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The Netherlands: The place to be for investing and tax structuring



Agenda

Current Dutch tax system

1

- Key features
- Tax rates
- Participation exemption
- Ruling practice
- Dutch cooperative

Recent developments

2

- New UK-NL Double Tax Convention
- Update on Dutch tax developments

How to structure your investments

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- Holding structure
- Tax optimization
- Principal structure
- The Netherlands as top holding location
- Offshore structure
- Financial crisis

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1. Current Dutch tax system

Summary of key features

Corporate income tax rate 25.5%

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 dividend withholding tax for Coops

Innovation box

Flexible ruling/APA practice

1. Current Dutch tax system

Tax rates

Corporate income tax rate`

- Profits up to EUR 200,000: 20%
- Profits exceeding EUR 200,000: 25,5%

Dutch dividend withholding tax rate is 15%

- Dividend distribution to a EU parent company (which holds at least 5% of the share capital) should not be subject to Dutch dividend withholding tax
- Distributions to EU pension funds are exempt

1. Current Dutch tax system

Participation exemption (1)

- 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.

1. Current Dutch tax system

Participation exemption (2)

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 is still possible to obtain the participation exemption if either
 - The subsidiary is subject to profit tax resulting in genuine taxation (“taxation test”), or
 - 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.

1. Current Dutch tax system

Ruling practice

- In the Netherlands it is common practice to agree Advance Price Agreements (APA) or Advance Tax Rulings (ATR) with the Dutch tax authorities.
- Tried and tested advance ruling practice:
 - Greenfield
 - Participation exemption
 - Substantial shareholding
 - Interest deduction
 - Excess profit ruling
 - Transfer pricing

1. Current Dutch tax system

Cooperatives key features

- Not subject to dividend withholding tax
- Participation exemption on dividends and capital gains with no minimal holding period
- Fiscal unity with Dutch companies possible (Coop as parent of the FU)
- Back-to-back financing (minimal spread / handling fee)
- Treaty protection
- Included in the annex to the Parent – Subsidiary Directive & Merger Directive
- Coop can be checked for US tax purposes
- Functional currency possible to avoid FX results
- Legally comparable to BV – limited liability and very flexible
- The Coop is an agreement and provides therefore a lot of flexibility regarding
 - e.g. content of the articles and profit allocation between members
- Easy to set-up / liquidate
 - no distributable reserves required for profit distributions
- No auditor's certificate required for contributions into Coop
- Dutch financial assistance rules do not apply on a Coop
- Linking investments to members possible

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2. Recent developments

UK-NL double tax convention

- Dutch explanatory note
- Dual Residence of Persons Other Than Individuals (Article 4 paragraph 4)
- Reductions of dividend withholding tax rates (Article 10 paragraph 2 subparagraph ii)
- Pensions (Article 17)
- Arbitration provision (Article 25 paragraph 5)
- Status

2. Recent developments

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 2010
- Transformation of the patent box into the attractive innovation box (5%)
- A look in the future: Committee Examining the Tax System
 - abolishing the 6% reduced rate of VAT;
 - abolishing real estate transfer tax and introducing a real estate ownership tax;
 - introducing an equity deduction and equity step-up in company taxation;
 - unilateral introduction of additional taxation on the financial sector is discouraged.

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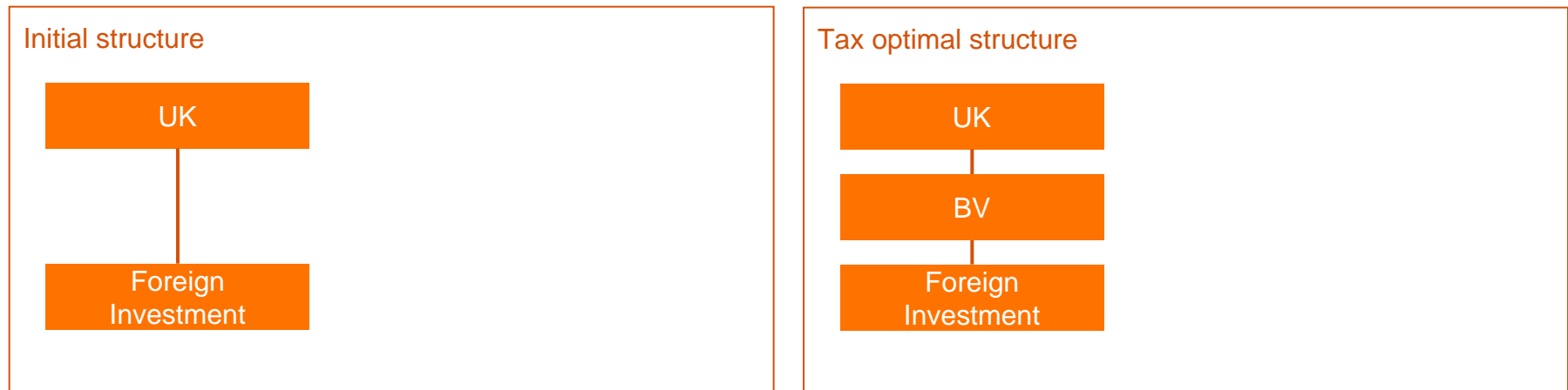
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3. How to structure your investments

Holding structure

using the favourable Dutch tax treaty network



- Withholding taxes
- Cash repatriation
- Capital gains tax

3. How to structure your investments

Tax optimization

Steps

- UK sets up a BV HoldCo
- BV HoldCo attracts a third party loan and acquires BV OpCo
- UK uses the funds to repay the initial third party loan
- BV HoldCo and BV OpCo form a fiscal unity

Objective

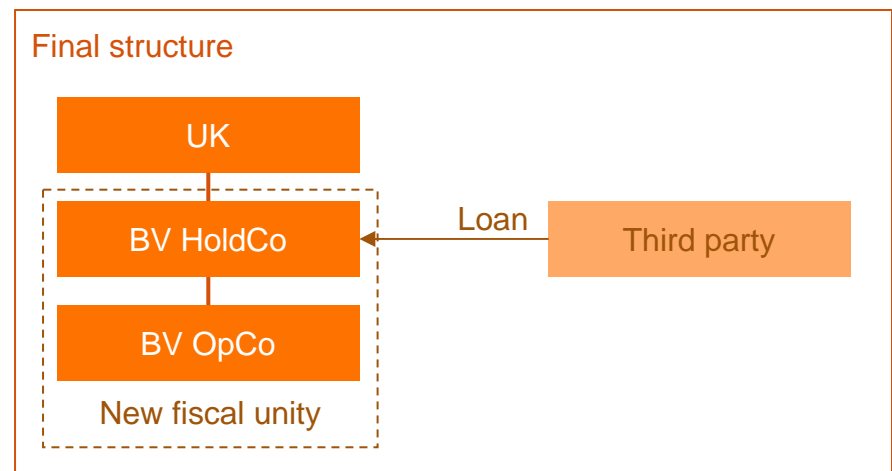
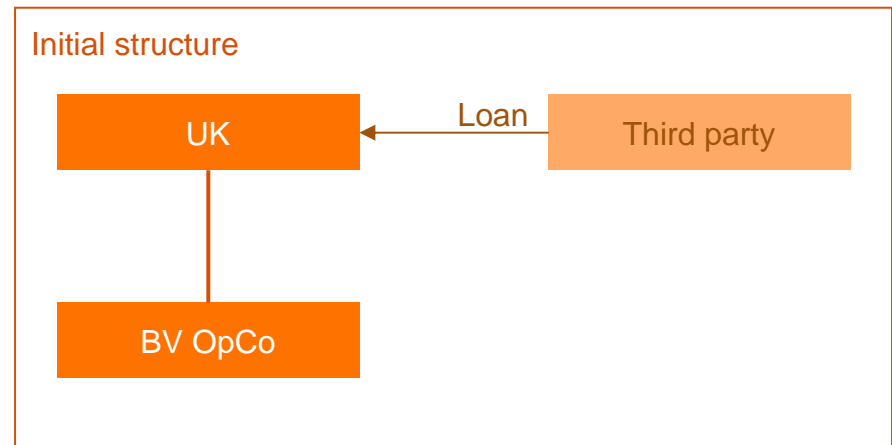
- Creating tax deductible interest that can be offset against Dutch profits

Tax considerations

- The interest paid can be offset against profits of the fiscal unity
- Anti-avoidance rules should be monitored

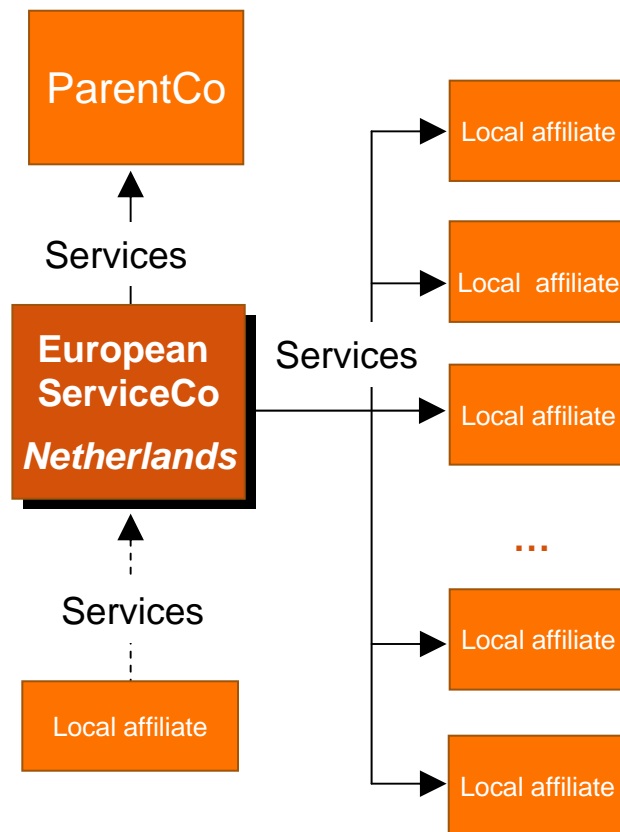
Applicability

- Taxable base in the Netherlands
- UK loss position



3. How to structure your investments

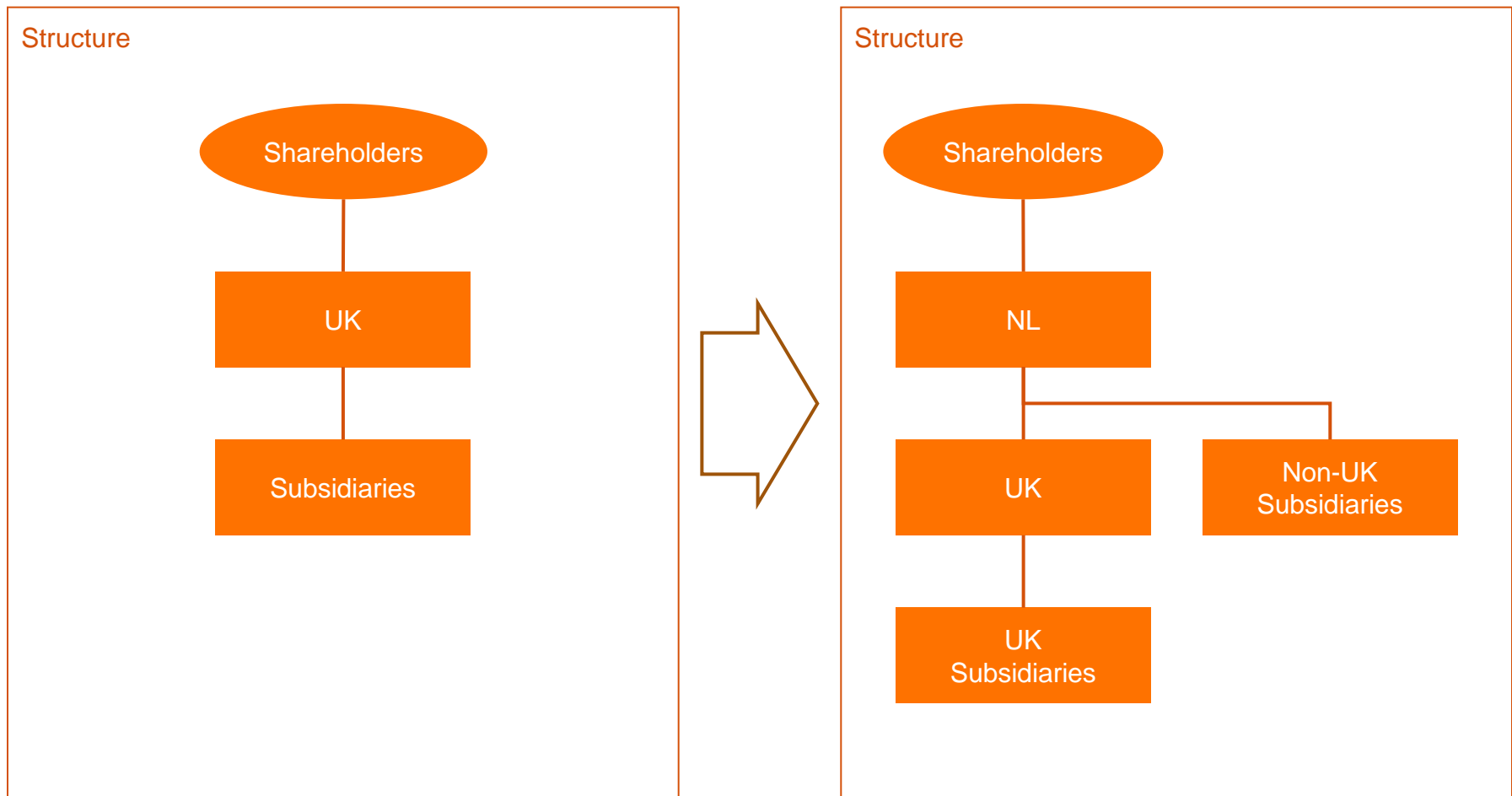
Principal structure



- Transfer Pricing methods for calculation of remuneration for services provided by ServiceCo to group companies.
- Advance Pricing Agreement with the Dutch tax authorities.
- Excess profit rulings can be obtained, informal capital contribution or (royalty) payments.
- Licensing: innovation box

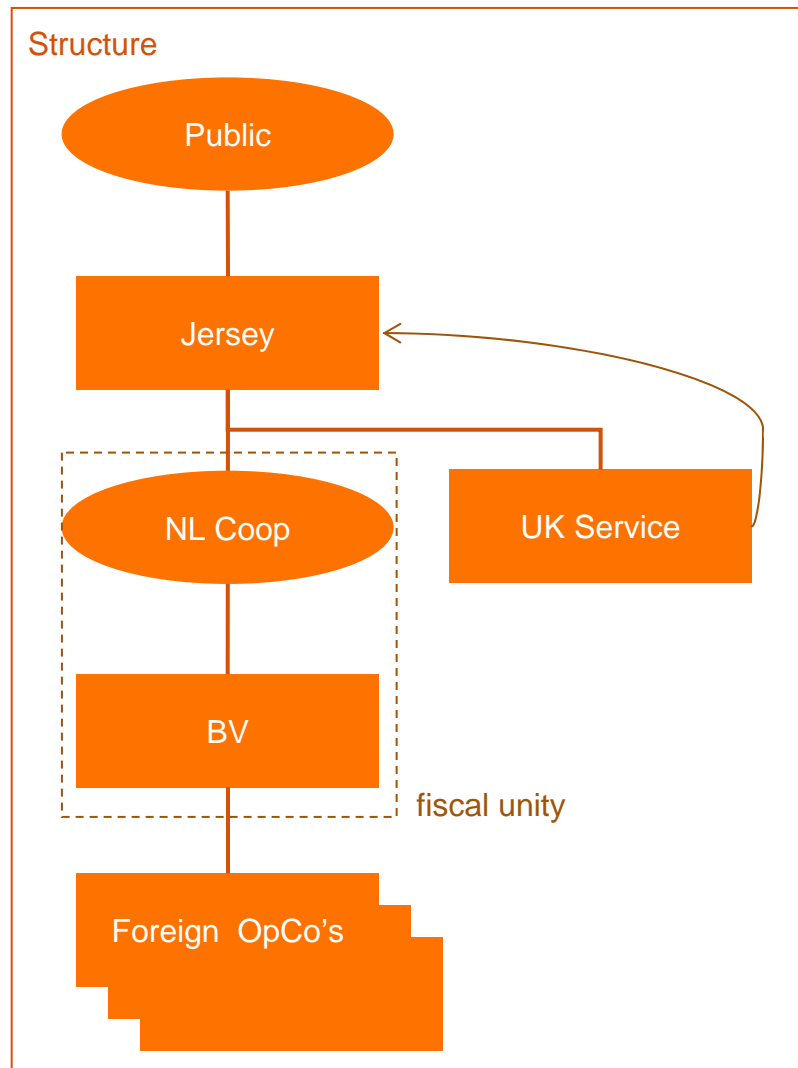
3. How to structure your investments

Using the Netherlands as top holding location



3. How to structure your investments

Offshore structure



How does it work:

- Jersey IPO company is used for listing the group.
- A UK service company makes it possible to hold certain key people functions in the UK.
- The Dutch holding company provides optimal flexibility for international restructurings and profit repatriations.

Tax considerations:

- The tax residency of all the companies in the various jurisdictions should be safeguarded (“substance”).
- Payments from NL to Jersey should not be subject to Dutch dividend withholding tax or substantial shareholding rules if structured carefully (rulings available).
- Due to extended treaty network of NL optimal reduction of foreign dividend withholding taxes on dividends from ROW to Public.
- Capital gains and dividends received from subsidiaries should be tax exempt under the Dutch participation exemption.

3. How to structure your investments

Financial crisis

Dutch credit crunch tax ideas

- Preliminary carry back decision
- Extended loss carry back period (3 years)
- Accelerated depreciation up to a maximum of 50% per year in FY 2009 and FY 2010
- Debt buy-back
- Devaluation of assets
- Provisions
- Participation exemption
- Thin capitalization
- Transfer pricing
- Innovation box

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Thank you

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