


The Netherlands as a corporate base for international operations

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The withholding tax rate of five per cent applies to royalty payments for the use of scientific and industrial equipment and information. To royalties paid for the use of trademarks and trade names the withholding tax rate of seven per cent applies. The 10 per cent rate applies to royalty payments for copyrights.

Vietnam

Payments on profit sharing bonds are treated as dividends.

Treaty contains a so-called 'most favoured nation clause'. If a treaty is concluded with an OECD country containing more favourable withholding tax rates on interest and royalty payments it automatically applies to the Dutch treaty.

Royalty withholding tax on industrial royalties is reduced to five per cent; trademark payments and information are subject to 10 per cent and other royalties to 15 per cent.

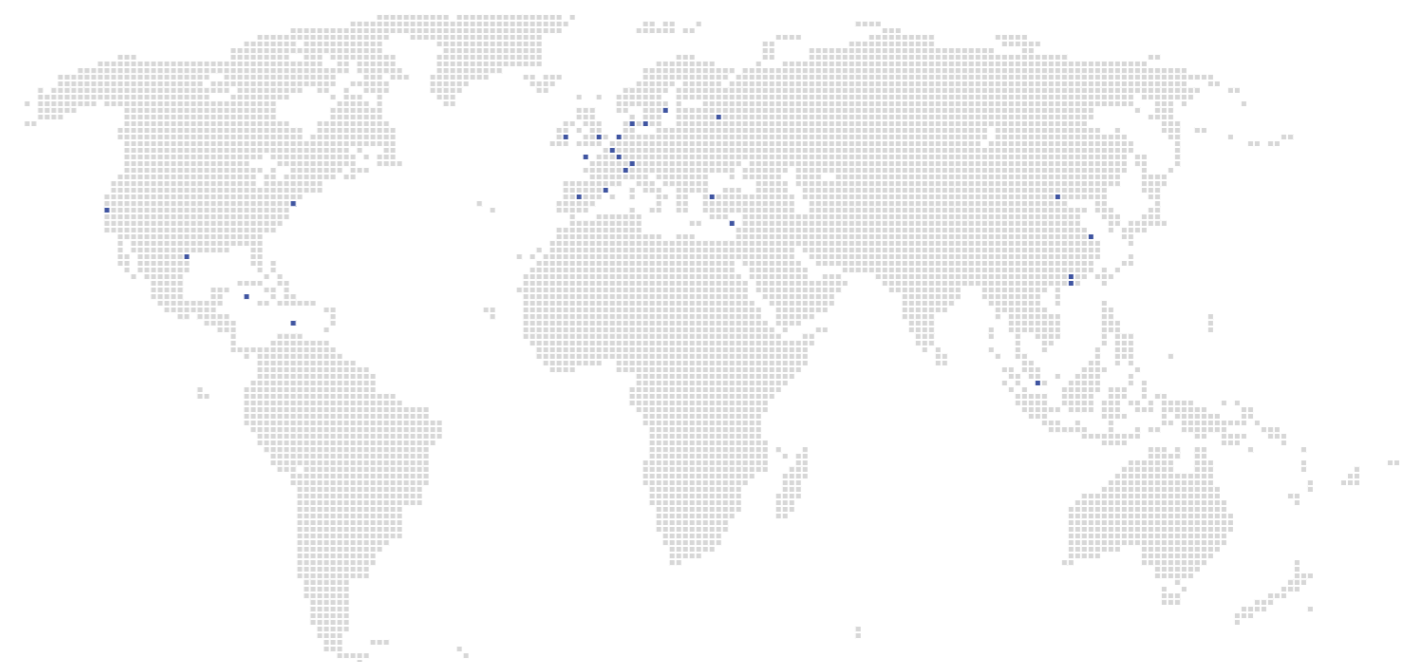
Zambia

Payments on profit sharing bonds are treated as interest.

Zimbabwe

Payments on profit sharing bonds are treated as interest.

Intertrust's global network of offices



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Introduction

The purpose of this booklet is to provide a general outline of the legal and fiscal implications of setting up a company in the Netherlands, particularly in view of the country's legal and fiscal advantages as a corporate base for international operations.

The Dutch system of corporate and tax statutes is well developed and provides a sound basis for structuring complex transactions. Traditionally, the Netherlands is a country with an open economy and this is one of the main factors contributing to its strength as a base for international group structures.

Foreign-owned enterprises enjoy the freedom to arrange corporate relationships and financing transactions in a manner that will maximise world-wide revenues and return on capital. International groups often choose the Netherlands to set up holding companies, investment companies, finance subsidiaries and licensing and service companies.

Part I of this booklet provides the necessary information on Dutch company law, taxation and foreign exchange control. Part II deals in more detail with the taxation aspects of Dutch holding, finance and royalty companies.

The most important factors which make the Netherlands an attractive base for domiciling international business operations can be summarised as follows.

- ▶ The incorporation of a Dutch company can normally be effected without undue delay and, relatively, is not very expensive. One is reasonably free to make stipulations in the articles of incorporation with regard to capital structure, management and so on. There are no restrictions with regard to the nationality or residence of shareholders and directors.
- ▶ The fiscal system offers ample possibilities for deducting expenses from gross income and a favourable treatment of losses. Furthermore, the rate of corporate taxation can be regarded as moderate for an industrialised country.
- ▶ The Netherlands has signed up to an extensive network of tax treaties

providing for avoidance of international double taxation and for the reduction of or exemption from withholding taxes. Even when no treaty applies, Dutch legislation unilaterally avoids international double taxation to a large extent.

- ▶ There is no withholding tax on interest and royalty payments in the Netherlands.
- ▶ The advantageous concept of the 'participation exemption' exempts all benefits to a Dutch holding or operating company that result from a qualifying participation in both Dutch and foreign companies – whether dividends received or capital gains realised on the sale of the shareholding – from corporate income tax.
- ▶ Results of an active foreign branch that have been subject to tax in the country of its location are excluded from the corporate income tax base of the Dutch company.
- ▶ In general, the Dutch fiscal treatment of foreign branch results also applies to those from real estate, which makes the Netherlands an attractive base from which to structure real estate portfolios.
- ▶ Whenever there is any uncertainty about the tax treatment of a structure or the applicability of certain regulations or facilities, it is possible – and quite usual – to discuss the matter with the Dutch tax authorities and to come to an agreement: an 'advance tax ruling'. This provides certainty with regard to the tax position, which is often as important for the long-term planning of international operations as the favourable tax treatment.
- ▶ Dutch foreign exchange regulations are among the most liberal in the world.

In addition, the Netherlands offers a strongly international business climate, with a highly skilled labour force and every kind of service available, including professional advice at an outstanding international level from lawyers, civil law notaries, tax advisers and auditors. The country also has a long tradition of political and social stability, with sophisticated legislation and a highly reputed fiscal system, which is applied consistently by reliable civil servants. In short, this is a country with an excellent infrastructure in every respect.

Some of the information provided in this booklet may prompt the reader to consider establishing industrial, trade and/or service activities in the Netherlands. Dutch government policy aims to promote such activities and to attract foreign investors in order to stimulate employment. To this end, various investment incentives and subsidy programmes have been created. On request, we will be glad to provide further information about them.

Part I
General Information on Company
Law, Taxation and Foreign Exchange
Control in The Netherlands



I.1 General Information on Dutch Company Law

I.1.1 Legal forms of enterprises

Book 2 of the Civil Code contains the basic provisions of Dutch company law. The most common corporate legal entities are the 'NV' the 'BV'.

NV

The 'naamloze vennootschap' or NV can be compared with the American corporation, the British public limited liability company (plc), the French société anonyme (SA) and the German Aktiengesellschaft (AG).

BV

The 'besloten vennootschap' or BV is broadly comparable with the private limited liability company in the United Kingdom, the German Gesellschaft mit beschränkter Haftung (GmbH) and the French société à responsabilité limitée (SARL).

Differences

The principal differences between an NV and a BV are as follows. The NV can issue either registered or – as long as they are fully paid up – bearer shares. The BV, on the other hand, can only issue registered shares. NV shares are freely transferable; BV shares are only transferable subject to certain restrictions, which must be specified in the articles of association. In general terms, these restrictions prevent the transfer of shares in a BV without the consent of the other shareholders, who usually have pre-emptive rights. Depository receipts may only be issued to NV shareholders (if shares are registered). Another difference between the two forms is the minimum share capital, as discussed in the next section. Apart from these differences, under current law the legal requirements for and structure of an NV and a BV are very much the same and can be dealt with together.

I.1.2 Share capital

Authorised

The authorised share capital of an NV or a BV must be fixed in the articles of association. These state the maximum amount of share capital the company may issue, expressed in euro. The capital must be divided into shares with a nominal value;

shares with no par value are not permitted. There are no limits on the amount of any premium at which shares may be issued or on the extent to which surplus paid-in capital may be introduced into the company.

Issued

At least one fifth of the authorised share capital must be issued. And at least a quarter of the issued share capital must be paid up. However, all bearer shares (NV) must be fully paid up. The authorised and issued share capital must amount to at least the minimum capital. In case of an NV, that minimum capital is EUR 45,000; for a BV, it is EUR 18,000

(a law to abolish the minimum capital of a BV is in preparation, see 1.7).

A company may only issue new shares pursuant to a resolution of the shareholders' meeting, insofar as no other body of the company has been designated for this purpose in the articles of association. Shareholders have a preferential right to any new shares issued, in proportion to the total nominal amount of their current shareholdings, unless a resolution is taken to restrict or waive such rights. In the case of a BV, the articles of association can deny such preferential rights.

The articles of association may attach certain rights to shares of a particular type, distinctive from ordinary shares (common stock). For example, entitlement to a defined percentage of the profits or, in the case of priority shares, special rights such as the power to make binding recommendations for the appointment of executive or non-executive directors. The exact nature of these rights is also specified in the articles of association.

The creation of non-voting shares is not currently permitted.

Shares can be registered in the name of a depository foundation, which issues non-voting 'depository receipts' to third parties. The owner of such a receipt enjoys full entitlement to dividend payments and the company's equity, but may not

vote at shareholders' meetings. That right is retained by the depository foundation, which has complete freedom to vote and to make decisions in the interests of the company, although also taking into account those of the owner of the depository receipts (for more information, see 1.9).

Repurchase/reduction

A company may repurchase its own shares, providing they are fully paid up. An NV may not, either directly or indirectly through its subsidiaries, acquire or hold in ownership more than 10 per cent of its own capital. For a BV, this amount is 50 per cent. In any such case, however, maintain the minimal capital requirement of EUR 45,000 (NV) or EUR 18,000 (BV) must be maintained. Fully paid-up shares may only be acquired if the company's equity, minus the acquisition price of the shares, exceeds the total amount of the paid and called up part of the share capital plus legal reserves. Moreover, the law requires the consent of all shareholders prior to such an acquisition.

The reduction of issued share capital requires the authorisation of the shareholders and can be effected in two ways: (1) by redeeming shares held by the company itself; or (2) by reducing the nominal value of the shares. The provisions relating to the issue and redemption of shares are not applicable to open-ended investment companies, the shares of which are traded on a stock exchange.

Capital protection

In general, a company is not allowed to grant loans to a third party for the purpose of enabling it to acquire shares in the company's capital. It may only make such a loan up to the amount of the distributable reserves, and only insofar as permitted under its articles of association.

A company is not allowed to provide security or to give a price guarantee on shares to a third party if that is done for the purpose of a subscription to or the acquisition of its own shares – or depository receipts for them – by others. This prohibition also applies to its own subsidiaries.

As a rule, a subsidiary is not allowed to hold shares in the capital of its parent company. For its own account, it may only acquire or cause the acquisition of such shares under particular title insofar as the company itself is permitted to acquire its own shares.

The rules for capital protection are likely to change under the proposed new law described in 1.7.

Transfer

The transfer of bearer shares is effectuated simply by handing over the share certificate. Registered shares are transferred by deed, executed before a civil law notary in the Netherlands. The notary will investigate the legal title to the shares and verify the identity of both transferor and transferee. Upon execution of the deed, management records the transfer in the shareholder register of the company, after which the new owner can exercise its rights.

Debt/equity

There are no legal restrictions on a company's ability to borrow funds. And except in the case of companies engaged in banking or insurance activities, there are no debt-to-equity ratio requirements.

There are no restrictions on borrowing money through the issue of public or private debentures, convertible into shares or with a warrant to purchase shares attached

Profit

Unless otherwise provided for in the articles of association, a company's profit is at the disposal of its shareholders. However, a company may only distribute its profits insofar as its equity exceeds the sum of the paid-up capital plus the reserves which must be maintained by law or under the articles of association.

One of the most important statutory reserves is the revaluation reserve, to which unrealised book profits are attributed. A profit arising out of the revaluation of the assets of the company cannot be paid out as a dividend to the shareholders.

I.1.3 Management

With the exception of large enterprises (so-called 'structuurvennootschappen', which are subject to special regulations; see 1.4), a company is largely free to define its own management structure in its articles of association as appropriate. However, the articles must at least provide for the following bodies.

- ▶ A general meeting of shareholders (algemene vergadering van aandeelhouders).
- ▶ A board of directors (directie).

A supervisory board (raad van commissarissen) is optional.

General meeting of shareholders

Any power not assigned to the board of directors or another body of the company is retained by the general meeting of shareholders.

The following powers of the general meeting may not be delegated.

- ▶ Adoption of the annual accounts;
- ▶ Fixing of the dividend;
- ▶ Appointment, suspension and dismissal of the directors and members of the supervisory board;
- ▶ The power to amend the articles of association or to liquidate the company.

General meetings of shareholders must be held at least once a year and must take place within the Netherlands at a place named in the articles of association. No legally valid resolution can be passed at a meeting held elsewhere except by a unanimous vote representing the entire issued share capital, and then only when the articles of association permit this option. They may also allow for such resolutions to be adopted in writing, but again only by a unanimous vote representing the entire issued share capital.

Under the proposed new law described in 1.7, it will become possible to hold the general meeting of shareholders outside the Netherlands.

The articles of association set out the procedure for convening a meeting of shareholders. Shareholders may be represented by a written proxy. When such a proxy is granted and recorded electronically, this counts as 'written'.

Directors

The directors of the NV or BV are responsible for conducting its day-to-day business. They represent and commit the company, either together or individually, in dealings with third parties. However, the articles of association may stipulate that only two or more directors acting jointly can legally bind the company. Such a restriction is effective vis-à-vis third parties only if properly recorded in the Trade Register at the regional Chamber of Commerce.

The directors prepare or have prepared the annual accounts of the company and submit them for adoption to the general meeting of shareholders with a recommendation from the supervisory board (if any).

The founding directors are appointed in the notarial deed of incorporation. Subsequently, directors are normally appointed (and dismissed) by the general meeting of shareholders, which also determines their remuneration. It is not necessary for a director to be either a Dutch citizen or a shareholder in the company. A corporate entity may also serve as a director.

Meetings of the board of directors may be held outside the Netherlands. To substantiate the need for effective management of the company to rest there, however, it is preferable to ensure that management decisions are taken in the Netherlands.

Supervisory board

The articles of association may provide for a board of supervisory (non-executive) directors (raad van commissarissen). Its function is to oversee and advise on the policy of the (executive) directors and the general direction of the company and any affiliated enterprises. Its powers must be

set out in the articles of association, and may vary depending on the intentions of the founders of the company. Sometimes, the articles require its consent for certain managerial decisions. A member of the supervisory board has no power to bind the company legally. Management is obliged to provide all information necessary for the supervisory board to fulfil its remit.

The supervisory board is appointed by the general meeting of shareholders. In principle, any person who is not an employee or director of the company qualifies for appointment. But the articles of association may limit the extent of such qualification.

Liability

The liability of directors and of members of the supervisory board is limited.

In the event of liquidation, the directors only remain jointly and severally liable for the outstanding debts after the assets of the company have been liquidated if they have clearly performed their duties improperly and that is deemed a principal cause of the failure. Directors are presumed to have been negligent if they failed to keep proper accounting records of the company's assets and liabilities. Books, documents and other data must be stored in such a way that the rights and obligations of the company can be known at all times. In addition, directors are presumed to have been negligent if they failed to file the annual accounts in good time.

If the financial situation of the company has been misrepresented in the annual accounts, in published interim figures or in the annual report, then the directors are jointly and severally liable towards third parties for any resulting loss or damage. A director who can prove that such misrepresentation is not attributable to him is exempt from this liability.

Under certain circumstances, the directors may be liable for the company's debts in respect of payroll taxes, social security premiums and Value Added Tax if they failed to inform the authorities promptly (that is, within two weeks after the due date) that the company was unable to meet these debts.

I.1.4 Special regulations for large enterprises

Since the early 1970s, Dutch company law has incorporated special regulations governing large enterprises (structuurvennootschappen). These relate to the management structure, the publication of financial statements and worker participation, and are usually referred to as the 'structure rules'. Companies forming part of an international group do not normally fall within the category of enterprises subject to these regulations.

For the purpose of the structure rules, a 'large enterprise' is defined as follows.

- ▶ The total amount of its issued capital plus reserves, as shown on the balance sheet, equals or exceeds EUR 16,000,000.
- ▶ It is legally required to establish a works council (ondernemingsraad).
- ▶ And, on average, it and its subsidiaries together employ at least one hundred persons in the Netherlands.

Whether an NV or a BV, a company covered by structure rules must have a supervisory board with at least three members (individuals) appointed by the general meeting of shareholders. This body has far-reaching powers, which in smaller companies are reserved for the managing directors or the general meeting of shareholders; they include a veto on major management decisions, approval of the annual accounts and the appointment and dismissal of directors.

I.1.5 Incorporation of an NV or BV

Procedure

To incorporate an NV or a BV, a deed of incorporation containing the articles of association in the Dutch language must be executed before a civil law notary. A single founder can execute this deed.

The founder does not need to be a Dutch citizen or resident, and may be represented by written proxy. A legal entity can also act as founder.

As of 1 July 2011, a 'declaration of no objection' issued by the Dutch Minister of Justice ceased to be a requirement for the incorporation of a BV or NV or for the amendment of its articles of association. This declaration was a 'preventive

supervision' measure, and required the submission of detailed information about the company's founders, directors and shareholders.

It has been replaced with a new system of 'continuous monitoring', which also applies to other legal entities such as foundations, associations and co-operatives. Amongst other things, the monitoring process tracks digital information already available to the government in such systems as the Companies Register and the Personal Records Database. As well as the actual founders, shareholders and directors, it also covers members of their families. Its aim is to reduce the abuse of legal entities for criminal and suchlike purposes.

After incorporation, the company must be registered and its articles of association filed in the Trade Register at the Chamber of Commerce for the region in which it has its principal place of business, or if it has no place of business in the Netherlands, its registered office.

The deed of incorporation must include all the following information.

1. The name of the company.
2. The local government district in which it has its registered office in the Netherlands.
3. Its objectives, in general terms; this usually covers a broad range of possible activities.
4. Its authorised capital in euro.
5. The number of shares and their par value.
6. Details of all persons and entities holding shares at the time of incorporation.

Shares may be paid up in euro or in kind (eg. by transfer of a subsidiary or payment in another currency), providing this is mentioned explicitly in the deed of incorporation.

Costs of incorporation

The civil law notary who prepares the deed usually also drafts the articles of association, and in addition may provide legal advice with regard to the formation of the company. The notary's fee will depend upon the amount of work involved.

Registration of the company entails both an initial and an annual fee. The latter is based upon its legal form, the region of registration and the number of employees.

Other minor expenses will also be incurred, such as the fee payable to the Chamber of Commerce for clearing the proposed name of the company.

These charges do not include the costs of services rendered by lawyers, tax advisers, banks and trust companies, which may be required before incorporation takes place.

I.1.6 Public registration

A company incorporated under Dutch law has to be listed in the Trade Register at the Chamber of Commerce for the region in which it has its registered office. Moreover, if it has an office in another region it must also register with the Chamber of Commerce there. The registration procedure includes filing the articles of association and any subsequent amendments to them.

In addition, the name, address and place and date of birth of every director, member of the supervisory board and holder of a proxy must be registered, together with details of the extent to which each of them is allowed to represent and bind the company and whether they can do so alone or must act together with other company representatives. And each person registered in this way has to provide a specimen signature. Any subsequent changes to this information must also be registered.

In addition, details are required concerning the size and denomination of the authorised share capital, the issued share capital and the amounts paid up on the share capital.

Finally, the annual accounts have to be filed with the Companies Register each year.

Shareholders

In the case of registered shares, the names and addresses of their holders are entered into the register of shareholders held by the managing director at the company's registered office. This information is not open for public inspection.

If all the shares are held by a single person or entity, their name and address with the Trade Register. No such requirement exists when there is more than one shareholder.

If a single person or entity acquires all the bearer shares issued by a company, they must inform it of that fact in writing within

eight days of the final transaction. Similarly, if such a sole shareholder disposes of any bearer shares, the company must be notified in writing within eight days.

Public inspection

All information held in the Trade Register is open for public inspection. For a nominal fee, the Chamber of Commerce will provide an official summary of the registration containing details of the company, its published annual accounts, its directors, the members of any supervisory board, any proxyholders and, if applicable, its sole shareholder.

I.1.7 Proposed law to make the BV more flexible

In the hope of attracting more new enterprises to the Netherlands, the government has introduced a parliamentary bill to make the BV more flexible. In particular, this should make incorporation simpler and more inexpensive. Most of the proposed changes relate to capital, to capital protection and to the protection of creditors. If adopted, the principal changes will be as follows.

- ▶ The minimum capital requirement of EUR 18,000 will be abolished.
- ▶ Upon incorporation of a BV, neither a bank statement for investment in cash nor an auditor's statement on investment in kind will be required.
- ▶ The authorised share capital will be no longer mandatory.
- ▶ A BV will be allowed to grant loans or provide security to a third party for the purpose of enabling it to acquire shares in the BV.
- ▶ It will become possible to denominate the nominal value of the shares in a currency other than the euro.
- ▶ It will become possible for holders of a certain type of share to appoint directors or members of supervisory board.
- ▶ Non-voting shares and shares without profit rights may be introduced. Moreover, voting rights will no longer need to reflect the nominal value of the shares.
- ▶ Meetings of the shareholders may be held outside the Netherlands.
- ▶ It will become possible to transfer shares without requiring approval of the other shareholders, and other share transfer restrictions will no longer be mandatory.

- ▶ The position of minority shareholders will be protected. All shareholders must agree changes concerning their statutory rights by unanimous vote.
- ▶ A shareholders' resolution to make a distribution will require the prior approval of the board of directors. The board may refuse such approval if it believes or reasonably anticipates that there is a fair chance that the distribution will leave the BV unable to meet its due and payable debts. Directors who were aware that such a situation was likely to arise as a result of the distribution will become jointly and severally liable towards the company for the resulting shortfall.

The bill already has been passed by the Lower House of Parliament and is to be considered by the Upper House soon. It seems probable that the new proposal will enter force in the second half of 2012, most likely on 1 July.

I.1.8 Partnerships

There are two forms of partnership in the Netherlands: the general partnership (vennootschap onder firma, VOF) and the limited partnership (commanditaire vennootschap, CV). The VOF form is used mainly by groups of partners running a business, often quite small, together; they assume unlimited liability for its debts and obligations. The CV is frequently used for joint business ventures in which the limited partners act as capital contributors and there is at least one managing partner. In this case, the partners are liable for the debts of the CV only to the extent of their capital contributions. If the limited partnership rights cannot be transferred without the consent of all the limited and managing partners, the entity is classified as a 'closed CV', which is transparent for corporation tax purposes.

A partnership is normally formed through a partnership agreement, which need not be executed by a civil law notary. If the partnership conducts an enterprise, it must be listed in the Trade Register at the regional Chamber of Commerce. There are no capital requirements, but the partners must contribute something (cash, property, knowhow, labour, etc.).

Partnerships have no 'legal personality' under Dutch civil law. Legislation allowing them to assume such a personality was due to enter force in 2008, but after years of preparation the bill was withdrawn by the

Minister of Justice. His main argument for doing so was that the plans did not sufficient flexibility for existing general partnerships. Many small businesses feared the costs involved and felt that there was no practical need to change the status quo.

I.1.9 Foundations

A foundation (stichting) is a legal entity without members or shareholders. Its main governing body is the board of directors, which is responsible for management of organisation. A foundation uses its designated equity for specific purposes set out in its articles of association. Originally, foundations were charitable bodies, but nowadays many have a commercial function. They may only make distributions to their designated beneficiaries, not to their founders, directors or any other body of the foundation.

Incorporating a foundation is simple and no capital contribution is required. Incorporation is by notarial deed and the directors must list the foundation in the Trade Register at the Chamber of Commerce.

One specific form, the so-called 'depository foundation' (stichting administratiekantoor, STAK), exists for the purpose of acquiring and administering assets (shares). By issuing depository receipts, a STAK separates voting rights from economic rights (to dividends and capital gains) and is often used as a means of protecting assets.

A Dutch resident foundation is subject to corporation tax to the extent that it conducts a business. For this purpose, 'business' is defined as any activity through which the foundation competes or potentially competes with other enterprises subject to corporation tax.

Holders of assets under title of administration are not usually considered as conducting a business, so in principle the STAK is not subject to Dutch corporate income tax.

I.1.10 Co-operatives

A co-operative is a legal entity and a specific form of association. It must be incorporated by at least two members, through the execution of a notarial deed.

The name of such an entity must include the word 'Coöperatie' and must end with

one of three abbreviations reflecting the extent of its members' legal liability: WA, ('wettelijke aansprakelijkheid', statutory liability), BA ('beperkte aansprakelijkheid', limited liability) or UA ('uitsluiting van aansprakelijkheid', exclusion of liability).

Under its articles of association, the co-operative must seek to provide for certain material needs of its members, as agreed with them. Acting as a holding or finance company could fall within this statement of purpose, if the objective and activities of the co-operative include the provision to members of, say, additional management, financial and other services in support of their business.

The governing bodies of a co-operative are the meeting of members and the managing board, the latter serving as its executive. In principle, the directors are elected by the meeting of members. They need not be members themselves, and may be either individuals or corporate entities. The managing board runs the organisation on a day-to-day basis, in accordance with the provisions of the articles of association.

Optionally, a supervisory board consisting of one or more individuals may be also formed. But if the organisation is classified as a 'large co-operative', a supervisory board with at least three members is obligatory. This body oversees the general state of the co-operative and its business, and provides the managing board with advice. In addition, under Article 2:63j of the Civil Code its approval is required for some resolutions of the Board of Directors.

Members may be individuals, legal entities, partnerships and so on. Membership is personal. Prospective members may be required to meet certain pre-determined requirements, as defined in the articles of association, or to be approved by the board. Retirement can also be made subject to certain limitations. And the transfer of a membership may be subject to approval requirements; a statutory membership meeting is required. A co-operative is financed by its members' contributions.

The co-operative has membership rights rather of shares, but its articles of association can be drafted as such that those rights are similar to shares in an economic sense. There is no statutory minimum capital requirement. The organisation must be listed with in Trade Register at the Chamber of Commerce.

A so-called UA co-operative is not dissimilar to a limited liability company, in that its members are only liable for debts up to the amount of their contributed capital.

Profits can be distributed to the members, and in principle are not subject to dividend withholding tax in the Netherlands. However, if the co-operative has been set up with the sole purpose of avoiding that or any other tax, Dutch or foreign, then the Dividend Withholding Tax Act provides for taxation of distributions. The members of a co-operative are, unless the articles of association provide otherwise, entitled to the surplus remaining after liquidation.

A co-operative is required to have its annual report prepared within six months of the end of its financial year. Within seven months, that report must be adopted by the meeting of members. Postponement of preparation and adoption is possible, with a maximum delay of five months, for a limited number of reasons.

A co-operative without a supervisory board and not requiring an auditor's statement on the annual report under Dutch financial reporting law (Dutch GAAP) must establish an accounts audit committee (kascommissie) elected by the meeting of members and consisting of at least two members who are not directors of the organisation. This committee examines the annual accounts and reports its findings to the meeting of members.



I.2 Taxation

I.2.1 Corporation Tax (Vennootschapsbelasting)

Rate

Under the Corporation Tax Act (Wet op Vennootschapsbelasting) of 1969, as amended per 1 January 2011, the rate of Corporation Tax rate is 20 per cent on the first EUR 200,000 profit and 25 per cent on all profit exceeding that amount. The same rates will apply in 2012.

Since 1 January 2010, profits derived from the use of registered patents and other innovative intangibles are taxable at a rate of five per cent (the so-called 'innovation box'). The size of this facility is unlimited.

Under certain conditions, the business profits of various forms of partnerships are not liable to Corporation Tax but do constitute taxable income for the individual members.

I.2.1.a Taxable corporate entities

The following entities are liable for Dutch Corporation Tax.

Residents

Dutch resident corporate entities. That is,

- ▶ Corporate entities incorporated under Dutch law (as an NV, BV, co-operative, 'open' limited partnership, foundation conducting business in competition with taxable entities, etc.)
- ▶ Corporate entities incorporated under a foreign jurisdiction but effectively managed and controlled within the Netherlands.

For residents, Corporation Tax is levied on their world-wide profits.

Non-residents

Non-resident corporate entities; that is, corporate entities incorporated under a foreign jurisdiction and managed and controlled outside the Netherlands. For non-residents, Corporation Tax is levied on certain categories of profit generated in the Netherlands or derived from sources here, as by a permanent establishment (branch)

or representative in the Netherlands, as well as on income from real estate located in the Netherlands.

I.2.1.b Determination of the taxable amount

Profit

The basis for assessing Corporation Tax is the taxable income, which is equivalent to the annual accounting profits less deductible losses (from prior or upcoming financial years) and certain qualifying gifts of a charitable nature. The fiscal year of a company coincides with its financial year as laid down in the articles of association. Profit consists of all income plus net capital gains. Consequently, capital gains are generally subject to Corporation Tax at the ordinary tax rates.

Annual profit must be determined on a consistent basis in accordance with the principles of 'sound business practice'. The choice of the accounting method used may not depend upon the likely results. Changes of method are only allowed if justified by sound business practice and may not be made with the sole purpose of obtaining a tax benefit. The expression 'sound business practice' is not further defined in law; instead, its interpretation is based upon case law. The application of generally accepted accounting principles will usually be in compliance with its requirements.

For intra-group transactions, Dutch tax law – based upon the OECD transfer pricing guidelines – requires the taxpayer to document their 'at arm's length' character.

Expenses

As a rule, business expenses are in fully tax deductible. But there are minor exclusions of certain expenses for entertainment, attending seminars and promotional gifts or presents. In principle, the deduction of expenses cannot be disallowed with the argument that incurring them is imprudent from a business point of view.

Neither dividends nor any other form of profit distribution to shareholders are deductible.

Interest and royalties payment are fully deductible in principle.

In the case of payments to related parties, 'at arm's length' principles must be applied and documented. Interest expenses paid to related entities are deductible if the underlying loan transaction is based upon sound business considerations or the interest received is subject to an effective tax rate of not less than 10 per cent, calculated according to Dutch tax principles.

However, Dutch tax law currently includes two exclusions for deductibility of interest paid in intercompany loan transactions.

- ▶ Interest paid on specific intercompany transactions (for example, a loan by a related company to the taxpayer for the acquisition of a qualifying participation in a subsidiary, or a loan by a related company to the taxpayer in connection with a dividend distribution or capital repayment by the taxpayer).
- ▶ Statutory thin-capitalisation rules for intercompany loans (see II.1.4).

From 1 January 2012, interest deduction in respect of acquisition debt is also restricted in the case of a loan taken up to acquire a Dutch target company, when that company is included in tax consolidation with the acquiring company (See II.1.4)

Valuation

The method used to value of assets and liabilities can substantially influence the level of taxable profit. Most methods are acceptable, providing they are comply with the requirements of 'sound business practice' and are applied consistently. For Dutch Corporation Tax purposes, participations and other assets are normally valued at purchase price.

However, the law requires annual revaluation of participations of 25 per cent or more in Dutch investment institutions (see I.2.1.c) and in foreign investment companies. These have to be valued at market value, and so each year may result in a taxable loss or profit.

Depreciation

Business assets with a life expectancy of more than one year can be depreciated down to their residual value over a number of years. Most methods of depreciation are acceptable from a tax point of view, providing they are based upon the historical cost of the asset and comply with 'sound business practice'.

Depreciation of immovable property held for investment purposes is not allowed when the tax-bearing amount falls below the property's official fair market value for tax purposes. Furthermore, the depreciation of buildings used for trade or business is limited to 50 per cent of the properties' official fair market value for tax purposes. The tax amortisation period is limited to ten years for goodwill, and for other assets like equipment and ICT systems to five years.

Provisions and reserves

Provisions can be made for specific future costs and expenses, and deducted from taxable profit. But the creation of tax-free provisions and reserves for general purposes is not allowed. Nor is it permitted to create a reserve for future liabilities, the size of which depends upon uncertain future developments. As an exception to this general principle, however, the law does explicitly allow the creation of a re-investment provision upon the sale of a tangible capital asset of a business as long as there is a clear intention to replace the asset within three years after the year in which the provision was created.

Exempted income

A few types of income are specifically exempted from Corporation Tax. Three such items are important in the context of this brochure.

- ▶ Taxation of dividends and capital gains related to subsidiary companies, the so-called 'participation exemption' (see II.1.2).
- ▶ Taxation of income from foreign permanent establishments (introduced 1 January 2012) (see I.2.3.a).

- ▶ Taxation of qualifying foreign source income, as a result of either treaty provisions or of unilateral Dutch measures for avoidance of double taxation (see I.2.3.a).

Losses

As a rule, an incurred loss can be offset against the company's taxable profit in the preceding year. Any balance then remaining can be carried forward up to nine years. As a temporary measure, in 2009, 2010 and 2011 an optional carryback of losses to the preceding three years was allowed and the carry forward was limited to six years. As of 1 January 2012, this measure has come to an end.

Losses incurred by a holding or a finance company resident in the Netherlands may only be offset against profits from that company's own holding and/or finance activities.

Fiscal unity

A Dutch NV or BV, or a permanent establishment in the Netherlands that holds 95 per cent of the share capital in other Dutch resident companies or in another permanent establishment in the Netherlands (hereafter: subsidiaries), can apply to the tax inspector to form a 'fiscal unity' with its subsidiaries. This results in them being consolidated for Dutch tax purposes. The profits and losses of companies comprising the fiscal unity are offset against one another and intercompany transactions do not result in profit and loss during the existence of the unity. An exemption applies to interest paid in respect of acquisition debt. When granting permission to be treated as a fiscal unity, the tax inspector will prescribe certain conditions as to the appropriate method of computation of the consolidated taxable profit, the treatment of tax-free provisions, the treatment of foreign source income and the carrying forward of losses. A fiscal unity may be established or dissolved – either fully or partially – upon request, at any time during the financial year. Establishment of a fiscal unity may be backdated up to three months prior to submission of the request.

I.2.1.c Investment Funds

2.1.c1 Zero-rated investment fund regime

A special tax regime has been created for investment companies and other investment funds established in the Netherlands or under the laws of Curaçao, Aruba, St Maarten, an EU member state or a country with which the Netherlands has concluded a tax treaty that contains a non-discrimination provision. These funds (fiscale beleggingsinstellingen) enjoy a zero tax rate if certain requirements are met.

- ▶ Their activities are limited to investment activities and their assets are restricted to investments only. Cash at banks, participations in other companies and intangible rights do not qualify as investments.
- ▶ Real property can be financed with mortgages up to 60 per cent of its book value.
- ▶ Leverage on other investments is limited to 20 per cent of their book value.
- ▶ Income on investments is distributed to the shareholders within eight months after the end of the financial year.
- ▶ Capital gains on investments can be reserved in a tax-free capital gains reserve.
- ▶ Expenses are allocated to both investment income and capital gains.
- ▶ If the shares are not listed on a stock exchange and a licence as an investment fund (beleggingsinstelling) under the Financial Supervision Act or an exemption from such a licence has not been granted: at least 75 per cent of the shares must be owned by individuals or other investment institutions (pension funds or investment funds).
- ▶ If the shares are not listed on the stock exchange and a licence as an investment fund under the Financial Supervision Act or an exemption from such a licence has not been granted: a single Dutch resident individual may not hold more

than five per cent of the shares of the investment fund (aanmerkelijk belang).

- ▶ If the shares are listed on the stock exchange or a licence as investment fund under the Financial Supervision Act or an exemption from such a licence has been granted: a single taxable corporate entity may not own 45 per cent or more of the shares.
- ▶ If the shares are listed on the stock exchange or a licence as investment fund under the Financial Supervision Act or an exemption from such a licence has been granted: a single non-resident individual or corporate body may not directly or indirectly own 25 per cent or more of the share capital in the fund.

Zero tax-rated investment funds are not entitled to the participation exemption, nor do participations in such funds qualify for that exemption. Since the funds cannot offset withholding taxes levied on their income against Corporation Tax, Dutch Dividend Withholding Tax is refunded. Withholding taxes on foreign income received are not creditable against Corporation Tax. But these funds can claim an allowance for foreign withholding taxes from the Dutch Ministry of Finance; the amount of that allowance depends upon the percentage of the fund owned by Dutch residents.

1.2.1.c2 Tax-exempt investment fund regime

The purpose and activity of the tax-exempt investment fund is restricted to the investment of cash or other assets in qualifying financial instruments. The regime requires a spread of the investment risk (a single investment is not allowed). However, there are no limits to the leverage of the investments.

The fund must have the legal form of a public company (NV), a fund for common account (fonds voor gemene rekening) or be established under the laws of Curaçao, Aruba, St Maarten, an EU member state or a country with which the Netherlands has concluded a tax treaty that contains a non-discrimination provision.

The fund must be open-ended with regard to the purchase and sale of shares.

The fund must either be listed on the stock exchange or be licensed under the Financial Supervision Act.

Tax-exempt investment funds are not subject to Dividend Withholding Tax on dividend distributions. A participation in such a fund does not qualify for the participation exemption. Nor do these funds benefit from the reduction of Dividend Withholding Tax under the Dutch tax treaties. There is no allowance for foreign withholding taxes.

1.2.2 Withholding Taxes

Dividends

Dutch resident corporations that distribute profit to their shareholders levy a Dividend Withholding Tax at a rate of 15 per cent. However, profit distributions from qualifying subsidiaries are exempt from this tax if the recipient is a Netherlands resident company enjoying the participation exemption or an EU/EEA resident company holding at least five per cent of the share capital in the Dutch company (see II.1.2.). Distribution of profit includes liquidation proceeds and payment for the redemption or repurchase of share capital if and inasmuch as they exceed the amount of paid-up capital. Under certain circumstances, repayment of paid-up surplus capital may also constitute a taxable distribution unless that surplus is transferred into share capital and the share capital is reduced by an amendment to the articles of association.

Interest, royalties

No Withholding Tax is levied on payments of interest, royalties and licence fees. However, payments on profit-sharing notes are considered as dividends and so are liable to 15 per cent Withholding Tax.

For Dutch resident recipients, Withholding Tax is creditable against the Income Tax or Corporation Tax due on their total income, which includes the gross amount of dividends.

1.2.3 Avoidance of double taxation

Corporations and individuals resident in the Netherlands are liable to taxation on the full amount of their domestic and foreign source income. Non-resident corporations and individuals are taxed on income from a limited number of Dutch sources (see I.2.1.a).

As other countries apply similar principles, it is obvious that double taxation of the same income can arise. However, avoiding this is a basic principle of the Dutch tax system.

The Netherlands has concluded treaties for avoidance of double taxation with most of the industrialised countries in the world, as well as with a growing number of developing countries.

In the absence of a treaty, the unilateral provisions for avoidance of double taxation grant relief of Dutch Corporation Tax or Income Tax to resident taxpayers in respect of some specific categories of foreign source income. As a basic rule, foreign taxes are at all times deductible from income.

In this brochure, the rules for avoidance of double taxation are reviewed only insofar as they apply to corporate taxation. However, it should be recalled that the unilateral measures as well as the treaties contain similar provisions with regard to corporate and personal Income Tax.

1.2.3.a Unilateral tax relief

The unilateral provisions on avoidance of double taxation of foreign source income are set out in an Order in Council (algemene maatregel van bestuur). This applies only applicable in cases where double taxation is not prevented by treaty. This includes situations in which particular income is not covered by the relevant treaty. The unilateral relief provisions define two means of avoiding double taxation:

1. Exemption

Exemption from taxation applies to income from specified foreign sources:

- ▶ A permanent establishment;
- ▶ A dependent permanent representative;
- ▶ Real estate.

That income must have been taxed in the source country.

As of 1 January 2012, the Corporate Income Tax Act changes the exemption method for income from foreign permanent establishments or permanent representatives to apply so-called 'object exemption'. Under this, the total result of a foreign permanent establishment is excluded from the taxable result of the company. Neither a profit nor a loss is included in the taxable base of the Dutch company. Only upon closure of the establishment may a loss be accounted by the Dutch company in calculating its taxable profit, and only insofar as no compensation for such loss has been

granted by the foreign tax authorities. This change is meant to bring the exemption for foreign permanent establishments in line with the participation exemption applicable to foreign subsidiary companies.

2. Credit

A credit against Dutch Corporation Tax or Income Tax applies to withholding taxes on dividends, interest and royalties levied by one of the more than 100 developing countries specifically listed in the Order. In addition, a credit can be granted for the income of passive permanent establishments.

When the exemption method is applicable but total taxable income is not sufficient to realise the exemption (because of a domestic loss situation), any unused balance may be carried forward indefinitely and offset against profit in subsequent years.

Qualifying foreign source losses are taken into account in calculating total taxable profit. However, foreign losses must be administered separately. If foreign profits arise, they are offset against the amount of foreign losses before exemption from taxation is granted. At present, the Netherlands applies the 'overall' method when calculating unilateral tax relief. Where tax treaties exist, the 'per country' method is applied.

The object exemption for foreign establishments of Dutch companies does not allow for deduction of foreign losses, but only for deduction upon a loss on dissolving the establishment. Again, a 'per country' method applies. The exemption does not apply to permanent establishments in low-tax countries that conduct passive investment or financing activities. In these cases, the credit method applies.

When the credit method is applicable, the credit is limited to the lower of the following two amounts.

1. The actual tax withheld on gross dividends, royalties or interest.
2. The Dutch Corporation Tax allocable to the net dividends, royalties or interest.

In respect of dividends, the credit is limited to 15 per cent of gross dividends. It should be noted that, when calculating the Dutch Corporation Tax allocable to foreign income, the net amount of income is used. This can be important if the sources producing income are financed

with loans. The interest expenses have to be taken into account when calculating the net income.

Based upon the second limit, dividends to which the participation exemption applies do not qualify for tax relief. If the dividend received is paid as such within three years to a shareholder in the Dutch BV resident in tax treaty country, Curaçao, St Maarten or Aruba, compensation up to a maximum of 3 per cent of the dividend amount will be paid as long as certain conditions are fulfilled. This is paid by the Dutch tax authorities to the Dutch BV and is not subject to corporation tax.

The credit method is also applicable if the activities of a permanent establishment are restricted to passive investment or passive financing activities. The credit here amounts to the higher figure of 12.75 per cent, applied to the taxable amount or the actual foreign corporate income tax withheld.

1.2.3.b Double taxation treaties

The Netherlands has concluded treaties for the avoidance of double taxation with some 75 countries. Nearly all of these are based upon the OECD Draft Double Taxation Convention on Income and Capital. Generally, they conform to the Dutch unilateral measures and, moreover, considerably extend the scope of avoidance. For instance, they include more categories of income than are covered by the unilateral measures and are applicable not only to Dutch residents but also to foreign taxpayers who are residents of the treaty country.

Withholding taxes

A substantial part of most treaties is taken up with regulations aimed at reducing withholding tax on dividends, interest and royalties.

All double taxation treaties concluded by the Netherlands provide for a mutual reduction of withholding taxes on the one hand, whilst on the other hand granting a tax credit for the remainder of the withholding taxes levied. However, such credit is limited only to the Dutch Corporate Income Tax due in respect of that specific income.

The general withholding tax rate on dividends of 15 per cent is set in most of the treaties. A further reduction, in some cases down to zero, is provided for

instances where the recipient company owns a participation of 10 per cent or more in the share capital of the distributing company.

A summary is given of the applicable withholding tax rates from the treaties in provided in the Annexes. In practice, the reduction of Dutch and foreign withholding taxes is effectuated either by obtaining permission from the relevant authorities to withhold tax at reduced rates or by obtaining a refund of tax withheld in excess of the treaty rates. For most of the treaty countries, special forms are available containing a standard application to the relevant authorities. The applicant usually has to obtain a declaration of residence from his own tax authorities before submitting the form.

Residence for treaty purposes

In order to benefit from a tax treaty, a company must be a resident in one of the treaty countries. Most of the treaties refer to domestic law to establish where a company is resident. But some contain their own definition.

In most cases, the place of effective management and control prevails over the place of incorporation of a company when determining its residency.

1.2.3.c Substance

Since the concept of 'effective management and control' is not normally further defined in the treaties, each country applies its own domestic laws and regulations.

In absence of a definition of effective management and control in Dutch tax law, the following guidelines are based upon case law.

The highest administrative body, which both formally and in reality has control over the company, is understood to carry out the effective management. In this respect, the level of 'week-to-week' control rather than that of 'day-to-day' management is taken as effective management. It is not where management decisions are implemented that is decisive, but where they are prepared, deliberated and finally taken.

In principle, the statutory directors of the company are deemed to perform its effective management unless there are signs indicating that they actually play a

subordinate role. That is referred to as 'puppet management'.

In the event of 'puppet management', the place where the effective management is carried out prevails over the location of the directors in determining tax residency.

With this in mind, it is advisable when setting up a Netherlands holding, finance or royalty company to create as much 'substance' as practicably possible.

Since Dutch case law considers the place of effective management or control as most decisive, in each case the following factors (economic ties) need to be looked at.

- ▶ Location of the registered office.
- ▶ Place of incorporation.
- ▶ Where the activities of the enterprise are actually performed.
- ▶ Where the company has an office.
- ▶ Where its books are held.
- ▶ Where its shareholders are resident;
- ▶ Where the general meeting of shareholders is held.

This list is not exhaustive!

Dutch finance and royalty companies wishing to obtain an advance ruling (ie. Advance Pricing Agreement, APA or Advance Tax Ruling, ATR) from the Dutch tax authorities must meet specific conditions of substance (for details, see II.2.1).

I.2.4 Miscellaneous taxes

I.2.4.1 Value Added Tax

Value Added Tax (VAT) is levied on the sale of goods and the supply of services within the Netherlands. Importation of goods and the rendering of certain types of services to residents of the Netherlands are also subject to VAT.

The general rate is 19 per cent. A reduced rate of six per cent applies to a number of goods and services considered 'essential'. These include primary food products, books, newspapers, medicines, gas, water and public transport. A zero rate applies to the export of goods, certain services supplied to non-resident enterprises, certain international transportation services, medical goods and services and so on.

A supplier of goods and services must charge his customer VAT on the net amount of the invoice. The supplier subsequently declares the total amount of VAT levied on all his business transactions to the tax authorities. However, he can deduct the amount of VAT he has paid to his suppliers of goods and services over the same period.

The balance has to be paid to the tax authorities. Where that amount is negative, the tax authorities refund the difference.

Some goods and services are exempt from VAT.

- ▶ Sale of real estate, except in the case of the sale of new buildings by the constructor.
- ▶ Rental of real estate.
- ▶ Insurance services.
- ▶ Securities transactions.
- ▶ Bank services related to lending and money transfers.

Unlike the supplier of goods and services to which the zero VAT rate applies, the supplier of exempt goods and services cannot reclaim the VAT he may have had to pay on invoices received.

In this respect, the VAT position of holding, finance and royalty companies is relevant.

Holding companies and VAT

A distinction must be drawn between active and passive holding companies. Such a company is deemed active if the management and control of its subsidiaries are considered to be an economic activity and it charges by invoice for these activities.

Passive holding companies are not deemed as conducting an enterprise for VAT purposes. They must pay VAT on invoices from service providers resident outside the EU when the 'reverse charge' rule applies to the service and if it is actually used by the holding company itself in the Netherlands. Consequently, services provided by passive holding companies are not subject to VAT and VAT charged to them is not refundable.

Active holding companies are considered as conducting an enterprise for VAT purposes, so they charge VAT on their invoices and can reclaim VAT paid to the extent that they perform economic activities. The reverse charge rule applies to some services.

Since 1 January 2010, the reverse charge rule has been applicable to all cross-border services supplied to EU VAT-registered entrepreneurs. At the same time it became a requirement that all such entrepreneurs to whom services are rendered and the rule applied be listed on a separate return.

Finance companies and VAT

A finance company is deemed to be conducting an enterprise for VAT purposes if its loan activities are considered to be an economic activity. The loans must be interest-bearing. Such companies can reclaim VAT paid, to the extent that they give loans to parties resident outside the EU. The reverse charge rule applies to certain services.

Royalty companies and VAT

A royalty company in the Netherlands is liable for VAT on payments for the use of intangible rights to the foreign original owner of the rights as if the service had been rendered in the Netherlands, based upon the reverse charge rule. However, the VAT payable can be offset against the VAT deemed to be charged to the royalty company, providing it does not render any services which are exempt from VAT.

I.2.4.2 Capital Issue Tax (Kapitaalsbelasting)

Capital Issue Tax (kapitaalsbelasting) was abolished as of 1 January 2006.

I.2.4.3 Real Estate Transfer Tax (Overdrachtsbelasting)

A six per cent tax is levied on the transfer of real estate situated in the Netherlands. When more than 50 per cent of a company's assets consist of Dutch real estate, the transfer of its shares is considered to a transfer of real estate for tax purposes. This tax is levied upon the transfer of title in the real estate.

For a period of one year starting on 1 July 2011, the Real Estate Transfer Tax for residential properties has been reduced to two per cent.

I.2.4.4 Insurance Tax (Assurantiebelasting)

A 9.7 per cent tax is levied upon certain insurance premiums. Life insurance and some types of transport insurance are exempted from this tax.



I.3 Financial reporting

All European Union (EU) directives regarding annual reporting by enterprises have been implemented in the Netherlands through Book 2, Section 9 of the Civil Code.

The Civil Code (Burgerlijk Wetboek, BW) requires all companies to prepare an annual financial report, which includes a balance sheet, an income statement, notes to the accounts and other prescribed information, as well as a management report. In addition, detailed requirements are laid down regarding the way in which the balance sheet and profit and loss account have to be drawn up. And this law also prescribes how assets are valued.

International Financial Reporting Standards

As of 1 January 2005, EU companies either listed themselves or having issued listed securities (bonds, notes, shares, etc.) on an EU stock exchange are required to prepare their consolidated accounts in accordance with the International Financial Reporting Standards (IFRS) as agreed by the EU (EU International Financial Reporting Standards, EU IFRS). Under Dutch law, listed companies can choose to file statutory accounts based upon either EU IFRS or the rules laid down in Book 2, Section 9 BW (Dutch GAAP). Unlisted companies may apply either EU IFRS or Dutch GAAP to their consolidated and their statutory accounts. The law also provides for a third alternative for statutory accounts is available: application of Dutch GAAP, but using valuation principles based upon IFRS. But this is only possible if EU IFRS is applied in the consolidated accounts.

General principles

The annual accounts must contain such information as will enable a reasonable judgement to be formed regarding the financial position, the results, the solvency and the liquidity of a company.

The balance sheet, the profit and loss account and the explanatory notes must give a true, clear and consistent view of the results for the financial year. Furthermore, the company is obliged to furnish additional information if this is necessary in order to provide a reasonable insight into its financial position and results.

The annual report and accounts must be in the Dutch language and the accounts must be drawn up in euro. If the meeting of shareholders so decides, however, the annual report and accounts may also be in French, German or English, providing none of the shareholders objects. In the context of the activities of the company or the international spread of the group, the accounts may be drawn up using a functional currency rather than the euro. The annual accounts must contain the previous year's equivalent figures for comparison.

Financial statements

The annual accounts must give a true and fair view of the company's financial position at the end of its financial year. In addition, the development of the business during the year must be reported, including a broad survey of major events. The annual accounts should not only cover the business of the company itself, but also those of its subsidiaries. Furthermore, information must be provided on post-balance sheet events and expected future developments, especially with regard to investments, financing, personnel and circumstances affecting turnover and profitability. In addition, activities in the field of research and development must be mentioned. If audit requirements apply to the company, the auditor must review both the annual report and the accounts.

Valuation rules

The Civil Code includes provisions regarding the valuation rules for assets and liabilities. In general, the actual value prevails.

Group companies

For a group of companies, the Civil Code prescribes consolidation of the accounts unless certain conditions apply. If consolidated accounts or group accounts are drawn up, they should comply as far as possible with the rules and regulations regarding annual reporting. Consolidation of the accounts of subsidiaries (shareholdings in which the head of the group has predominant management and control) is obligatory in principle. Under Dutch GAAP, though, consolidation is not mandatory if the Dutch company consolidated with

its subsidiaries would still qualify as a small company (Art. 407:1 BW). No such consolidation exemption is currently available under EU IFRS.

If a Dutch company is a subsidiary and acts as an intermediate holding company, it is not obligatory to draw up consolidated accounts as long as such accounts are prepared at the parent company level (Art. 408 BW) under EU IFRS or in compliance with the provisions of the EU Accounting Directive and certain other conditions are met.

If the accounts of the Dutch company prepared under Dutch GAAP are consolidated into those of an EU parent company which does object to consolidating at the Dutch level, and the parent assumes responsibility for the assets and liabilities of the Dutch company, it is not obligatory to draw up consolidated accounts or to have the annual report audited (Art. 403 BW).

In all other cases, the Dutch holding company has to prepare consolidated accounts.

Model accounts under Dutch GAAP and EU IFRS

Companies applying Dutch GAAP are required to follow the models prescribed in the relevant Order in Council, which supplements the Civil Code regulations. The main headings in the balance sheet and profit and loss account are prescribed by law. And their sequence is laid down in the models. No model accounts have been compiled under EU IFRS.

Small and medium-sized companies under Dutch GAAP

Small companies are defined as those which satisfy two out of the three criteria below in both the opening and the closing balance sheet during two successive years subsequent to 1 January 2006.

- ▶ The value of assets is not more than EUR 4.4 million.
- ▶ The net turnover is not more than EUR 8.8 million.

- ▶ The average number of employees is less than 50.

Small companies are permitted to draw up their annual accounts based upon tax valuation rules.

Medium-sized companies are those which satisfy two out of the three criteria below in both the opening and the closing balance sheet during two successive years.

- ▶ The value of assets is more than EUR 4.4 million but not more than EUR 17.5 million.
- ▶ The net turnover is more than EUR 8.8 million but not more than EUR 35.0 million.
- ▶ The average number of employees is more than 50 but less than 250.

These criteria apply to the consolidated accounts and include both local and foreign subsidiaries.

All other companies qualify as large.

Medium-sized companies have to satisfy all annual reporting requirements except for a condensed income statement. Small companies are allowed to prepare a condensed balance sheet and condensed income statement together with a limited amount of other information.

Under the new rules for intra-group finance and licensing companies, the net turnover is no longer based upon the interest or royalty spreads but instead upon the interest or royalty payments received. Under these new rules, such companies will probably count as medium-sized rather than small.

Small and medium-sized companies under EU IFRS

At present, no IFRS standards for small and medium-sized companies have been agreed upon by the EU. In applying EU IFRS, such companies must therefore satisfy the same reporting, auditing and publishing requirements as large ones.

Audit requirements

For listed companies, banks or insurance companies and privately held NVs and BVs, there is an audit requirement in Dutch civil law. Under Dutch GAAP, there is no such requirement for small NVs or BVs. A further exemption applies to companies forming part of a group if Article 403 BW is applied.

The auditor must be either a Dutch certified auditor or a foreign certified auditor who has obtained a licence from the Minister of Economic Affairs.

Filing requirements

A company is required to have its annual report prepared within five months of the end of its financial year. The report must be adopted by the general meeting of shareholders within six months, then filed with the Trade Register at the Chamber of Commerce within eight days of adoption. The annual general meeting of shareholders (AGMS) may postpone preparation and adoption by a maximum of six months for a limited number of extraordinary reasons. If the accounts are not adopted, the directors are required to file unapproved accounts within one month after the date on which they should have been adopted. At the latest, then, filing must occur seven months – or, in the case of postponement by the AGMS, 13 months – after the end of the financial year.

Listed companies and those issuing listed securities (bonds, notes, shares, etc.) cannot make use of the exemption for small and medium-sized companies and so must follow the regime for large companies. Moreover, they must file their annual report (management report, annual accounts and other mandatory information) with the Financial Markets Authority (Autoriteit Financiële Markten, AFM, the official supervisor for financial reporting in the Netherlands), within four months of the end of their financial year. Their half-yearly report must be filed within two months of the end of their financial half-year.

If the listed securities have a denomination per share of EUR 50,000 or more, the

company issuing them is allowed to file its annual report with AFM within the general six-month term, but it must do so within five days of their adoption by the AGMS.

If the audit requirements apply, the auditor's report has to be filed together with the annual report, balance sheet, profit and loss account and other mandatory information.

An exemption from the need to file the annual accounts of a Dutch company exists if they are consolidated into those of its parent company in accordance with Article 403 BW and if those consolidated accounts are filed together with a declaration of several liability (aansprakelijkheidsverklaring) and a declaration of consent (instemmingsverklaring). If Article 408 BW is applied, then both the statutory accounts of the Dutch company and the consolidated accounts of its parent company must be filed.

I.4 Foreign exchange control and supervision of finance companies

External Financial Relations Act

The Dutch foreign exchange regime can now be considered as one of the most liberal in the industrialised world.

The regulations are based upon the External Financial Relations Act. In principle, this allows all cross-border payments unless explicitly forbidden. The Dutch central bank (De Nederlandsche Bank NV, DNB) is vested with extensive powers to issue regulations under the act.

Reporting to the central bank

The regulations in force are primarily designed to provide DNB with full reporting information. This enables it to compile balance of payments statistics and to monitor financial policies.

Special financial institutions

To facilitate their administration of information, DNB has issued guidelines for so-called 'special financial institutions' (bijzondere financiële instellingen, BFI).

These are defined as resident companies and institutions, irrespective of their legal form, in which non-residents participate directly or indirectly by means of shareholdings or other interests, where the principal business involves receiving funds from and passing these on to non-residents.

Special financial institutions have to register with DNB, which requires regular inspection of their balance sheets in order to update its selection of institutions that report monthly on their international payments and balance sheet item movements. These reports are required to complete the balance of payments statistics reported to the European Central Bank. All information provided to DNB remains confidential.

Financial Supervision Act

The Financial Supervision Act grants DNB far-reaching as regulator of banks and other financial institutions. Finance subsidiaries of foreign banks and other foreign enterprises do not fall within the scope of this supervision unless they undertake banking activities. It is DNB policy to allow such companies to raise funds from professional

market parties or within a restricted circle. They may also raise funds from the public by issuing securities as defined in the Financial Supervision Act, if at least 95 per cent of their total assets are lent to or invested with other group companies under a 'keep well' arrangement for the issued debt by a parent company or with an unconditional guarantee from a credit institution in an EU/EEA member state, the United States, Japan, Canada, Australia or Switzerland.

I.5 Customer identification rules

I.5.1 Client identification rules and the Act on the Supervision of Trust Offices

The Act on the Supervision of Trust Offices (Wet toezicht trustkantoren, Wtt) enter force on 1 March 2004. Intended to improve the integrity and quality of the trust sector, the act helps to prevent money laundering and terrorist financing through Dutch entities.

Trust offices providing any of the following services in or from the Netherlands must obtain a licence from the DNB, which enforces the Wtt.

- ▶ Directorship of a legal entity or partner in a partnership.
- ▶ Provision of a correspondence address (domiciliation) with the performance of at least one ancillary activity (eg, administrative, corporate legal or tax facilitation services).
- ▶ Sale of legal entities.
- ▶ Acting as trustee.

The trust office is required to obtain the following 'know your customer' information.

- ▶ The identity of the ultimate beneficiary owner.
- ▶ The objective for which the structure is being set up and the purpose of the object company.
- ▶ The source and destination of the object company's funds.
- ▶ The relevant parts of the structure of the group to which the object company belongs.
- ▶ The identity of the buyer(s) in the sale of legal entities.
- ▶ The identity of the settlor of the trust when trustee services are provided.

I.5.2 Client identification rules and disclosure of unusual transactions

Pursuant to the Act on the Prevention of Money Laundering and Terrorist Financing (Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft), trust offices are – irrespective of the nature of the services provided – required to disclose unusual transactions to a government body created specifically for the purpose.

This measure forms part of a broad OECD and EU campaign to combat money laundering and criminal activities. DNB and the OECD have issued guidelines as to which transactions must be reported, including both objective indicators (eg, certain cash transactions and physical deliveries of securities) and the subjective ones (suspicions or intuition that money laundering is taking place).

Part II

Holding, finance and royalty
companies in the Netherlands



II.1 A holding company in the Netherlands

II.1.1 General

'Participation Exemption'

The favourable Dutch fiscal treatment of a company's income from participating interests in other firms does not rely upon the holding company enjoying any special status, as is the case in Luxembourg, Spain and Switzerland. Any one company holding shares in another may take advantage of the exemption from Corporation Tax as long as certain requirements are met.

This treatment is known as the 'participation exemption'.

In addition, the Netherlands has negotiated a very broad network of treaties for the avoidance of double taxation, which enhances its attractiveness as a base for international holding companies.

II.1.2 The Participation Exemption: history

The participation exemption was originally introduced in 1893 to avoid the double taxation of dividend income flowing between companies. This was achieved by exempting dividends from tax in the hands of the recipient company. Although the exemption originally applied only to dividends received from another resident company, it was soon extended to those received from non-resident companies and to capital gains from the disposal of shares that would qualify for it. Article 13 of the Dutch Corporation Tax Act of 1969, as amended, now governs the participation exemption.

II.1.3 Requirements of the participation exemption

The current regime requires that three conditions to be met with in order to qualify for the participation exemption.

- ▶ The entity in which the participation is held must have a capital divided into shares.

- ▶ The shareholder must have an interest in the entity's share capital of at least five per cent.
- ▶ The participation is not deemed to be a passive investment.

A capital divided into shares

The participation exemption is applicable to all legal entities subject to Corporation Tax in the Netherlands. This means not only NVs and BVs, but also – providing they are subject to Corporation Tax – co-operatives, associations, foundations, mutual funds and so on. Moreover, a non-resident corporate taxpayer enjoys the exemption if a qualifying participation forms part of its permanent establishment in the Netherlands. Zero tax-rated investment funds (see I.2.1.c.) are excluded, though, as a separate regime applies, allowing them a zero rate of corporate income tax.

The capital requirement may be substituted by voting rights if the Netherlands and the contracting EU member state have concluded a tax treaty in which Dividend Withholding Tax is reduced on that basis.

Five per cent

The participating company must own at least five per cent of the share capital of the subject company. This threshold draws a formal line between a participation and a portfolio investment, since the legislation is intended to avoid double taxation on corporate income derived from the business of a group of companies rather than from portfolio investments.

All domestic shareholdings of five per cent or more qualify for the exemption, whilst all less than that are deemed to be portfolio investments. It should be borne in mind that the taxpayer has no option: a participation either qualifies or not.

If, though, a participation is less than five per cent but a related company holds at least five per cent of the same company, then the exemption also applies to the former. A related company is defined as one holding at least a third of the share capital of the company to which it is related.

Passive investments

Until 2010, the exemption did not apply to participations in what was classified as a 'low-taxed passive investment subsidiary'. For this to be the case, two tests had to be met: the 'passive investment (asset) test' and the 'subject-to-tax test'.

In 2010, however, Dutch government reintroduced the so-called 'motive test' for application of the participation exemption. It does not now apply to domestic and foreign subsidiaries which are held as passive investments. Despite this change, the passive investment (asset) test and the subject-to-tax test remain in place in a simplified form.

- ▶ Motive test.
A subsidiary is considered held as a passive investment if the parent company's objective is to realise a return that is to be expected from normal active asset management. The motive test is failed if more than half of the subsidiary's assets are shareholdings of less than five per cent. Also, participations in group finance companies and – under certain circumstances – in captive insurance companies are deemed to be passive investments.
If the motive test is failed, the subject-to-tax and the passive investment (asset) tests may provide a solution.
- ▶ Subject to tax test
To qualify for the participation exemption, a subsidiary must be subject to a realistic tax levy by Dutch standards. This test is met if the subsidiary is subject to a profits tax of at least 10 per cent.
- ▶ Passive investment (asset) test
The passive investment (asset) test is met if less than 50 per cent of the company's directly and indirectly held assets of the company are passive – that is, assets not linked directly with its business activity. However, real estate and assets used in the leasing business are considered active.

Low-taxed passive investment subsidiaries with 90 per cent or more of their assets

consisting of portfolio investments have to be valued for tax purposes on the basis of market value (annual profit realisation). As a consequence, the annual revaluation is a taxable event. Participation income from a low-taxed passive investment subsidiary is taxable, but a credit for underlying tax of five per cent applies as long as the subsidiary is subject to a profit tax. If the subsidiary is an EU resident and the actual underlying tax is higher than five per cent, that actual underlying tax is credited.

Intermediary holding companies

If the motive test is failed, an intermediary holding company of a Dutch parent company could qualify as a low-taxed passive investment subsidiary to which the participation exemption does not apply. The passive (asset) investment test prescribes that all assets held by the intermediary holding company as well as those held by the lower-tier subsidiaries must be aggregated, whereby shareholdings in the lower-tier subsidiaries are disregarded and replaced by the assets held at the lower tier. The ratio of passive to other (active) investments will determine the outcome of the test.

II.1.4 Scope of the exemption

All benefits

The participation exemption applies to all benefits resulting from the participation. Dividends and liquidation payments in whatever form, as well as gains from sale of the participation, are thus exempt from taxation. In addition, gains caused by the revaluation of a qualifying participation are exempt from Corporation tax.

The exemption of capital gains and revaluation gains with no minimum holding period is unique to the Netherlands. It provides a multinational group of companies with the flexibility to reorganise without adverse tax consequences.

If the Dutch taxpayer holds a qualifying participation, the income derived from profit certificates, profit-sharing loans and hybrid loans fall within the scope of the exemption.

Losses (liquidation losses)

As a logical counterpoint to the exemption of capital gains, a loss arising from the sale of a qualifying participation is not eligible for tax relief. In the event of liquidation of the participation, however, losses can in principle be deducted.

There are detailed anti-abuse provisions restricting such liquidation relief where, for instance, part of the investment arises from the conversion of a current account into capital or where the liquidation loss is increased by stripping out dividends before liquidation.

Deduction of costs

Expenses, apart from acquisition and sales costs, incurred by Dutch holding companies in respect of qualifying participations are, in principle, fully deductible.

There are two important exceptions to this rule.

1. Thin capitalisation rules restrict the deductibility of interest costs on related party borrowings to the extent that the Dutch company is undercapitalised. Interest costs on related party borrowings are disallowed to the extent that the debt-to-equity ratio of the taxpayer exceeds 3:1. This means that, in principle, deductibility will not be restricted if the equity for tax purposes equals at least 25 per cent of the sum of equity and loan capital. A related party (or affiliated entity) is with an interest of at least a third (33 per cent) in each of the other entities.
2. Deduction of interest in respect of acquisition debt is restricted with effect from 1 January 2012. Interest on loans taken up to acquire a Dutch target company is restricted when the target is in fiscal unity with the acquiring company. The interest deduction is limited to the amount of annual profit of the acquiring company (fiscal unity) but excluding the annual profit of the target. The limitation applies to the lower of (i) annual interest expenses in excess of the profits of the acquiring company plus EUR 1,000,000 or (ii) annual

interest expenses to the extent that the acquisition debt is deemed excessive. This is when the acquisition loans exceed 60 per cent of the acquisition price of the target company at the end of the year in which the acquisition was made. In subsequent years, that percentage is reduced by five per cent per annum down to a minimum of 25 per cent. This implies that 25 per cent of the acquisition debt may remain outstanding without resulting in its classification as excessive. This restriction applied to the interest on acquisition loans taken out after 15 November 2011, the date on which the Dutch Parliament approved it.

The government has announced plans for an additional restriction on the deduction of interest paid in relation to qualifying participations, as a further anti-abuse measure. A firm proposal on this is expected during the course of 2012.

Foreign exchange results on loans to finance participations (in the same currency as the participation) or the result of instruments to hedge the foreign exchange risk on participations are, in principle, tax-exempt. Upfront approval from the tax inspector provides certainty, however.

II.1.5 Withholding tax on dividend income from a qualifying participation

Withholding tax

No Dutch Dividend Withholding Tax is due on dividends received from a qualifying participation in a Dutch BV or NV. When shares are issued as bearer certificates – the standard form for shares in large Dutch NVs – the existence of a qualifying participation, particularly if it is a small one, may not always be known with the distributing company. In order to avoid a liquidity loss, the participating company must inform the investee company, requesting a dividend payout gross of withholding tax.

Foreign withholding tax on dividends received by a Dutch company from a foreign qualifying participation can not be credited against the Dutch Corporation Tax

due on taxable profits in the Netherlands, if any. As a result of the tax treaties concluded by the Netherlands, however, the rate of foreign withholding tax is reduced further than the 'normal' treaty rates in the case of substantial participations.

For substantial participations in companies resident in most other EU countries, under certain conditions the withholding tax is reduced to zero as a result of the EU Directive mentioned earlier (see Annexe I).

The Dividend Tax Act contains a facility which compensates for foreign withholding tax on dividends creditable against the Dutch withholding tax paid by the Dutch company upon redistribution of dividends to its foreign shareholders. This compensation is worth up to three per cent of the gross dividends. To qualify, the company receiving the dividend must be a resident of a tax treaty country, Aruba, Curacao or St Maarten, the participation exemption must apply to dividends received and the qualifying participation must be at least 25 per cent. The compensation is paid by the Dutch tax authorities to the Dutch BV and is not subject to Corporation Tax.

II.1.6 Dutch withholding tax on distributions to foreign shareholders

Where a Dutch holding company offers opportunities to benefit from reduced or even zero foreign withholding tax rates on distributions from substantial participations,

any other distribution to its shareholders is in principle be subject to Dutch withholding tax at a rate of 15 per cent.

However, withholding tax on distributions to parent companies that are residents of other EU member states has been abolished subject to the condition that the participation exceeds five per cent.

If a tax treaty has been concluded between the Netherlands and the country of residence of the parent company, Dutch withholding tax on distributions is in most cases reduced to zero or five per cent, providing the parent company owns at least 10 per cent of the shares.

Where no treaty applies, it may be worth considering the incorporation of a 'top' holding company in a country which has concluded a tax treaty with the Netherlands and which itself imposes little or no tax on distributions received from a Dutch holding company. In such cases, however, one must be aware of the 'beneficial ownership' clause in the treaty's dividend provisions.

II.1.7 Advance rulings and the participation exemption

Advance tax rulings

As mentioned earlier, there are circumstances in which it is advisable to obtain an advance tax ruling to confirm that the participation exemption will apply. This can be done before starting operations, or even before incorporation.

The Dutch tax authorities will require that at least 15 per cent of the purchase price of the participation be financed out of equity from the Dutch holding company.

In the request for a ruling, detailed information must be given on the company's activities, its structure and its beneficial owner.

II.1.8 A co-operative as holding company: tax consequences

A co-operative is subject to Corporation Tax. It can apply the participation exemption and may benefit from the Dutch tax treaties. And, as in principle it is not subject to Dividend Withholding Tax, it makes an attractive alternative for a BV or a NV when operating a holding structure in the Netherlands.

A Dutch resident co-operative and a Dutch resident BV or a NV may form a fiscal unity for local Corporation Tax purposes.

Profit distributions or capital gains derived from an interest in a Dutch co-operative by a foreign member (corporation or partnership) not resident in a state which has concluded a tax treaty with the Netherlands could be subject to Dutch Corporation Tax if the member has a substantial interest (entitlement, directly or indirectly, to at least five per cent of the co-operative's annual profit) which does not form part of the assets of an enterprise.

With effect from 1 January 2012, the Dividend Withholding Tax Act incorporates an anti-avoidance provision relating to distributions by co-operatives. These are now subject to Dividend Withholding Tax if (i) the co-operative directly or indirectly owns shares in a company whose main purpose is to avoid another person's Dutch withholding tax or foreign tax liability and (ii) the relevant member cannot qualify its interest in the cooperative as a business asset.

An advance ruling by the Dutch tax authorities on the structure as a whole, including the applicability of the participation exemption in respect of subsidiaries and Corporation Tax liability on a 'substantial interest' membership, can be obtained generally within reasonable timeframe.

II.1.9 A foreign subsidiary or foreign branch

Active subsidiary or branch

Notwithstanding the advantages of the participation exemption, it may be more efficient to organise foreign activities as a branch operation rather than as a foreign subsidiary. Income and gains from foreign branches are normally exempt from tax in the Netherlands, either by treaty or as a result of the recently amended Corporation Tax Act.

As of 1 January 2012, that law states that an active permanent establishment – as

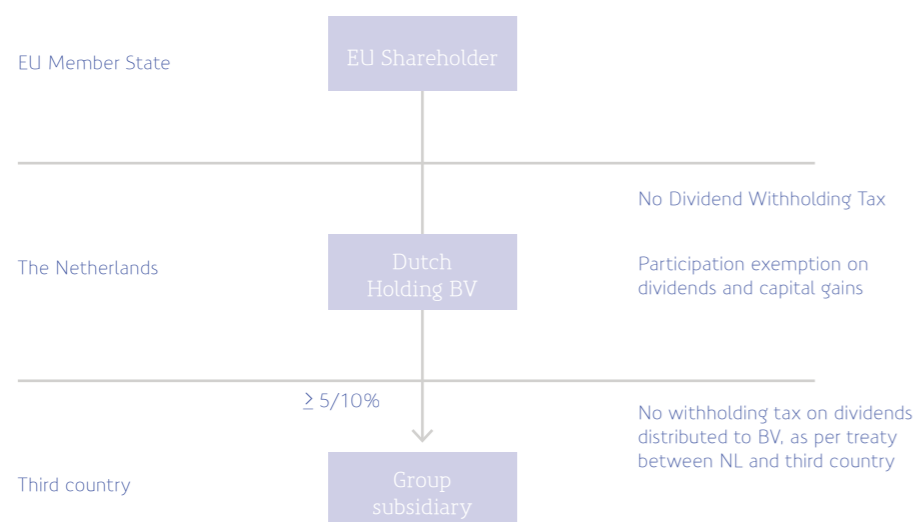
opposed to a passive permanent one – outside the Netherlands is exempt from Dutch corporate taxation as long as the profits are in principle subject to tax in the state where it is situated. The position is similar where a Dutch company holds real estate outside the Netherlands: income or gains from it are excluded from the taxable base in the Netherlands providing they are subject to tax in the source country.

For the avoidance of double taxation of a passive permanent establishment, see I.2.3.a above.

Until 1 January 2012, active branches could offset foreign losses against Dutch taxable profits. This facility made it attractive to start up foreign operations through a branch of a Dutch company rather than through a foreign subsidiary.

As of 1 January 2012, however, the tax exemption for permanent establishments has been replaced by an object exemption. This implies that the annual result from an active permanent establishment is excluded from the taxable base in the Netherlands. Only upon dissolving the establishment may a loss be taken into account when calculating the Dutch corporate tax base. This new legislation eliminates the previous difference between the treatment of subsidiaries and permanent establishments as regards Corporation Tax.

Dutch holding structure with EU shareholder



II.2 A finance company in the Netherlands

When a group needs to borrow funds from an external or internal (group) source and would otherwise have to withhold tax from interest payments, interposing a Dutch subsidiary to act as a group finance company may mitigate the withholding tax burden. That company borrows the money and then lends it on to other companies within the group. Dutch finance companies are also suitable vehicles to raise funds by Eurobonds or commercial paper issues.

The function of a finance company could be extended to include borrowings from group companies and lending on to other group companies, making it a 'clearing institute' for all intra-group financing and carrying out treasury management functions in its own right for group subsidiaries.

Advantages

There are a number of advantages which make the Netherlands a much-favoured location for finance companies. Interest paid by a Dutch company is generally not subject to withholding tax, except on the interest on profit-sharing bonds. Moreover, under the double taxation treaties withholding taxes on interest payments made to companies resident in the Netherlands are reduced, often to zero. This arrangement may be subject to anti-avoidance provisions in the source

country, however, if the finance company is regarded as a mere conduit set up to facilitate a single intra-group or shareholders' loan.

In addition, there is the advantage that the subsidiaries of a world-wide group of companies, regardless of where they are resident, enjoy the presence of a central group finance company established in a country with a very liberal exchange control regime.

II.2.1 Taxation in the Netherlands

Ruling policy for intra-group financing companies

Under the ruling policy established as of 1 April 2001, an intra-group finance company can seek advance certainty on its Dutch tax position with the authorities here. There are two conditions for obtaining this:

- ▶ Having 'substance' in the Netherlands;
- ▶ Running real risks on the transactions performed.

If an intra-group finance company is not exposed to real risks, the Dutch tax authorities may of their own accord exchange information with the source country of the interest. In such a situation,

the tax credit on foreign withholding tax is not available because the finance company is basically acting as an agent or intermediary and is considered to be the beneficial owner. Where no advance certainty is available, the finance company still has to report a taxable profit based upon an 'arm's length' profit margin prescribed by the transfer pricing guidelines of the OECD, as codified in Dutch law.

Advance certainty may also be denied if granting it would conflict with the good faith due to tax treaty partners.

Substance criteria

For the company to have 'substance' in the Netherlands, the following criteria must be met.

1. At least half of the statutory directors – corporate or individual – with decision-making authority are resident in the Netherlands.
2. The directors resident in the Netherlands have sufficient expertise to carry out their functions. They should be able to manage the transactions performed and the risks being run. The functions of the local directors include, at least, making decisions – on a basis of company autonomy within the framework of normal group control – in respect of

the transactions it enters into, as well as arranging the handling of those transactions. Moreover, the company has access to qualified personnel (either its own or third-party employees) for the adequate execution and registration of such transactions.

3. The company's important board decisions are taken in the Netherlands.
4. The company's main bank account is in the Netherlands.
5. The company's bookkeeping is performed in the Netherlands.
6. As of the moment of testing, the company has met all of its filing obligations in respect of Corporation Tax, payroll taxes, VAT and so on.
7. The company is resident in the Netherlands, and, to the best of its knowledge, is not also resident anywhere else.
8. The company has sufficient equity for the functions it performs (taking into account its assets and the risks incurred).

Real risk

In general, the main risks a finance company will be exposed to are credit (debtor and currency risks), market and operational risks. Dutch tax legislation requires an intra-group finance company to maintain sufficient equity to bear these. The following test is used to establish that a company does incur sufficient or real risk: the equity to bear the risks is at least one per cent of the loan or loans extended, or at least EUR 2 million. A realistic possibility of recourse to this equity is also necessary, meaning that no group company may guarantee its amount.

Even if an intra-group finance company passes this test and so is deemed to incur real risk, that does not mean that it automatically satisfies the 'adequate equity' requirement under the substance criteria. Some additional equity may therefore be needed.

Remuneration 'at arm's length'

Interest income receivable by a finance company which satisfies the substance and real risk tests above is taxable at the Dutch

Corporation Tax rate. Interest payable is normally deductible against taxable income. However, since the margins between interest received and interest paid are often quite low and loans are made to related parties, it is important to document that the margin earned by the finance company is established 'at arm's length'. Should there be any doubt in this respect, that status can be confirmed by the tax authorities in an advance pricing agreement (APA), but this must be based on the OECD transfer pricing guidelines as codified in Dutch law.

A finance company is remunerated in two ways.

- ▶ An annual service fee related to the activities it performs, the group and the size of the loan transactions.
- ▶ Equity remuneration: a certain minimum equity is required and minimum required return on that equity has to be established through benchmarking.

For companies with a total loan volume of EUR 100 million or less, the service fee is determined on a cost-plus basis.

The APA is binding upon both the finance company and the tax authorities.

- ▶ a third company has a direct holding of at least 25 per cent in the capital of both companies.

In addition, a continuous holding period of at least one year is required.

II.2.3 Exchange Control and Supervision

Exchange Control

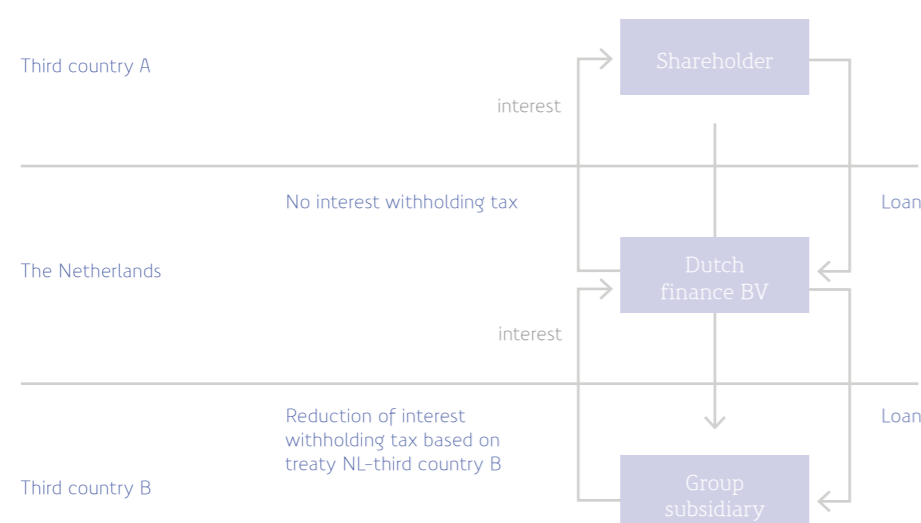
The borrowing and lending operations of a finance company are subject to the exchange control regulations described in 1.4 above. These are very liberal and consist mainly of the reporting of transactions with non-residents to the Dutch central bank.

Central Bank Supervision

Certain types of finance companies are subject to supervision exercised by the Dutch central bank (De Nederlandsche Bank NV, DNB). This means that they are required to submit a monthly status of their equity and debt position and that they have to meet certain criteria as regards their debt-to-equity ratio, management qualifications and so on. DNB supervision applies if the company is deemed to be a 'credit institution' or a 'capital market institution'.

Finance companies do not fall under this regime if they attract funds from 'professional market parties', within a 'restricted circle' (such as other group companies) or from 'the public'. In the latter case, the requirements are that the funds be obtained against the issuance of securities in compliance with the Financial Supervision Act, that at least 95 per cent of the finance company's balance sheet total be lent on within the group to which it belongs and that the parent company either provide a guarantee or a 'keep well' declaration regarding the liabilities of the finance company or an unconditional guarantee from a credit institution in an EU/EEA member state, the US, Japan, Canada, Australia or Switzerland.

Dutch intermediary finance structure



Finance companies borrowing funds from professional market parties or within a restricted circle are allowed to use the proceeds for investment or lending on outside their own group. A person who acquires a loan (or a package of loans) with a nominal value of at least EUR 50,000, or for a consideration of at least EUR 50,000, is automatically considered to be a professional market party.

Certain filing requirements apply to be exempt from supervision. The DNB must be notified in writing within two weeks after the activities as a finance company begin, informing it of the name and address of the company, the names of its directors and the members of its supervisory board and its Trade Register number.



II.3 A licensing company in the Netherlands

The mere fact that the Netherlands does not levy withholding tax on royalty payments makes the country a suitable base for the exploitation of intellectual property, such as films, patents and rights, within a group of companies. Under such an arrangement, the Dutch-based group licensing company licenses the rights from one group company and then sublicenses them to other companies within the group.

Advantages

Most of the double taxation treaties entered into by the Netherlands contain a provision reducing the foreign withholding tax applicable to royalties received by a Dutch resident. And under domestic law no withholding tax is levied on royalty payments made by a Dutch resident. As a consequence, it is often attractive to use a Dutch company as a vehicle through which to channel royalty income when ownership of the intellectual or other property rights rests in another jurisdiction where it enjoys the benefit of low tax rates.

The conditions which have to be met in order to enjoy the reduced rates of withholding tax on royalty payments to the Dutch company vary from treaty to treaty.

II.3.1. Taxation in the Netherlands

Ruling policy for intra-group licensing companies

Under existing ruling policy, an intra-group licensing company can seek advance certainty on its Dutch tax position with the authorities here. There are two conditions for obtaining this:

- ▶ having 'substance' in the Netherlands;
- ▶ running real risks on the transactions performed.

If an intra-group licensing company is not exposed to real risks, the Dutch tax authorities may of their own accord exchange information with the source country of the royalties. In such a situation, the tax credit on foreign withholding tax is not available because the licensing company is basically acting as an agent or intermediary and is considered to be the beneficial owner. Where no advance certainty is available, the licensing company still has to report a taxable profit based upon an 'arm's length' profit margin prescribed by the transfer pricing guidelines of the OECD, as codified in Dutch law.

Advance certainty may also be denied if granting it would conflict with the good faith due to tax treaty partners.

Substance criteria

For the company to have 'substance' in the Netherlands, the following criteria must be met.

1. At least half of the statutory directors – corporate or individual – with decision-making authority are resident in the Netherlands.
2. The directors resident in the Netherlands have sufficient expertise to carry out their functions. They should be able to manage the transactions performed and the risks being run. The functions of the local directors include, at least, making decisions – on a basis of company autonomy within the framework of normal group control – in respect of the transactions it enters into, as well as arranging the handling of those transactions. Moreover, the company has access to qualified personnel (either its own or third-party employees) for the adequate execution and registration of such transactions.
3. The company's important board decisions are taken in the Netherlands.
4. The company's main bank account is in the Netherlands.
5. The company's bookkeeping is performed in the Netherlands.

6. As of the moment of testing, the company has met all of its filing obligations in respect of Corporation Tax, payroll taxes, VAT and so on.
7. The company is resident in the Netherlands, and, to the best of its knowledge, is not also resident anywhere else.
8. The company has sufficient equity for the functions it performs (taking into account its assets and the risks incurred).

Real risk

For Dutch tax purposes, an intra-group licensing company must maintain sufficient equity to bear real risk on the licensing transactions. For a licensing company, the test applied by the tax authorities is that either 50 per cent of the expected annual gross royalty payment or EUR 2 million, whichever is less, must be exposed to real risk.

Even if a licensing company passes this test and so is deemed to incur real risk, that does not mean that it automatically satisfies the 'adequate equity' requirement under the substance criteria. Some additional equity may therefore be needed.

Remuneration 'at arm's length'

Royalty income received by a licensing company which satisfies the substance and real risks tests above is taxable at the Dutch Corporation Tax rate. Royalties payable are normally deductible against taxable income. However, since the margins between royalties received and royalties paid are often quite low and related parties are involved, it is important to document that the margin earned by the licensing company is established 'at arm's length'. Should there be any doubt in this respect, that status can be confirmed by the tax authorities in an advance pricing agreement (APA), but this must be based on the OECD transfer pricing guidelines as codified in Dutch law.

Like a finance company, a licensing company is remunerated through both equity and an annual service fee, the level of which should be benchmarked to the

firm's specific circumstances. For companies with a total royalty volume not exceeding EUR 8 million, the service fee may be benchmarked on a cost-plus basis.

The APA is binding upon both the finance company and the tax authorities.

II.3.2 EU Interest and Royalty Directive

The EU Interest and Royalty Directive entered force on 1 January 2004.

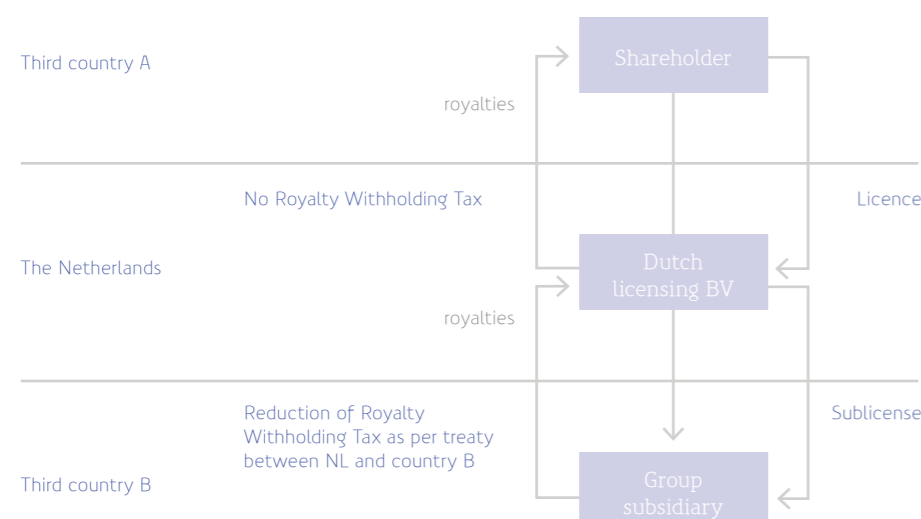
Under this regulation, outbound royalty payments are exempt from withholding tax as long as their beneficial owner is a related company of another company resident in an EU member state or such a company's permanent establishment situated in another EU member state. The relevant companies must be listed in the annexe of the directive and subject to Corporation Tax (without being exempt).

A company is a related company if:

- ▶ it has a direct holding of at least 25 per cent in the capital of the other company; or,
- ▶ a third company has a direct holding of at least 25 per cent in the capital of both companies.

In addition, a continuous holding period of at least one year is required.

Dutch intermediary licensing structure



Annex I Withholding tax rates on dividends

	Dividend Withholding Tax Rate	To the Netherlands from:			From the Netherlands to:		
		Dividends	Substantial Holdings	Minimum Percentage	Dividends	Substantial Holdings	Minimum Percentage
Albania	10	10	0	50%	15	0	50%
Argentina	0/35	0/15	0/10	25%	15	10	25%
Armenia	10	10	5	10%	15	0	10%
Aruba	0/10	0	0		15	7.5/5	25%
Australia	30	15	15		15	15	
Austria	25	15	0	10%	15	0	10%
Azerbaijan	10	10	5	25%	10	5	25%
Bahrain	0	0	0		10	10	
Bangladesh	20	15	10	10%	15	10	10%
Barbados	15	15	0	10%	15	0	10%
Belarus	12	12	0/5	50%	15	0	50%
Belgium	25	0/15	0	10%	15	0	5%
Bosnia-Herzegovina	5	5	5		15	5	25%
Brazil	0	0	0		15	15	
Bulgaria	5	5	0	10%	15	0	5%
Canada	25	15	5	10%/25%	15	5	25%
China	10	10	10		10	10	
Croatia	20	15	0	10%	15	0	10%
Curaçao	0	0	0		15	5/8.3	25%
Cyprus*	0	0	0		15	0	5%
Czech Republic	15	10	0	10%	10	0	5%
Denmark	28	15	0	10%	15	0	5%
Egypt	0	0	0		15	0	25%
Estonia	0	0	0		15	0	5%
Finland	28	15	0	10%	15	0	5%
France	25	15	0	10%	15	0	5%
Georgia	5	5	0	50%	15	0	50%
Germany	25	15	0	5%	15	0	5%
Ghana	8	8	8		10	5	10%
Greece	25	0	0	10%	15	0	5%
Hong Kong (2011)	0	0			10	0	10%
Hungary	0	0	0		15	0	5%
Iceland	18	15	0	10%	15	0	10%
India	0	0	0		10	10	
Indonesia	20	10	10		10	10	
Ireland	20	15	0	10%	15	0	5%
Israel	25	15	5	25%	15	5	25%
Italy	27	15	0	10%	15	0	5%
Japan (2010)	20	10	0	50%	10	0	50%
Jordan	0	0	0		15	0	10%
Kazakhstan	15	15	0	50%	15	0	50%
Korea	20	15	10	25%	15	10	25%
Kuwait	0	0	0		10	0	10%
Latvia	10	10	0	10%	15	0	5%
Lithuania	15	15	0	10%	15	0	5%
Luxembourg	15	15	0	10%	15	0	5%
Macedonia	10	10	0	10%	15	0	10%

* EU Parent/Subsidiary Directive

	Dividend Withholding Tax Rate	To the Netherlands from:			From the Netherlands to:		
		Dividends	Substantial Holdings	Minimum Percentage	Dividends	Substantial Holdings	Minimum Percentage
Malawi	10	10	10		15	15	
Malaysia	0	0	0		15	0	25%
Malta	0	0	0		15	0	5%
Mexico	0	0	0		15	0	10%
Moldova	15	15	0	50%	15	0	50%
Mongolia	20	15	0	10%	15	0	10%
Montenegro	9	9	5	25%	15	5	25%
Morocco	10	10	10		15	10	25%
New Zealand	30	15	15		15	15	
Nigeria	10	10	10		15	12.5	10%
Norway	25	15	0	25%	15	0	25%
Oman	0	0	0		15	0	25%
Pakistan	10	10	10		15	10	25%
Panama	10	10	10/0		15	15/0	15%
Philippines	30	15	10	10%	15	10	10%
Poland	19	15	0	10%	15	0	5%
Portugal	21.5	10	0	10%	10	0	5%
Qatar	0	0	0		10	0	7.5%
Romania	16	10	0	10%	10	0	5%
Russia	15	15	5	25%	15	5	25%
Saudi-Arabia	5	5	5		10	5	10%
Serbia	20	15	5	25%	15	5	25%
Singapore	0	0	0		15	0	25%
Slovak Republic	0	0	0		10	0	5%
Slovenia	15	15	0	10%	15	0	5%
South Africa	0	0	0		10	5	10%
Spain	19	15	0	10%	15	0	5%
Sri Lanka	10	10	10		15	10	25%
St. Maarten	0	0	0		15	5/8.3	25%
Surinam	25	20	7.5	25%	15	7.5	25%
Sweden	30	15	0	10%	15	0	5%
Switzerland (2010)	35	15	0	10%	15	0	10%
Taiwan	20	10	10		10	10	
Tajikistan	12	12	12		15	15	
Thailand	10	10	10		15	5	25%
Tunisia	0	0	0		15	0	10%
Turkey	15	15	10	25%	15	5	25%
Uganda	15	15	0/5	50%	15	0	50%
Ukraine	15	15	0/5	50%	15	0/5	50%
United Arab Emirates	0	0	0		10	5	10%
United Kingdom	0	0	0		10	0	5%
United States	30	15	0	80%	15	0	80%
Uzbekistan	10	10	0	25%	15	5	25%
Venezuela	34	10	0	25%	10	0	25%
Vietnam	0	0	0		15	5	50%
Zambia	15	15	5	25%	15	5	25%
Zimbabwe	15	15	10	25%	15	10	25%

Annex II Withholding tax rates on interest and royalty payments

	To non-treaty countries from:			To the Netherlands from:		
	Interest	Royalties	Interest EU directive	Interest other	Royalties EU directive	Royalties other
Albania	10	10	-	10	-	10
Argentina	15/35	12/21/28/31	-	12	-	3/5/10/15
Armenia	10	10	-	0	-	5
Aruba	0	0	-	0	-	0
Australia	10	30	-	10	-	10
Austria	0	20	0	0	0	0
Azerbaijan	10	14	-	10	-	5/10
Bahrain	0	0	-	0	-	0
Bangladesh	10	10	-	10	-	10
Barbados	15	15	-	5	-	5
Belarus	10	15	-	5	-	3/5/10
Belgium	15	15	0	0/10	0	0
Bosnia Herzegovina	10	10	-	0	-	10
Brazil	15/25	15/25	-	10/15	-	15
Bulgaria	10	10	0	0	0	0
Canada	25	25	-	0/10	-	0/10
China	10	10	-	10	-	10
Croatia	15	15	-	0	-	0
Curaçao	0	0	-	0	-	0
Cyprus*	0	10	0	0	0	10
Czech Republic	15	15	0	0	5	5
Denmark	25	25	0	0	0	0
Egypt	20	20	-	12	-	12
Estonia	0/21	15	0	0/10	0	5/10
Finland	0	28	0	0	0	0
France	18	33.33	0	0/10	0	0
Georgia	5	20	-	0	-	0
Germany	0	15/20	0	0	0	0
Ghana	8	10	-	8	-	10
Greece	40	25	5	8/10	0/5	0/5/7
Hong Kong (2011)	0	4.95	-	0	-	3
Hungary	0	0	0	0	0	0
Iceland	18	20	-	0	-	0
India	20	10	-	0/10	-	10
Indonesia	20	20	-	0/10	-	10
Ireland	20	20	0	0	0	0
Israel	15/25	25	-	10/15	-	5/10
Italy	12.5/27	22.5	0	10	0	5
Japan (2010)	20	20	-	10	-	0
Jordan	7	7	-	5	-	10
Kazakhstan	15/20	15/20	-	10	-	10
Korea	27.5	26.8	-	10/15	-	10/15
Kuwait	0	0	-	0	-	0
Latvia	5/10	5/15	5	0/10	5	5/10
Lithuania	10	10	5	10	5/10	5/10
Luxembourg	0/15	0/15	0	0	0	0
Macedonia	10	10	-	0	-	0

* Based on EU Interest/Royalty Directive

	To non-treaty countries from:			To the Netherlands from:		
	Dividends	Substantial Holdings	Minimum Percentage	Dividends	Substantial Holdings	Minimum Percentage
Malawi	20	20	-	0	-	0
Malaysia	15	10	-	0/10	-	0/8
Malta	0	0	0	0	0	0
Mexico	30/40	25/30	-	10	-	10
Moldova	10	10	-	5	-	2
Mongolia	20	20	-	10	-	0/5
Montenegro	9	9	-	0	-	10
Morocco	10	10	-	10	-	10
New Zealand	15	15	-	10	-	10
Nigeria	10	10	-	10	-	10
Norway	0	0	-	0	-	0
Oman	0	10	-	0	-	0
Pakistan	30	15	-	20	-	5/15
Panama	12.5	12.5	-	5	-	5
Philippines	20	30	-	10/15	-	10/15
Poland	20	20	0	5	5	5
Portugal	21.5	15	5	10	5	10
Qatar	0	0	-	0	-	0
Romania	16	16	0	0	0	0
Russia	20	20	-	0	-	0
Saudi-Arabia	5	15	-	5	-	7
Serbia	20	20	-	0	-	10
Singapore	15	10	-	10	-	0
Slovak Republic	19	19	0	0	0	5
Slovenia	15	15	0	5	0	5
South Africa	0	12	-	0	-	0
Spain	19	24	0	10	6	6
Sri Lanka	15	15	-	10	-	10
St. Maarten	0	0	-	0	-	0
Surinam	0	0	-	0	-	0
Sweden	0	0	0	0	0	0
Switzerland (2010)	0	0	-	0	-	0
Taiwan	20	20	-	10	-	10
Tajikistan	12	15	-	0	-	0
Thailand	15	15	-	15	-	5/15
Tunisia	20	15	-	7.5	-	7.5
Turkey	10/15	20	-	0/10/15	-	10
Uganda	15	15	-	10	-	10
Ukraine	15	15	-	2/10	-	0/10
United Arab Emirates	0	0	-	0	-	0
United Kingdom (2008)	20	20	0	0	0	0
United States	0/30	30	-	0	-	0
Uzbekistan	10	20	-	10	-	10
Venezuela	15/34	34	-	5	-	5/7/10
Vietnam	5/10	10	-	7.5	-	5/10
Zambia	15	15	-	10	-	10
Zimbabwe	15	15	-	10	-	10

Notes to the annexes

The schedules contained in these annexes present a review of withholding tax rates applicable at 1 January 2012.

Albania

Dividends are exempt from dividend withholding tax if the company receiving dividends owns at least 50 per cent of the capital of the dividend distributing company and the investment amounts at least USD 250,000.

Payments on profit sharing bonds are treated as interest.

The withholding tax on interest payments to banks is reduced to five per cent.

Argentina

Dividend (from Argentina) subject to withholding only if it exceeds accumulated taxable income. Treaty contains for a so-called 'most favored nation clause'. If a treaty is concluded with an OECD country containing more favorable withholding tax rates it automatically applies to the Dutch treaty.

Payments on profit sharing bonds are treated as interest.

The treaty withholding tax rates on royalty payments are: three per cent on news related payments, five per cent on cultural royalties, excluding movies and videotapes, 10 per cent on industrial royalties, 15 per cent on other royalties including financial leasing, movies and videotapes.

Armenia

The withholding tax rate on dividends from Armenia is five per cent in case no profit tax has been paid on the profit in Armenia. Anti-abuse rule: exemption of Dutch dividend withholding tax is not applicable on conduit structures.

Payments on profit sharing bonds are treated as interest by Armenia, as dividends by The Netherlands. No withholding tax on interest is levied on interest payments to banks.

Aruba

Aruba imposes a maximum dividend withholding tax of 10 per cent on outgoing dividends, but exemptions are applicable.

If the Aruba company is subject to a local profit tax at a rate of at least 5.5 per cent, Dutch dividend withholding tax is reduced to five per cent.

Payments on profit sharing bonds are treated as dividends.

Australia

Under Australian tax law, no dividend withholding tax is imposed on franked dividends. Dividends are franked if tax is paid at the corporate level.

Payments on profit sharing bonds are treated as dividends.

Treaty contains a so-called 'most favored nation clause'. If a treaty is concluded with an OECD country containing more favorable withholding tax rates the Netherlands immediately may renegotiate.

Austria

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 10 per cent.

Payments on profit sharing bonds are treated as interest.

On royalty payments to a shareholder owning at least 50 per cent of the capital of the Austrian company, 10 per cent withholding tax is due, unless the EU Interest/Royalty Directive applies.

Azerbaijan

The dividend withholding tax is reduced to five per cent if the company receiving the dividend owns at least 25 per cent of the subsidiary and has invested at least EUR 200,000 in the subsidiary.

Payments on profit sharing bonds are treated as interest. No withholding tax is due on interest payments to banks.

For cultural royalty payments and rights vested for three years and more 10 per cent royalty withholding tax is levied.

Bahrain

Payments on profit sharing bonds are treated as interest.

Bangladesh

Payments on profit sharing bonds are treated as dividends.

Barbados

Reduction of Dutch dividend withholding tax to 0 per cent applies only if certain 'limitation of benefit' rules are met. Payments on profit sharing bonds are treated as interest.

Belarus

Dividends are exempt if the company receiving the dividends owns at least 50% of the capital of the distributing company and the investment amounts at least EUR 250,000. Otherwise five per cent dividend withholding tax will be levied.

Payments on profit sharing bonds are treated as dividends.

The withholding tax rates on royalty payments are: 10 per cent on cultural royalties (incl. movies and videotapes), five per cent on lease payments, and three per cent on other royalties.

Belgium

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 10 per cent. Liquidation proceeds are subject to 10 per cent dividend withholding tax.

Payments on profit sharing bonds are treated as interest.

No withholding tax is levied on interest payments to a Dutch enterprise.

Bosnia Herzegovina

Withholding tax percentages are based on the former tax treaty concluded by Yugoslavia and the Netherlands which is still applicable.

Payments on profit sharing bonds are treated as dividends.

Brazil

Payments on profit sharing bonds are treated as interest.

Withholding tax on interest payments is reduced to 10 per cent in case of bank loans for a period of at least seven years for the purpose to acquire industrial equipment.

Bulgaria

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

Canada

Substantial holding: at least 25 per cent of the share capital or at least 10 per cent of the voting rights. Payments on profit sharing bonds are treated as dividends. As of 1 January 2008 no interest withholding tax is levied on interest payments if the transaction is at arm's length. No royalty withholding tax on cultural royalty payments except for movies and videotape royalties.

China

Payments on profit sharing bonds are treated as interest. Withholding tax on lease payments for technical equipment is limited to a basis of 60 per cent of such payments.

Croatia

Anti-abuse rule: exemption of Dutch dividend withholding tax is not applicable on conduit structures. Payments on profit sharing bonds are treated as dividends.

Cyprus

Because Cyprus and the Netherlands have not yet concluded a tax treaty the withholding tax rates reflect the EU parent/subsidiary Directive and EU interest/royalty Directive.

Curaçao

On 10 October 2010 the Netherlands Antilles ceased to exist as part of the Kingdom of the Netherlands. Instead the islands of Curaçao and St. Maarten became part of the Kingdom as separate countries, just like Aruba already did. Each of the countries is free to develop its own tax legislation, but Curaçao and St. Maarten for the time being adopted the Netherlands Antilles tax legislation. The Tax Regulation for the Kingdom remains applicable. If the Curaçao company is subject to a local profit tax at a rate of at least 5.5 per cent, Dutch dividend withholding tax is reduced to five per cent. Under conditions the Netherlands levy 8.3 per cent withholding tax on substantial holding dividends, if in Curaçao the lower offshore tax rates apply.

Payments on profit sharing bonds are treated as dividends.

Czech Rep.

If the EU parent/subsidiary Directive is not applicable dividends are exempt from dividend withholding tax if the corporate shareholding is at least 25 per cent. Payments on profit sharing bonds are treated as dividends.

Denmark

If the EU parent/subsidiary Directive is not applicable dividends are exempt if the shareholding is at least 10 per cent and the shares are held for a consecutive period of 12 months. Payments on profit sharing bonds are treated as interest.

Egypt

Payments on profit sharing bonds are treated as dividends.

Estonia

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 25 per cent. Anti-abuse rule: exemption of Dutch dividend withholding tax is not applicable on conduit structures. Payments on profit sharing bonds are treated as dividends.

No withholding tax on interest is levied on

interest payments to banks.

Withholding tax on industrial royalties is five per cent, on other royalties 10 per cent.

Treaty contains a so-called 'most favored nation clause'. If a treaty is concluded with an OECD country containing more favorable withholding tax rates on interest and royalty payments the Netherlands immediately may renegotiate.

Finland

Payments on profit sharing bonds are treated as dividends.

France

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as interest.

No interest withholding tax is levied on interest payments to Dutch financial institutions.

Georgia

Dividends are exempt if the company receiving the dividend owns at least 50 per cent of the capital of the distributing company and the investment amounts at least USD 2,000,000. If the company receiving the dividend has a participation of between 10 per cent and 50 per cent, dividend withholding tax on dividends is levied at five per cent.

Payments on profit sharing bonds are treated as interest.

Germany

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to 15 per cent if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

Ghana

Payments on profit sharing bonds are treated as interest.

Greece

Payments on profit sharing bonds are treated as dividends.

Withholding tax on interest is eight per cent if interest is being paid to a bank.

Withholding tax on cultural royalties (incl. movies) is reduced to five per cent.

If the conditions of the EU interest/royalty Directive are fulfilled, interest and royalty payments made after 1 July 2008 will be subject to five per cent Greek withholding tax.

Hong Kong

The treaty with Hong Kong has been signed on 22 March 2010 and is effective as per 1 January 2012 (the Netherlands) and 1 April 2012 (Hong Kong)

Payments on profit sharing bonds are treated as interest.

Hungary

Payments on profit sharing bonds are treated as dividends.

Iceland

Payments on profit sharing bonds are treated as dividends.

India

Payments on profit sharing bonds are treated as dividends.

Treaty contains a so-called 'most favored nation clause'. If a treaty is concluded with an OECD country containing more favorable withholding tax rates the Netherlands immediately may renegotiate. Withholding tax on interest is 10 per cent if paid to a bank or to the parent company of the payer.

Indonesia

Payments on profit sharing bonds are treated as dividends.

The treaty contains an exemption of Indonesian interest withholding tax for interest paid on loans with a term of more than two years and credits for industrial, commercial and scientific equipment, but the Indonesian tax authorities claim that this paragraph is not in force yet.

Ireland

If the EU parent/subsidiary Directive is not applicable dividends are exempt from dividend withholding tax if at least 25 per cent of the voting rights are held by a corporate entity. Payments on profit sharing bonds are treated as interest.

Under Irish tax law withholding tax on royalties is only imposed if the royalties relate to the use of patent.

Israel

Withholding tax rate on dividends is 10 per cent if profits from Israel are taxed at reduced corporate tax rates. Payments on profit sharing bonds are treated as dividends.

Withholding tax on interest is 10 per cent if paid to a bank.

Withholding tax on royalty payments is 10 per cent with regard to movies, music and videotapes.

Italy

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is 1,375 per cent if paid to corporate entities established in an EU Member State or an EEA country not blacklisted as tax haven.

Italy levies 27.5 per cent dividend and interest withholding tax if a company resident in a blacklisted tax haven is beneficiary. Payments on profit sharing bonds are treated as dividends.

Japan

The new treaty with Japan entered into force on 1 January 2012. Dividend withholding tax is reduced to five per cent in case the percentage held amounts between 10 per cent and 50 per cent. Payments on profit sharing bonds are treated as interest.

Jordan

Anti-abuse rule: Exemption of dividend withholding tax is not applicable on conduit structures. Payments on profit sharing bonds are treated as dividends.

Kazakhstan

Dividends are exempt if the company receiving the dividends owns at least 50 per cent of the capital of the distributing company and the investment amounts at least USD 1,000,000 and the investment is guaranteed or insured by the government of the investor country. Otherwise dividend withholding tax is reduced to five per cent if the shareholder is a corporate entity

holding at least 10 per cent participation in the dividend distributing company.

Payments on profit sharing bonds are treated as interest by Kazakhstan, as dividends by the Netherlands.

Treaty contains a so-called 'most favoured nation clause'. If a treaty is concluded with an OECD country containing more favourable withholding tax rates on interest and royalty payments it automatically applies to the Dutch treaty.

Korea

Payments on profit sharing bonds are treated as interest by Korea, as dividends by the Netherlands. Withholding tax on interest is reduced to 10 per cent on borrowings exceeding a period of seven years. Withholding tax on cultural royalties is levied at 15 per cent.

Kuwait

The Netherlands treats profit sharing bonds payments as dividends.

Latvia

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

No withholding taxes on interest payments to a Dutch enterprise, or paid to banks or on credits for industrial, commercial and scientific equipment.

Withholding tax on industrial royalties is five per cent. Treaty contains a so-called 'most favoured nation clause'. If a treaty is concluded with an OECD country containing more favourable withholding tax rates on royalty payments it automatically applies to the Dutch treaty.

Lithuania

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

No interest withholding tax applies for interest payments on supply of credit.

Withholding tax on industrial royalties is five per cent. Treaty contains a so-called 'most favoured nation clause'. If a

treaty is concluded with an OECD country containing more favourable withholding tax rates on royalty payments it automatically applies to the Dutch treaty.

Luxembourg

The treaty does not apply to Luxembourg holding 1929 companies, who are exempt from corporate income tax. If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to 2.5 per cent if the corporate shareholding is at least 25 per cent. Payments on profit sharing bonds are treated as dividends.

Macedonia

Payments on profit sharing bonds are treated as dividends.

Malawi

The treaty with Malawi results from the extension of the 1948 treaty concluded between the United Kingdom and The Netherlands. The dividend article ceased to have effect from 1963 onwards.

Malaysia

Payments on profit sharing bonds are treated as interest.

No withholding tax on interest is levied on interest paid on long term borrowings approved by the relevant authorities. Industrial royalties are exempt from royalty withholding tax.

Malta

Payments on profit sharing bonds are treated as dividends.

Mexico

Payments on profit sharing bonds are treated as interest. Withholding tax on interest is reduced to five per cent if paid to a bank resident in a treaty country and interest on bonds quoted on a stock exchange.

Moldova

Dividends are exempt if the company receiving the dividends owns at least 50 per cent of the capital of the distributing company and the investment amounts at least USD 300,000. Otherwise dividend withholding tax is five per cent.

Payments on profit sharing bonds are treated as interest by Moldova, as dividends by the Netherlands. No withholding tax on interest payments on credits for industrial, commercial and scientific equipment.

Mongolia

Payments on profit sharing bonds are treated as dividends.

Royalty withholding tax on technical services is reduced to five per cent.

Montenegro

The old Yugoslavia treaty is applicable to Montenegro.

Payments on profit sharing bonds are treated as dividends.

Morocco

Payments on profit sharing bonds are treated as interest.

New Zealand

Payments on profit sharing bonds are treated as dividends.

Treaty contains a so-called 'most favored nation clause'. If a treaty is concluded with an OECD country containing more favorable withholding tax rates the Netherlands immediately may renegotiate.

Nigeria

Payments on profit sharing bonds are treated as interest.

Norway

Payments on profit sharing bonds are treated as dividends.

Oman

The treaty contains a 'most favoured nation clause' on behalf of Oman. Payments on profit sharing bonds are treated as interest.

Panama

Payments on profit sharing bonds are treated as interest

Pakistan

Payments on profit sharing bonds are treated as dividends. Withholding tax on cultural royalties is reduced to five per cent except for royalties for movies and videotapes.

Philippines

Payments on profit sharing bonds are treated as dividends.

No interest withholding tax is levied on interest payments on a supply of credit.

Withholding tax on interest is reduced to 10 per cent if paid to a bank or on bonds issued to the public.

Poland

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 10 per cent.

Payments on profit sharing bonds are treated as dividends.

No withholding tax is levied on cultural royalties.

Portugal

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to 10 per cent. Payments on profit sharing bonds are treated as dividends.

Qatar

The treaty contains a 'most favoured nation clause' on behalf of Qatar.

Payments on profit sharing bonds are treated as interest.

Romania

If the EU parent/subsidiary Directive is not applicable no dividend withholding tax is applicable if the corporate shareholding is at least 25 per cent.

Romania treats profit sharing bonds payments as interest. The Netherlands treats profit sharing bonds payments as dividends.

Russia

Dividend withholding tax for substantial interests (at least 25 per cent shareholding) is reduced to five per cent if the investment amount is at least EUR 75,000.

Payments on profit sharing bonds are treated as dividends.

Saudi Arabia

Payments on profit sharing bonds are treated as interest.

Serbia

The old Yugoslavia treaty is applicable to Serbia.

Payments on profit sharing bonds are treated as dividends.

Singapore

Payments on profit sharing bonds are treated as interest.

Singapore withholding tax on cultural royalties is 15 per cent.

Slovak Rep.

Payments on profit sharing bonds are treated as dividends.

Slovenia

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 10 per cent.

Payments on profit sharing bonds are treated as interest. Interest payments on hybrid loans are treated as dividends.

South Africa

Payments on profit sharing bonds are treated as dividends.

Spain

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if the corporate shareholding is at least 50 per cent or two shareholders of at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

St.Maarten

On 10 October 2010 the Netherlands Antilles ceased to exist as part of the Kingdom of the Netherlands. Instead the islands of Curaçao and St. Maarten became part of the Kingdom as separate countries, just like Aruba already did. Each of the countries is free to develop its own tax legislation, but Curaçao and St. Maarten for the time being adopted the Netherlands Antilles tax legislation. The Tax Regulation for the Kingdom remains applicable. If the St. Maarten company is subject to a local profit tax at a rate of at least 5.5 per cent, Dutch dividend withholding tax is reduced to five per cent. Under conditions the Netherlands levy 8.3 per cent withholding tax on substantial holding dividends, if the lower St. Maarten offshore tax rates apply.

Payments on profit sharing bonds are treated as dividends

Sri Lanka

Payments on profit sharing bonds are treated as dividends.

Surinam

Payments on profit sharing bonds are treated as dividends.

Sweden

If the EU parent/subsidiary Directive is not applicable no dividend withholding tax is applicable if the corporate shareholding is at least 25 per cent.

Payments on profit sharing bonds are treated as dividends.

Switzerland

The 2010 treaty with Switzerland entered into force on 1 January 2012.

Payments on profit sharing bonds are treated as interest.

Taiwan

Payments on profit sharing bonds are treated as interest.

Tajikistan

The Old treaty with the Soviet Union is applicable for Tajikistan.

Payments on profit sharing bonds are treated as dividends.

Thailand

Payments on profit sharing bonds are treated as interest.

Withholding tax on cultural royalties is levied at a rate of five per cent.

Tunisia

Payments on profit sharing bonds are treated as dividends.

Turkey

Payments on profit sharing bonds are treated as interest.

No withholding tax on interest payments on credits for industrial, commercial and scientific equipment. In case of borrowings for a period of at least two years the interest withholding tax is 10 per cent.

Uganda

The exemption of dividend withholding tax is only applicable to new investments or expansion of existing investments made after the date of entry into force of the treaty (The Netherlands: 1-7-2007; Uganda: 31-7-2007).

Payments on profit sharing bonds are treated as interest. Interest payments on hybrid loans are treated as dividends.

No withholding tax on interest is levied on interest payments to banks if the loan has at least a three year term.

Ukraine

Dividends are exempt if the company receiving the dividends owns at least 50 per cent of the capital of the distributing company and the investment amounts at least USD 300,000. Dividend withholding tax is reduced to five per cent if the shareholding is at least 20 per cent.

Payments on profit sharing bonds are treated as dividends.

Interest withholding tax is reduced to two per cent on interest payments paid to a bank or financial institution or on credits for industrial, commercial and scientific equipment.

Withholding tax on cultural royalties is levied at a rate of 10 per cent.

U.K.

The UK. (2008) treaty entered into force on 1 January 2011.

If the EU parent/subsidiary Directive is not applicable dividend withholding tax is reduced to five per cent if a corporate entity holds at least 10 per cent of the voting rights.

Payments on profit sharing bonds are treated as interest.

United Arab Emirates

Payments on profit sharing bonds are treated as interest.

U.S.A.

Exemption of dividend withholding tax is applicable if certain strict requirements are met (limitation of benefits is not applicable, shares must be held as of 1 January 1998, etc.).

If a corporate shareholder holds at least 10 per cent but not more than 80 per cent of the voting rights of a company and the limitation of benefits is not applicable, dividend withholding tax will be reduced to five per cent.

Payments on profit sharing bonds are treated as dividends.

Uzbekistan

Payments on profit sharing bonds are treated as dividends.

Venezuela

Anti-abuse rule: exemption of Dutch dividend withholding tax is not applicable on conduit structures. Payments on profit sharing bonds are treated as dividends.