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NFLA breakfast seminar

New developments in the
Netherlands tax climate

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Eelco van Solkema/Jan-Willem Thoen

The Netherlands and the UK: trading partners for life

- Of the UK's FTSE 350, 45% have a presence in the Netherlands.
- The UK is the fourth most important export partner of the Netherlands and fifth main import partner.
- For the last six years, the Netherlands has been one of the UK's top five major trading partners.

Top five – export countries	In EUR bn	Top five – import countries	In EUR bn
USA	43.7	Germany	55.9
Germany	35.5	USA	37.5
The Netherlands	23.9	China	34.0
France	23.2	The Netherlands	31.5
Ireland	23.1	France	29.8

Agenda

1. Features in the Dutch tax system
2. New UK-Netherlands tax treaty
3. Fiscal outlook 2011
4. Examples
 - Innovation box
 - Informal capital
 - Low income tax regime

Features in the current Dutch tax system

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Summary of key features

Corporate income tax
rate 25%

Participation exemption

Fiscal unity

No capital tax

No withholding tax on
royalties and interest

Large number of tax treaties
concluded which reduce
withholding taxes,
including 0% dividend
withholding tax to the US

No CFC legislation

Innovation box

Flexible ruling/advance
pricing agreement (APA)
practice

Participation exemption

Under the participation exemption:

- dividends received are fully exempt from Dutch corporate income tax
- capital gains realised are fully exempt from Dutch corporate income tax
- costs related to the subsidiary are fully deductible (unless restricted under specific anti-abuse regulations)
- liquidation losses are in general tax deductible.

Participation exemption

Main rule:

- Re-introduction of ‘motive test’: if the 5% shareholding threshold is met, the participation exemption applies provided that the subsidiary is not held as ‘a portfolio investment’.
- A subsidiary should not be a ‘portfolio investment’ amongst others when there is a link between the business of the subsidiary and the business of the Dutch company or its (indirect) shareholder.

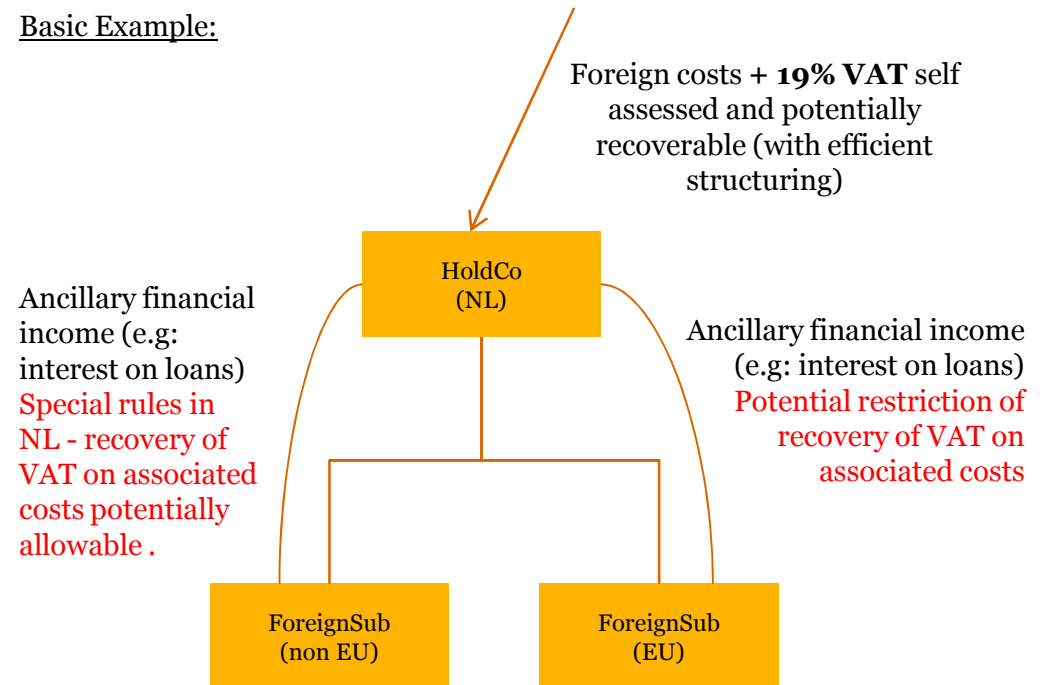
Fall back:

- If the subsidiary is (deemed to be) held as a portfolio investment, it’s still possible to obtain the participation exemption if either:
 - The subsidiary is subject to profit tax resulting in genuine taxation (‘taxation test’)
 - The aggregated ‘bad assets’ of the subsidiary and its lower-tier subsidiaries are usually less than 50% of the total aggregated assets (‘asset test’).
 - Bad assets are free portfolio investments of which the income is not taxed sufficiently.

Developments in EU for VAT and holding companies

- Due to recent European Court of Justice case law on VAT, holding companies in EU countries are more restricted in reclaiming VAT on costs. (EDM – C-77/01, AB SKF – C-29/08, Securita – C-437/06).
- The VAT position of holding companies is important when a holding company is incurring costs (acquisition - restructuring costs etc.).
- Worst case: VAT can become a costs on total expenditure of holding companies.
- Due to existing VAT holding decrees in the Netherlands (*Decree 18 Feb 1991 VB 91/356*) Dutch holding companies can still make use of favourable Dutch rules, **but this may change in the next couple of years** NB: this needs to be efficiently structured and/or agreed with Dutch Tax Authority

Basic Example:



New UK-Netherlands tax treaty

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General information

- Ratified in both the UK (February 2009) and the Netherlands (December 2010)
- Entry into force:
 - The Netherlands as per 1 January 2011
 - The UK as per 1 April 2011 (corporation tax) or 6 April 2011 (income tax and capital gains tax).

Anti-abuse

- No 'limitation on benefits' but 'main purpose test' instead
- Exchange of information in line with the Organisation for Economic Cooperation and Development (OECD) standard.

Article 4 - residency

- ‘Tie-breaker’ has been replaced by ‘place of effective management’

Dutch BV which is managed and controlled in the UK is treated as UK resident for treaty purposes (and vice versa)

- *place of senior management*
- *place of board meetings*
- *place of head office*
- *the entity’s economic relations with both states*
- *risk of abuse, either of the treaty or of domestic tax rules.*

- Dual residence will be dealt with under a mutual agreement procedure by the ‘competent authorities’

A taxpayer is deemed not to be a resident of either contracting state and, therefore can’t benefit from the treaty, until an agreement is reached

- Arbitration provision
- Grandfathering provisions

Article 10, 11 and 12 – reduction of withholding taxes

- Under the new treaty, the withholding tax rate on interest and royalties remains 0% (The Netherlands: N.A. / UK: 20%)
- Under the new treaty, the withholding tax rate on dividends may be further reduced.

	New treaty	1980 Treaty
Dividends	0% (more than 10% voting rights, charities or pension schemes)	5% (more than 25% voting rights)
NL: 15%	10%	15%
UK: N.A.	15% (real estate investment trusts (REITs)/ fiscal investment institution (FBI))	

Article 15 – director's fees

- Taxed in the residence state of the company - director's remuneration is attributable to the services rendered in that state.

Article 17 - pensions

- Pension schemes and charities qualify as treaty resident: the distinction between public and private pensions has been removed.

Fiscal outlook 2011

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Update on Dutch tax developments

- Optional extension from one to three years of the carry back period for losses
- Extension of the accelerated depreciation measures to investments made in 2011
- Transformation of the Patent Box into the attractive Innovation Box (5%)
- A look in the future: committee examining the tax system (March/April)
- Budget day: 20 September 2011.

Examples

Innovation Box

Informal capital

Low income tax regime

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Innovation Box

Profit allocation methods

- Residual Profit Split method:
 - Applicable when research and development (R&D) is a core function
 - Earnings before interest and taxes (EBIT) first reduced by remuneration for routine functions
 - Residual profit allocated to core function (typically: corporate excellence, sales and marketing and R&D)
 - Roughly between 25% and 75% of EBIT in Innovation Box.
- Cost Plus method:
 - R&D as support function
 - Mark-up between 10-30% on R&D expense in Innovation Box.
- Direct method:
 - Intellectual property (IP) income (e.g. royalties) less development costs.

Practical experience

Industry	IP
Software development companies	Software products
Web based companies	Web shop software
Telecom operators	Networks, services, application software
Financial institutions	Trading software, application software
Technology industry	Products and process engineering
Food production	Products and process engineering
Production companies	Products and process engineering
Energy sector	Products and process engineering
Marine contractors	Process engineering
Freight management and logistics	Application software
Employment agencies	Application software
Plant breeders	Breeds

Technology company

Case

- Carbon emission measurement device with patented technology
- Developed in India
- IP contributed to Dutch BV at fair market value
- Product and IP further developed for risk and account of BV, partly under R&D declaration (R&D in the Netherlands) and contract R&D in India.

Innovation Box application

- Qualifying IP: patented technology in final measurement device
- Amortisation of IP covers part of the income to be allocated to old IP (i.e. IP developed in India).

Production company

Case

- Production of various food based mixtures
- R&D declarations for quality measurement methods
- R&D declaration for special recipes ('specialties')
- R&D centre in the Netherlands
- Production is core activity.

Innovation Box application

- Qualifying IP: quality measurement method and specialities
- R&D is auxiliary to production activity
- Mark-up on R&D costs taxed at reduced rate.

Internet trading company

Case

- Self developed automated trading system
- R&D declarations for software development.

Innovation Box application

- Qualifying IP: automated trading software

Low wage tax

30% ruling for extra territorial employees

- The Netherlands has a top income tax rate of 52%, but a tax facility for foreign employees
- 30% ruling: only 70% of the gross wage is basis for income tax
- Applying the 30% ruling has the main benefit of lowering the marginal tax rate from 52% to 36.4%
- Requirements:
 - The employee is transferred to the Netherlands within the concern
 - The employee has specific expertise which is not/scarcely available in the Netherlands
 - A joint request should be filed by employee and employer with the Dutch tax authorities.

Example

	UK	NL
Gross taxable income	£ 100,000.00	€ 118,034.00
-/- 30% ruling	-/- £ 0.00	-/- € 35,410.20
-/- mortgage	-/- £ 0.00	-/- € 29,509.00
Taxable income	£ 100,000.00	€ 53,114.80
Less: income tax	£ 29,930.00	€ 14,472.47
Less: employee social security	£ 4,760.00	€ 7,126.31
Net income	£ 65,310.00	€ 96,435.22
Less: housing allowance	£ 25,000.00	€ 29,509.00
Disposable income in £	£ 40,310.00	
Exchange rates (January 2011)	1,18034	
Disposable income in €	€ 47,579.51	€ 66,926.22

Contact details

Dutch desk for the UK
(London Embankment Place office)

Eelco van Solkema

eelco.van.solkema@uk.pwc.com

+44 (0)20 7212 5814

UK-Netherlands Tax Team
(Rotterdam office)

Jan-Willem Thoen

jan-willem.thoen@nl.pwc.com

+ 31 (0)88 792 36 80

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