial year. If a firm of accountants submits the return a postponement scheme applies. This means that the return may be submitted later in the year.

Income tax

Income tax is a tax levied on the income of natural entities with domicile in the Netherlands (domestic taxpayers). They are taxed on their full income wherever it is earned in the world. Any natural person who is not domiciled in the Netherlands, but earns an income in the Netherlands, is liable to pay income tax on the income (foreign taxpayers). Foreign taxpayers can also opt to pay domestic taxes. In the latter instance, the taxpayer is subject to all the rules applicable to domestic taxpayers.
In principle, income tax is charged on an individual basis: Married persons, registered partners and unmarried cohabitants (under certain conditions) can however mutually distribute certain joint income tax components.

Dividend tax

Companies often pay out profits to the shareholders in the form of dividends. The following are further examples of dividend situations:
- Partial repayment of the moneys paid-up on shares by shareholders;
- Liquidation payments above the average paid-up equity capital;
- Bonus shares from profits;
- Constructive dividend. This concerns payments made by a corporation primarily for the benefit of a shareholder as opposed to the business interests of the corporation;
- Interest payments on qualifying hybrid debt as such debt is treated as informal equity of the borrowing company.

The company (liable for withholding the tax) that pays out the dividend is bound to withhold the dividend tax and to pay it to the tax authorities.

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Exemption

No tax is withheld, among others, in the following situations:
- Where, in inland relationships, benefits are enjoyed from the shares, profit-sharing certificates and cash loans of participations to which the participation exemption applies;
- If a Dutch company pays out dividends to a company established in a member state of the European Union and the company holds at least a 5% share of the Dutch company.

Tax rate

The tax rate for dividends is 15%. The tax is withheld by the company that pays out the dividends and pays it to the tax authorities. The dividend tax withheld serves as an advance tax payment on income and corporate income tax.
The Netherlands has signed tax treaties with various other countries, as a result of which a lower tax rate will apply in many instances.

Capital Gains Tax on the Sale of Shares

Under the participation exemption, all capital gains made by a Dutch holding company on the sale of shares in a subsidiary are tax free in Holland irrespective of whether the subsidiary is resident or non resident.

Prevention of double taxation

Residents of the Netherlands and companies that are registered in the Netherlands must pay tax on all revenue generated worldwide. This could result in any given income component being taxed both in the Netherlands and abroad. To prevent this kind of double taxation, the Netherlands has signed tax treaties with many other countries. The treaties are largely modelled on the OESO Model Treaty for the prevention of double taxation.

If an income tax component is nevertheless double-taxed as income or corporate income tax, the taxed amount is reduced based on the exemption method. The method entails a reduction of the Dutch tax related to the foreign income. The exemption on the income tax is calculated per box. Double taxation of dividend payments and interest payments and royalties is prevented with the use

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of the settlement method. The use of this method means that the Dutch tax is reduced by the amount of tax charged abroad.
In certain situations it is also possible to deduct the foreign tax directly from the profits or as costs related to income.

VAT rates

The general VAT tax rate is 21% (19% untill 1 October 2012). The Netherlands also has a low VAT rate of 6%. Goods and services falling under the low tax rate are specified in Table 1 of the Turnover Tax Act (Wet op de omzetbelasting 1968). This applies, among other things, to foodstuffs and medicines. The zero rate is mainly intended for goods exported to outside the EU and for goods exported to other EU members states.
All companies are bound to submit VAT declarations. If the company also supplies goods or services to elsewhere in the European Union, it is also bound to fill in the 'Opgaaf Intracommunautaire Prestaties' (Intracommunity Supplies) tax form.

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained.