OTTERSPEER HAASNOOT & PARTNERS
Dutch and International Tax Counsel

Summary of the Netherlands Tax Regime 2017

Relevant features for foreign investors

May 2017

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GENERAL

Profits of companies and certain other legal entities resident in the Netherlands with a capital divided into shares are subject to corporate income tax, irrespective whether or not such companies have been incorporated under the laws of The Netherlands. The corporate income tax rate is 25% (20% over the first € 200,000 of taxable profit; the amount of € 200,000 will increase to € 350,000 by 2021) Non-resident companies are taxable for Netherlands source income only. Besides corporate income tax, companies are not subject to any significant taxes on income (except certain companies involved in the exploration or exploitation of oil & gas on the Dutch part of the continental shelf).

The Netherlands do not levy withholding taxes on interest (except where the relevant loan, based on certain features of equity, is reclassified as equity) and on royalties. Profit distributions by a company are subject to dividend withholding tax at the (domestic) rate of 15%; under various tax treaties this rate is reduced substantially. For qualifying EU parent companies a 5% minimum shareholding will be sufficient to benefit from a full exemption of the dividend withholding tax (instead of the current 10% - threshold of the EU Parent Subsidiary Directive). Tax exempt EU and EEA resident funds, which are comparable with Dutch tax exempt funds (e.g. pension funds) are entitled to a refund of Dutch dividend withholding tax. As from 1 January 2012, tax exempt funds which are resident outside the EU and EEA are also entitled to a refund of Dutch dividend withholding tax on portfolio dividends, under the condition that an arrangement applies between the Netherlands and the residence state which provides for the exchange of information.

Company profits are calculated in Euros. If another currency than the Euro is to be considered as the functional currency for the company, it is permitted to calculate the taxable profit in that functional currency, provided a functional currency tax ruling is obtained.

Profits and losses are determined under the assumption that the company is dealing with related parties on an arm’s length basis (i.e. under third party conditions). Adjustments to taxable profits can be made if the tax payer is unable to provide sufficient transfer pricing documentation. All tax payers involved in intercompany transactions are required by law to maintain adequate transfer pricing documentation in relation to their intercompany transactions.

Generally, no distinction is made between different types of income such as trading profits, capital gains, passive income etc. A few exceptions apply:

- An exemption applies to qualifying shareholdings (see 'the participation exemption').
- Income qualifying for the so-called innovation box is subject to an effective tax rate of 5% (see the innovation box).
- Tonnage tax (special regime for shipping & related activities; see 'Shipping')
- Losses incurred by a company that only performs holding activities and no other activities can only be offset only against profits of a similar nature.

The recognition of annual income and the valuation of balance sheet items should be in conformity with "sound business practice", a doctrine developed in case law. The "sound business practice" concept is generally in line with internationally accepted accounting principles. Consequently, no fixed rules for depreciation of fixed assets and the calculation of provisions exist, although minimum depreciation periods and other restrictions may apply. The main principle of the "sound business practice" is the historical cost convention, although a number of facilities are available aimed at avoiding taxation of inflation profits, such as roll-over facilities for capital gains and special provisions for the valuation of stocks. Furthermore, certain elements of the total income may be tax exempt. Most well-known is the participation exemption for income and capital gains derived from qualifying subsidiaries (see the participation exemption).

Another important facility of the Netherlands corporate income tax system is the possibility to opt, under certain conditions, for a consolidated tax treatment for Netherlands group companies (see Consolidated Tax Treatment).

Foreign source income may be *exempt* from Dutch corporate income tax on the basis of either double tax treaties or the Dutch unilateral regulations for avoidance of double taxation (see Unilateral Regulations of Double Taxation). Alternatively, foreign (withholding) tax on foreign source income may be credited against the Dutch tax liability on such income.

IMPORTANT ITEMS

THE PARTICIPATION EXEMPTION

General

Under the participation exemption, proceeds from qualifying subsidiaries, including dividends and both realised and unrealised capital gains, are excluded from the taxable profit for corporate income tax purposes. Costs of acquisition and disposition of participations are also covered by the exemption and therefore are non-deductible.

Accordingly, capital losses on the disposition of participations are not deductible. An important exception is made for losses in connection with the liquidation of a participation (i.e. liquidation losses may be deductible), provided certain requirements are met.

A shareholding is a participation if the taxpayer owns at least 5% of the *nominal issued and paid up capital* of a Dutch or foreign company with a capital divided into shares. Shareholdings of less than 5% do not qualify.

As a general rule, the participation exemption applies if a participation is not held as a passive investment by the tax payer (“motive test”). A participation is held as a passive investment if it is held for the purpose of earning a return on investment which can be expected from ordinary asset management. If the motive test cannot be met, the participation exemption may still apply if the participation is a “qualifying participation”, which is the case if the ‘subject-to-tax test’ is met and/or the ‘asset test’ is met.

Subject to tax test

The subject to tax test effectively requires a general comparison of the profits tax regime of the country where the participation is established with the Dutch corporate income tax regime. The subject to tax test is met if:

- The statutory rate of the profits tax is at least 10% and there are no significant differences in tax base, or
- The statutory rate of the profits tax is at least 10% and there are significant differences in tax base but these do not result in an effective tax burden of less than 10%, or
- The statutory rate of the profits tax is less than 10% but it is probable that the effective tax burden is at least 10%.

Asset Test

The asset test is met if the aggregated assets of the participation do not consist, for 50% or more of *low taxed* free passive assets. In principle, free passive assets are all assets which are not necessary for carrying on the business of the participation. Examples of free passive assets are excess cash and group receivables. However, under certain conditions even excess cash and group receivables may not be treated as free passive assets. The following assets are deemed not to be low taxed passive assets:

- Assets the income of which is subject to levy of profits tax which is considered “real” by Dutch standards (reference is made to the subject to tax test).
- Real estate (including rights which relate directly or indirectly to real estate).
- Low taxed passive assets which do not form more than 30% of the total assets of the participation owning the low taxed passive assets.
- Group receivables or receivables from providing assets intra group, provided that the participation owning such receivables meets the strict conditions for “active group financing companies” or provided that such receivables have been externally financed (legally and in substance) for at least 90%.

Where the participation is held as a passive investment or is not a qualifying participation, double taxation relief is granted by way of a 5% deemed tax credit (irrespective of the underlying tax rate). In relation to EU & EEA resident passive investment participations, the underlying rate of tax may be credited at the request of the taxpayer, instead of the 5% deemed tax credit.

Compartmentalization

Until 16 April 2015, the compartmentalization principle was not codified in Dutch domestic law. Following a decision of the Dutch Supreme Court dated 14 June 2013, in which it was decided that compartmentalization is not obliged in case of a change in the participation exemption legislation, the regulations regarding compartmentalization under the participation exemption were codified on 16 April 2015 (with retroactive effect as from 14 June 2013).

In short, compartmentalization is obliged in cases where the treatment of income from shares (i.e. dividends or capital gains) changes over time (from exempt to non-exempt or vice versa) due to a change in facts and circumstances (i.e. interest drops below 5%) or a change in the participation exemption legislation itself. Under the new compartmentalization legislation, the market value of the shares should be determined at the time of the change in treatment. In case of a change from non-exempt to exempt, the new legislation results in a deferred taxable claim, which is due upon the sale of the shares or as soon as dividends, which are attributable to the non-exempt period, are received by the shareholder (the latter is not applicable if the EU parent-subsidiary directive is applicable, in which case the deferred tax claim will only become payable upon the sale of the shares).

Hybrid mismatches

Following the implementation of EU Directive 2014/86 as per 1 January 2016, the participation exemption no longer applies on income from shares to the extent that such income is deductible at the level of the subsidiary.

TRANSFER PRICING

Netherland's corporations who control other Dutch (NL) or foreign entities have to use at arm's length prices for their inter-company pricing. This pricing system is based on the OECD Transfer Pricing Guidelines (hereafter: guidelines), which in its turn are applicable towards countries who adopt this system in their bilateral tax treaties.
If the commercial prices used are not in line with the principles laid down in the guidelines, for tax reasons the commercial prices will in principle be adjusted towards "guideline"-prices.. These adjustments may to a certain extent be followed by penalties and will cause substantial administrative disorder and therefore have to be avoided.

TP-REPORT

The occurrence of TP-adjustments can best be avoided by means of performing a TP-report-study.

A TP-report should, by explaining the inter-company transfers, fulfil the taxpayers obligations towards the tax authorities. The obligations are:

1. Lay down sufficient documentation (e.g. by means of a TP-report) which proves that intercompany prices used are in line with the guidelines;

2. Starting from tax year 2016:

    a. For groups with total sales exceeding €50 million:

    Draft a Master file / Country file report and/or framework which is in line with the OECD BEPS Action Report 13:
    - The Master file should give a comprehensive overview of the parent company's activities in relation to the subsidiary's activities;
    - The Country file should give a description of the subsidiary's activities and sales and profit level, plus TP-explanation of the sales and profit level.
    - The Master file / Country file must be laid down in the administration of the taxpayer after the annual accounts and respective CIT-return have been accomplished. Tax authorities may decide to pick up and share with the other tax authorities spontaneously.

b. For groups with total sales exceeding €750 million:

Make available Country-by-Country (CbC) Report / framework (also based upon BEPS-Action Report 13):

- Draft a framework which shows per group-entity / group-country figures about i.e.:
  - Sales
  - Employees
  - Profit
  - Working capital
  - Etc.
- This framework must be made available to the tax authorities 12 months after the annual account period has ended and will be automatically exchanged by and between the tax authorities, to give the tax authorities involved the possibility to check their tax files. CbC-Reporting as such cannot be an argument for TP-adjustments.

CONSOLIDATED TAX TREATMENT (FISCAL UNITY)

The fiscal unity rules have been laid down in the Corporate Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*) and tax regulations.

A fiscal unity can be formed by and between Netherlands resident companies, and (under certain circumstances) – by and between – Netherlands resident companies and non-resident entities carrying on (part of) their enterprise through a Netherlands branch.

Following the implementation of EU case law, a fiscal unity is also possible between:

- Netherlands resident sister companies owned by a parent company established in another EU/EEA Member State; and
- a Netherlands resident parent company and a Netherlands resident sub-subsidiary owned by an intermediary company established in another EU/EEA Member State.

The main conditions for forming a fiscal unity include the following:

1. *Share ownership requirement*
   - The fiscal unity parent company or other fiscal unity member companies will need to own, legally and economically, at least 95% of the issued and paid up share capital, giving right to at least 95% of the voting power, at least 95% of the profit, and at least 95% of the capital, of the fiscal unity subsidiary;

2. *Book year requirement*
   - The fiscal unity member companies need to have the same book year;

3. *Same regime requirement*
   - The fiscal unity member companies need to be subject to the same tax rules (e.g. exempted companies and normally taxable companies cannot be joined in a fiscal unity);

4. *Corporate form requirement*
   - In addition to NVs and BVs (and similar Netherlands resident non- Netherlands entities) certain other entities may form part of a fiscal unity as parent company.

A fiscal unity is in fact a fiscal consolidation, resulting in all participating companies being treated as a single taxpayer for corporate income tax purposes. One of the major benefits of a fiscal unity is the mutual settlement of profits and losses of the different group companies. Other benefits are the possibility for group reorganization without (current) taxation, and the reduction of tax compliance. And finally, a benefit for (purely domestic taxpayers only) can be that certain interest deduction limitations or loss compensation limitations do not apply.

The fiscal unity may be terminated upon request or will be terminated automatically if any of the conditions for its formation are no longer met.

ANTI-BASE EROSION – DEDUCTIBILITY OF INTEREST

Interest on a loan from a related entity is not deductible to the extent that the loan relates to one of the following transactions:

1) A profit distribution or a repayment of paid-up share capital, by the taxpayer or a related entity (which is subject to Dutch CIT), to a related entity or a related individual;

2) A capital contribution to a related entity, by the taxpayer, a related entity (which is subject to Dutch CIT) or a related individual (who is a resident of the Netherlands);

3) The acquisition or increase of interest in an entity, which, after the acquisition or increase of interest will qualify as a related entity, by the taxpayer, a related entity (which is subject to Dutch CIT) or a related individual (who is a resident of the Netherlands).

Nevertheless, the interest is deductible when:

1) the taxpayer can demonstrate that there are sound business reasons for taking up the loan <u>and</u> for the transaction; or

(2) the interest is subject to a ‘sufficient’ tax on profits (in general at least 10% on a tax basis that is determined by Dutch legislation) at the level of the recipient <u>and</u> the recipient is not entitled to a loss carry forward (subject to conditions under which the Tax Authorities may demonstrate that the transaction is not entered into under sound business reasons or is entered into to compensate foreseeable losses of the recipient).

INTEREST DEDUCTIBILITY FOR 'EXCESSIVE PARTICIPATION DEBT' RESTRICTED

Interest on "excessive" participation debt is not deductible if and to the extent such interest exceeds € 750,000 per year. Excessive participation interest equals total interest expense multiplied by the fraction which is year-average "participation debt" divided by year-average total debt. Participation debt is defined as the purchase price of participations less total equity (i.e. participations are deemed to be fully financed by equity).

<u>*Example:*</u> Taxpayer A BV's tax balance sheet (x €1 million)

Debit		Credit	
Participations	400	Equity	250
Other assets	300	Debt	450

A BV's profit before interest is 25. A pays total interest expense on debts of 30. Without the proposed restriction, A BV's profit after interest would be -/- 5. Pursuant to the restriction, A BV's participation debt would be 400 – 250, is 150.

Excessive participation interest expense is 30 (total interest expense) x 150 (participation debt) / 450 (total debt) is 10. Reduced by the € 0.75 million threshold, 9.25 (million) of interest expense would be non-deductible.

In order not to impede "proper" expansion of enterprise, the acquisition of a participation or increase of an existing participation (through capital contributions or purchase of additional shares) which forms and expansion of operational activity (of the group of which the taxpayer forms part) is excluded from the restriction of participation interest expense (i.e. interest is deductible). Internal transfers of participations to Dutch holding companies are (in principle) not considered expansion of operational activity. Expansion of operational activity may still result in non-deductible participation interest expense in certain cases of (deemed) abusive financing (e.g. "double dip").

In order to alleviate the burden of proof for the taxpayer in relation to 'old' participations, for purposes of the excessive participation debt formula, the taxpayer may elect to disregard 90% of the acquisition cost of all participations acquired in or before the book year running or starting on 1 January 2006 (i.e. for book years equal to calendar years all participations acquired on or before 31 December 2006), thus reducing the excessive participation debt by the amount of the acquisition cost of those participations.

It is expected that as per 1 January 2019 these restrictions will be abolished and replaced by measures included in EU Directive 2016/1164 (see below)

INTEREST DEDUCTIBILITY FOR 'ACQUISITION DEBT' RESTRICTED

In case a foreign or domestic acquirer uses a debt-financed Dutch acquisition company ("Acquisition Company") to acquire a Dutch target company and includes such target company into a fiscal unity with its Acquisition Company, or merges such target company with the Acquisition Company, the interest expense on the acquisition debt ("Acquisition Debt", and "Acquisition Interest") reduces the taxable profit of the fiscal unity. Pursuant to the

Acquisition Interest Provision, aimed at avoiding erosion of the Dutch taxable base described above, Acquisition Interest (including associated expenses and positive and negative foreign exchange results) will be deductible only against the stand alone profit of the Acquiring Company (or, in case the Acquisition Company forms part of a fiscal unity, and under certain conditions, Acquisition Interest will be deductible against the fiscal unity profit excluding the profit of the acquired target(s)).

However, this restriction only applies to the lower of:

(i) Acquisition Interest in excess of € 1 million ("First Limitation");
(ii) Interest on the excessive part of Acquisition Debt ("Second Limitation").

In the first year of inclusion of the acquired participation into the fiscal unity, Acquisition Debt is excessive to the extent it exceeds 60% of the acquisition price. This percentage will decline to 25% in eight years. As from year eight after inclusion of the participation into the fiscal unity, Acquisition Interest paid on Acquisition Debt in excess of 25% of the acquisition price is not deductible.

It is expected that as per 1 January 2019 these restrictions will be abolished and replaced by measures included in EU Directive 2016/1164 (see below)

NEW INTEREST DEDUCTIBILITY LIMITATION RULE AS PER 1 JANUARY 2019

Following EU Directive 2016/1164, the Netherlands is obliged to introduce a new interest deductibility limitation rule, most likely, as per 1 January 2019. Deductibility of interest will be limited to the higher of 30% of EBITDA or EUR 1 million. A higher limit applies in case the taxpayer has an equity-to-asset ratio equal to or higher than the group of which the taxpayer forms part. For financial institutions, a temporary exemption is envisaged since the nature of their business requires more detailed consideration. Both excess EBITA (unused absorption) and excess interest expense (insufficient absorption) may be carried forward.

NON-ARM'S LENGTH LOANS

Recently, the Dutch Supreme Court ruled that the impairment of a loan (that is also qualified as a loan for tax purposes) between related entities, which loan was not entered into under arm's length conditions, is not deductible. In short, a loan is not entered into arm's length conditions if a third party only would have been prepared to grant the loan (under the exact same conditions) against a profit dependent interest.

It is recommendable to carefully document the conditions of the loan at the time the loan is entered into. When determining the interest percentage and the repayment schedule, the (lack of) guaranties or collateral by the borrower (or a related entity) should be taken into account.

ACCELERATED DEPRECIATION

If certain requirements are met, the following assets may qualify for accelerated depreciation:

- Assets with a beneficial impact on the environment as listed in a decree;
- Ocean shipping vessels meeting certain exploitation conditions, up to 20% per annum (not-applicable in cases where the Tonnage Tax Regime applies).

NON-RESIDENT CORPORATE INCOME TAX LIABILITY

Non-resident entities can be subject to corporate income tax on income from the following Dutch sources (non-resident corporate income tax liability):

1. Income (dividends and capital gains) from to 5% or larger shareholdings in Dutch companies ("substantial interest tax")
2. Income from a business enterprise carried on by a Dutch permanent establishment or permanent representative ("Dutch business")

Re 1. The substantial interest tax is an anti-abuse rule, which applies <u>only</u> if:

a. the non-resident entity holds the substantial interest in the Dutch company with the avoidance of income tax or dividend withholding tax by another person as its principal, or one of its principal purposes,

b. within the framework of an artificial (series) of arrangement(s).

The question whether a substantial interest is held with the avoidance of income tax or dividend withholding tax as the principal or one of the principal purposes, will have to be determined on a case by case basis, taking into account legislative history and case law. The same applies for the question whether or not an artificial construction or series of artificial constructions is in place.

Re 2. Income from a Dutch business is a broad term that includes certain fictions (deemed Dutch businesses) such as:

- Dutch real estate
- Receivables on a Dutch company in which the creditor holds a substantial interest

DUTCH COOPERATIVES AND DIVIDEND WITHOLDING TAX

In the past, Dutch Cooperative Associations ("Coops") have become a popular alternative Dutch holding company, as they are – in principle – not subject to Dutch dividend withholding tax, while being eligible for a.o. participation exemption and treaty benefits. As of 2012, however, in abusive situations, members of a Coop can become liable to Dutch dividend withholding tax. Abusive situations may exist where a foreign company owning a participation in a Dutch company interposes a Coop in order to avoid Dutch dividend withholding tax, or where a foreign company owning a foreign participation interposes a Coop to avoid the foreign withholding tax, without the Coop having real (economic) meaning.

In an effort to further tighten the rules against abuse of Coops, the Dutch state secretary of finance has announced the intention to introduce new legislative proposals that are planned to enter into effect on 1 January 2018. As a result of these proposals, Coops that function (for 70% or more) as holding and/or financing companies, will be required to withholding dividend tax on distributions to members who have a 5% or larger interest in the Coop (and members who have a less than 5% interest but who cooperate as a group and collectively have an interest of 5% or more), unless:

1. The Coop forms part of a chain of companies that carry on an active business, and
2. The member in the Coop is resident in the Netherlands or a country with which the Netherlands have concluded a treaty for the avoidance of double taxation, and
3. The structure is not abusive.

These conditions are explained only very briefly in the announcement. The legislative proceedings to this proposal should provide guidance as to how to explain the conditions.

In this announced proposal, other Dutch entities which have always been subject to dividend withholding tax, such as BV's and NV's will be granted similar treatment as the Coop. This would be beneficial to the Dutch investment climate, as this would mean that BV's and NV's that meet the abovementioned criteria should no longer be subject to dividend withholding tax, even in situations where the applicable double tax treaty allows the Netherlands to tax dividend distributions.

FINAL SETTLEMENT (EXIT) TAXES

If a company, as a result of a transfer of its place of effective management or activities ceases to be subject to Dutch corporate income tax, this results in a revaluation of assets and liabilities for fair market value. The corresponding capital gains must be reported as taxable income. For transfers within the EU, in National Grid Indus (C 371/10), the ECJ ruled that:

1. the exit tax settlement constitutes a restriction on the freedom of establishment (a transfer of the place of effective management within the Netherlands would not have trigger the tax), but

2. such restriction is justified under the principle of territoriality, and that the Dutch exit tax legislation is appropriate for ensuring the preservation of the allocation of taxing rights between the Member States concerned;

Following the ECJ's recommendation, the Dutch Ministry of Finance issued an Implementation Decree, which was later replaced by legislation. The legislation offers taxpayers the possibility to opt for extension of payment regarding final settlement taxes, subject to conditions. For further information, we refer to our Tax News Bulletin of 6 January 2012 and the unofficial translation of the Decree (which was later replaced by legislation).

Also under the EU Anti-Tax Avoidance Directive of 29 January 2016 exit taxation is required.

AVOIDANCE OF DOUBLE TAXATION

TAX TREATIES

The network of Netherlands tax treaties for avoidance of double taxation is extensive. Nearly all treaties are based on the OECD Model Tax Convention and some have features of the UN Model Tax Convention between developing and developed countries.

Application of treaties with EU countries may coincide with application of EU regulations, like the Parent-Subsidiary Directive, the Merger Directive or the Arbitration Convention (if and when applicable). In such case, the most beneficial regulation prevails.

In recent years, the Netherlands has concluded Tax Information Exchange Agreements (“TIEA’s”) with a significant number of jurisdictions, many of which are considered tax havens. Not all of these TIEA’s are yet in force. Reference is made to our treaty chart for an overview.

Recently, in November 2016, more than one hundred jurisdictions adopted an anti-abuse measure in the form of a multilateral instrument (MLI) which is meant to achieve that every bilateral tax treaty between OECD member states will automatically include general anti-abuse provisions, in the form of either limitation on benefits provisions or a principal purpose test (PPT). The Dutch Government appears to be in favour of the PPT.

UNILATERAL REGULATIONS FOR AVOIDANCE OF DOUBLE TAXATION

In cases where bi- or multilateral treaties do not provide for avoidance or mitigation of double taxation, the Netherlands apply unilateral regulations for the avoidance of double taxation. The regulations apply to taxpayers (individuals and companies) resident in the Netherlands.

The unilateral regulations apply to:

- ✓ Personal income tax
- ✓ Wage tax
- ✓ Inheritance and gift tax

For profits and other income, the general method for elimination of double taxation is the so-called exemption method; Netherlands tax on the world-wide income is reduced by a percentage that corresponds with foreign income divided by world-wide income. Profits or income must have been subject to tax on profits or income in the other state. Furthermore, profits must have been derived from a permanent establishment in the other state.

Furthermore, double tax relief is available for dividends, interest and royalties arising in countries mentioned in a list of qualifying developing countries, which list includes an important number of countries which are not developing countries in the strict sense of the word. The double tax relief is determined on the basis of the ordinary credit method (whereby a credit for the foreign tax is given), unless double tax relief on the basis of the above-mentioned exemption method would result in lower double tax relief (in which case this lower relief will apply). A number of tax treaties (most often with developing countries) contain tax

sparing credit provisions (i.e. a credit based on a higher amount than the actual foreign withholding tax).

AVOIDANCE OF DOUBLE TAXATION FOR PERMANENT ESTABLISHMENTS

Until 1 January 2012, PE losses were immediately deductible from the Dutch taxable base (i.e. can be used to offset head office profits), subject to a later recapture. Under the new Object Exemption, which was introduced as per 1 January 2012, PE losses will no longer be deductible against head office profits.

The Object Exemption will not apply to low taxed passive PE's. Instead of an Object Exemption, profits from low taxed passive PE's are eligible for a fixed 5% credit. PE losses which have become permanent due to the fact that the PE activities have been terminated, and which have not been subject to local loss relief in the PE country, are deductible from the Dutch taxable base in the year in which the PE activities are terminated. Finally, under the proposed Object Exemption, the "subject-to-tax" requirement (mostly in non-treaty situations) will no longer be a condition for relief from double taxation.

LIMITED CARRY FORWARD OF LOSSES

Netherlands companies have the possibility of carrying back losses from business activities to the previous book year, and forward to the next nine book years.

TAX EXEMPT STATUS FOR INVESTMENT COMPANIES

There are three general types of investment funds in the Netherlands:

1. Closed limited partnerships ('besloten commanditaire vennootschappen') or Netherlands resident foreign equivalents thereof
2. Fiscal Investment Funds, ("FIF")
3. Exempt Investment Funds ("EIF")

Closed limited partnerships or Dutch resident foreign equivalents thereof are transparent for Dutch corporate tax income tax purposes as a result of their capital structure. Income from partnership interests are subject to personal income tax at the level of the individual (see Taxation of individuals). Closed limited partnerships are not subject to Dutch dividend withholding tax. They are also not considered residents of the Netherlands and as such are not entitled to Dutch bilateral tax treaty benefits.

FIF's are subject to Dutch corporate income tax, however a zero percent rate applies. As a result of it being subject to Dutch corporate income tax, a FIF is entitled to Dutch bilateral tax treaty benefits. A FIF is subject to Dutch dividend withholding tax, and is required by law to distribute its profit no later than in the eighth month following the end of the taxable year. The FIF regime was designed to enable passive investors to benefit from economies of scale and the spreading of risks through collective investment, without incurring an additional tax burden at the level of the investment fund.

In practice, the obligation to distribute profits in the eighth month after the taxable year appeared to be considered a difficult burden for certain investment funds. As a reaction to

this, the EIF regime was introduced as of 1 August 2007. The EIF is exempt from Dutch CIT and exempt from Dutch dividend withholding tax. As a result of its exempt status, it is not entitled to Dutch bilateral tax treaty benefits. Unlike the FIF, the EIF is not required to distribute its profits, but if and to the extent this does not happen individual shareholders are taxed on the basis of a deemed dividend income.

Although the EIF was originally not designed for this purpose, in practice it has been approved that individuals (substantial interest holders) may also benefit from the EIF regime under certain circumstances, and provided that the conditions of the regime can be met. Starting 2017 this opportunity has become much less attractive.

SHIPPING

TONNAGE TAX REGIME

Netherlands ship owners and operators can opt for the Tonnage Tax Regime which permits them to determine taxable income not on the basis of the profit and loss account, but on the basis of the vessel's freight capacity, provided that certain conditions are met. For a period of at least 10 years, profits will be based on an amount per net ton of the ship, according to a degressive scale, starting with EUR 9,08 per 1000 net ton per day for the first 1,000 net ton, and decreasing to EUR 0,50 per 1000 net ton above 50,000 net ton. This should be very attractive for ship owners who are generating profits, but it should be borne in mind that this effect backfires when the ship-owner incurs losses later in the 10 year period, while he will be considered to have earned profits for tax purposes. The Tonnage Tax Regime is also available for enterprises which are not (co-)ship-owners, but which take care of the entire crew and technical management of qualifying vessels.

Owners and operators of cable ships, pipe-line layers, assessment vessels and crane ships are also able to opt for the Tonnage Tax Regime.

RESEARCH AND DEVELOPMENT TAX INCENTIVES

INNOVATION BOX

Current I-box

If a company has opted for the innovation box, a deduction from taxable base applies of 80% from the innovative profit so that an effective 5% corporate income tax (CIT) rate will apply to the operational profit which is derived directly or indirectly from qualifying intellectual property ("IP").

As from 2017, IP only qualifies if a WBSO-declaration is available.

Large companies (sales ≥ €50 million. or innovative profit ≥ 7.5 million) need - starting from 2017 - an additional entry ticket, being (e.g.):

- software title;
- patent;
- connected license;
- pharmaceutical right.

The entry ticket must be connected to the IP.

R&D expenses are immediately deductible, i.e. in the year in which they are incurred. However, a recapture for future years exists. The innovation box does not apply directly to losses from the innovative activity, which means that these are deductible at the regular tax rate of 25%. But the 5% rate will only apply to the innovative profit in later years after recovery of those losses.

Modified Nexus Approach

From 2017 the Modified Nexus Approach (MNA) is applied. The MNA originates from international agreements as closed in the BEPS-Arena (Action 5). This means that a taxpayer needs to take into account the connected R&D activity costs of a related company and must apply a certain discount for these activities based on the following formula:

(Qualifying expenditure *1.3 / Total Expenditure) * innovative profit = qualifying innovative profit.

Total Expenditure includes the costs of the related R&D-company; qualifying expenditure does not.

TRANSITIONAL LAW

Until 2017 it was sufficient if a company either had a patent or a WBSO-declaration as entry-ticket for the I-box. The criteria for large companies and the MNA did not apply yet. In such cases, for existing qualifying IP, a grandfathering-rule of four and half years is applicable.

RESEARCH AND DEVELOPMENT FACILITY – LABOUR COSTS

The Research and Development Facility ("RDF") is a reduction for wage tax liability (and social security contributions). In effect, it subsidizes R&D labour.
To qualify, one has to contact the sub department of the Ministry of Economic affairs ("RVO") and argue by means of a formal request that the taxpayer performs technical new projects.[1]

In 2016, the deduction is 32% (40% in first three years) of the first € 350,000 in R&D wage costs, and 16% of the R&D wage costs in excess of € 350.000 (up to a maximum wage of € 14 million. In addition a R&D-deduction applies: the R&D costs (not being internal or external employees) are calculated using a fixed average hourly wage, which applies to all R&D employees (€ 10 per S&O hour for the first 1,800 hours; if the limit is reached, a tariff of € 4 per hour exists). Alternatively, one can also choose to deduct real R&D-costs.

Proceeds from intangible property, for which the RDF was granted in the development stage, are to be included in the innovation box (see above).

THE ATR/APA PRACTICE

ADVANCE PRICING AGREEMENT (APA) AND ADVANCE TAX RULING (ATR)

The Netherlands has an advanced and well developed tax system. The possibility of prior open communications with the Tax Administration about issues that may be interpreted in different ways and their tax consequences, resulting in certainty in advance, is considered an essential element. All deliberations take place within the scope of applicable law and jurisprudence. Solutions are determined on a case by case basis and laid down in an A(dvance) T(ax) R(uling), or A(dvance) P(ricing) A(greement).

The APA & ATR Unit, which a.o. deals with agreements and rulings for (sub)license and financing activities, is located at the Rotterdam Tax Administration. This also applies to the Central Desk for potential foreign investors, which operates in close co-operation with the APA & ATR team.

ATR (ADVANCE TAX RULING) - HOLDING COMPANIES

The term ATR is reserved for advance rulings concerning (1) (intra group) holding and management companies, (2) hybrid financing or hybrid entities and (3) (non)existence of permanent establishments within The Netherlands.

The ATR for holding and management companies covers the application of the Dutch participation exemption and the at arm's length character of management fees.

[1] Technical may be both hard- and software.

APA (ADVANCE PRICING AGREEMENT) - (INTERMEDIATE) FINANCING AND LICENSING

An APA offers certainty in advance. An APA can cover a wide range of transfer pricing issues. The taxpayer itself can indicate for which elements it requires certainty in advance e.g.:

- specific transactions;
- transactions between specific companies;
- transfer pricing method; and
- whether either a unilateral, or a bi- or multilateral approach is desired;

Advance pricing agreements are based on the OECD and EU transfer pricing guidelines. A specific category is the APA for intercompany licensing and financing activities.

The activities of The Netherlands company have to be documented, analysed and determined and an adequate arm's length compensation must be documented.

If a Dutch company has minimal substance but runs a real risk, which risk is covered by an adequate amount of equity, foreign withholding taxes on interest, (portfolio) dividends, and royalties can be credited against the Dutch corporate income tax liability on such income. Also, a company which has been organised in this way will have more possibilities to prevent or resist challenges by foreign tax administrations regarding the beneficial ownership test which is part of most (more recent) tax treaties in order to benefit from tax treaty protection.

Activities like these can also be implemented without first obtaining a formal APA, and therefore without certainty in advance.

No APA will be obtained in case of insufficient substance regarding for example, the management board of the Netherlands company (see Substance Requirements below).

Exchange of APA's and ATR's

Starting 2016 the Netherlands tax authorities agreed on a multilateral base (BEPS-platform) that rulings will be exchanged automatically with other Tax administrations involved (BEPS Action 12, mandatory disclosure rules).

APA'S MORE IN GENERAL

If, in a situation where a unilateral APA applies, the other country makes a transfer pricing adjustment, the APA shall not pre-empt the application of the mutual agreement procedure under a bilateral tax treaty or an opposite adjustment in The Netherlands.

The APA request should include at least the following information:

- character and background of the transactions;
- description of the Group companies involved;
- group structure;
- state(s) involved;

- evidence for the transfer pricing;
- transfer pricing method;
- ultimate beneficial ownership disclosure.

SUBSTANCE REQUIREMENTS

An important element of the APA practice is that the substance of a Dutch company is strictly observed by the tax authorities. “Intermediary financing companies”, i.e. companies of which the activities consist for 70% or more of intercompany financing and/or intercompany licensing, are required to meet the substance requirements, irrespective of whether or not they apply for an APA on the remuneration for their intermediary financing activities. In determining whether a company qualifies as an intermediary financing company, holding company activities are disregarded.

As of 2014, the substance requirements are as follows:

- □ At least half of the statutory directors, authorised to make decisions, are Dutch residents;
- □ The directors must have sufficient professional skills to perform their tasks;
- □ The company has qualified personnel for an adequate execution and registration of transactions;
- □ Board decisions shall be made in The Netherlands;
- □ The most important bank accounts are held in the Netherlands;
- □ The books and records of the company must be kept in The Netherlands;
- □ The company’s business address must be in The Netherlands;
- □ The company cannot also be resident for tax purposes in another country;
- □ The company bears real risks in relation to the interest paid/received on loans and/or royalties paid/received on license agreements;
- □ The company‘s equity must be appropriate in light of its real risks borne.

In practice, a third party corporate service provider can be hired to help meet these substance requirements. Failure to meet the substance requirements can result in exchange of information by the Dutch tax authorities with the relevant countries involved.

From 2014, intermediary financing companies are required to report in their annual corporate income tax whether they meet all of the substance requirements. In years in which the taxpayers do not apply for an arrangement for avoidance of double taxation (e.g. a double tax treaty, or the EU interest and royalty directive), a taxpayer is not required to report in its corporate income tax return whether or not it meets all substance requirements.

Failure to meet the substance reporting requirements may result in a fine of up to € 20,500.

CENTRAL DESK FOR POTENTIAL FOREIGN INVESTORS

In order to be able to obtain a prior confirmation of their future tax position before making investment decisions without unnecessary delay, potential foreign investors should discuss relevant issues preferably with one single tax commissioner who has a broad experience and expertise in this field.

Based on this concept, the tax authorities have created a Central Desk for such investors with the Rotterdam Tax Administration. The Central Desk can issue prior confirmations in the field of corporate income tax, wage withholding tax, dividend withholding tax, personal income tax and value added tax.

Also, arrangements about customs duties can be initiated via the Central Desk. This Desk acts in close co-operation with the ATR & APA Institute.

Obviously, such arrangements can only be made within the boundaries of legislation and case law. Inter alia, the following issues can be confirmed with the Central Desk:

- so-called informal capital contributions;
- treatment of royalties (tax deductibility);
- lifetime over which assets can be depreciated;
- applicability of 30% rulings (personal income tax);
- permits to postpone payment of VAT on imported goods from the moment of importation until the VAT over the relevant period is due (in principle the same VAT can be deducted simultaneously which results in significant cash flow advantages).

IMMOVABLE PROPERTY

REAL ESTATE TRANSFER TAX

The Netherlands impose a tax upon the transfer of the legal (or economic) ownership of real estate located within the Netherlands. The tax is levied from the purchaser of the real estate. The present rate for residential houses amounts to 2% of the sales price (or if applicable the higher fair market value of the real estate). For other real estate, not being residential houses, the rate amounts to 6%. A number of exemptions apply, amongst others in cases where a transfer is subject to value added tax (VAT) and in the case of restructurings of enterprises.

Also the transfer of shares in certain companies can be treated as the transfer of real estate held by such companies (so called “real estate companies” or “REC’s”). As of 2011, the rules applicable to REC’s have been further tightened, in an effort to combat abusive transactions. Under these rules, broadly, real estate transfer tax is due in cases where, at the time of the transfer or any time during the year before the transfer:

- the fair market value of real estate represents at least 50% (until 2011: 70%) of the company’s assets,
- and at the same time at least 30% of the real estate is situated in the Netherlands,
- the real estate is held mainly (i.e. for 70% or more) for the sale, acquisition or exploitation of such real estate (i.e. passive investment), and
- the purchaser acquires (including any shares already owned) a shareholding of 1/3 (in case the acquirer is a company; 7% in case the acquirer is an individual) in the capital of the company or increases such shareholding.

Under these ~~new~~ rules, real estate abroad also counts for the assets test ~~since 2011~~. This means that, at least theoretically, the transfer of shares in a foreign company, the assets of which consist also of at least 30% Dutch real estate, may be subject to Dutch real estate

transfer tax, even if the transferor and/or transferee are non-Dutch residents. It can be expected that the real estate transfer tax will be very difficult to administer, levy and collect, in such cases.

TAXATION OF INDIVIDUALS

GENERAL

Individuals resident in the Netherlands are subject to personal income tax on their worldwide income; non-resident individuals are subject to personal income tax on income from Dutch sources. At first sight, the burden of personal income tax in the Netherlands appears to be a high one, taking into consideration the maximum personal income tax rate of 52%. However, in many cases the average tax burden is less than one would expect, since the Netherlands is one of the few countries allowing taxpayers deduction from their taxable income of interest on (mortgage) loans to finance their houses. Also, qualifying expatriates can benefit from so called 30%-rulings.

For personal income tax purpose three types of income are recognised i.e.:

- employment and business income, subject to progressive personal income tax (PIT) and social security rates of up to 52% (box 1);
- income from substantial shareholdings, subject to a flat rate of 25% (box 2) and
- deemed investment income, subject to a flat rate of 30% on the deemed return on investment:
  - Investments until € 75,000: deemed return on investment 2,87%;
  - Investments from € 75,000 up to € 975,000: deemed return on investment 4,6%;
  - Investments from € 975,000: deemed return on investment 5,39%

The consequence of the box system is that losses in one box cannot be offset against income from another box, but only against income from the same box.

Taxpayers are not entitled to tax free amounts. Instead, resident taxpayers are entitled to a credit against their total annual PIT liability. The credit declines as the income grows (2017: maximum credit: € 5,477; minimum credit: € 0). Several additional credits are available depending on personal circumstances.

BOX 1 – BUSINESS AND EMPLOYMENT INCOME

RATES

TAXABLE INCOME			**PERSONAL INCOME TAX**		**SOCIAL SECURITY CONTRIBUTION**		**TAX AND CONTR. COMBINED**	**ACCUM.**
BRACKET								
€		**€**	**%**	**Max €**	**%**	**Max €**	**Max €**	**Max €**
0	-	19,982	8.90	1,778	27.65	5,525	7,303	7,303
19,982	-	33,791	13.15	1,815	27.65	3,818	5,633	12,936
33,791	-	67,072	40.80	13,578	-	-	13,578	26,514
67,072	-	excess	52.0		-	-		

Since 2014, the maximum tax rate at which mortgage interest can be deducted decreases by 0,5% each year. For the year 2017, the rate for deductible mortgage interest amounts to 50%.

BOX 2 - INCOME AND CAPITAL GAINS FROM SUBSTANTIAL SHAREHOLDINGS

For resident tax payers a substantial shareholding is recognised when the taxpayer holds, together with his partner (including spouse), directly or indirectly:

- 5% or more of any class of share capital in a company with a capital divided into shares; or
- option rights giving rights to acquire, directly or indirectly, 5% or more of any class of shares in a company with a capital divided into shares; or
- profit sharing rights to 5% or more of the annual profits or liquidation proceeds of a company with a capital divided into shares; or
- so called long term usufruct and similar rights to 5% or more of any class of shares in a company with a capital divided into shares;

If a substantial shareholding is recognised in one of the above categories, all other shares, option rights, profit sharing rights and usufruct and similar rights are deemed to form part of the substantial shareholding. If the taxpayer himself does not have a substantial shareholding but his partner or certain other relatives do so, the shares, option rights, profit sharing rights and usufruct and similar rights owned by the taxpayer are deemed to form a substantial shareholding.

Where a substantial shareholding exists, profit distributions by the company and capital gains realised upon sale of the shares are subject to personal income tax at a flat rate of 25%.

For *non-resident taxpayers*, the above only applies in case of a substantial shareholding in a company resident in the Netherlands which shareholding does not form part of the capital of a business enterprise of the tax payer. If such a Dutch resident company transfers its seat of residence to a place outside the Netherlands, such transfer is considered as a deemed disposal of the substantial shareholding by the non-resident taxpayer.

BOX 3 - DEEMED INCOME FROM NET WEALTH

Deemed investment income, subject to a flat rate of 30% on the deemed return on investment:

- Investments until € 75,000: deemed return on investment 2,87%;
- Investments from € 75,000 up to € 975,000: deemed return on investment 4,6%;
- Investments from € 975,000: deemed return on investment 5,39%

The deemed return is calculated over the amount of net wealth as of 1 January of the taxable year.

30% RULINGS

For highly qualified employees who come to work in the Netherlands on a temporary basis, the tax burden and the way of determining taxable income could create serious problems if the Netherlands did not have special regulations for such employees. Therefore, for a maximum period of eight years, so-called 30% rulings are available for qualifying individuals, who come to work in the Netherlands on a temporary basis. Since 1 January 2012, the headlines are as follows:

- The maximum term of the 30% ruling is eight years (before 2012: ten years);
- This term is reduced with the periods of previous stay in the Netherlands in the last 25 years (before 2012: 10 to 15 years);
- A minimum gross salary of € 37,000 (2017) is required (€ 52,857 before reduction of the 30% allowance), except for:
  - Employees under 30 with a Master degree (2017: € 28,125, respectively € 40,179)
  - Scientists (under conditions, no minimum salary);
- Employees must have lived more than 150 KM from the Dutch border in more than two-thirds of the 24 month period before commencement of the Dutch employment (this is to avoid unintended use by people who live just across the border);
- Scarcity of the employee’s skills should (only) be demonstrated if the salary in (almost) the entire branch is higher than the above mentioned minimum salary.
- Transitional rules apply to rulings granted before 1 January 2012.

The first advantage of the 30% ruling is, broadly, that the employer may grant the employee a tax-free allowance equal to 30% of his gross employment income without having to prove that this is a reimbursement of extra-territorial costs (i.e. extra costs of temporarily staying outside the country of origin). The employment contract will have to stipulate that the gross salary includes a 30% allowance as defined by law. As a result the employee will be taxed on approximately 70% of this employment income.

The second advantage of such ruling is the possibility for the employee to opt for a treatment as a partially non-resident taxpayer, which implies that the employee is only taxed as a resident for box 1 income; for box 2 and 3 income he can opt for taxation as a non-resident.

School (tuition) fees for primary and secondary international schools can be reimbursed by the employer on a tax-free basis.

POSSIBILITY TO OPT FOR TREATMENT AS A RESIDENT TAXPAYER

In certain cases it would be discrimination if non-resident individuals earn income from Dutch sources but cannot claim the same personal deductions as resident individuals. To avoid such discrimination, so-called qualifying non-resident individuals will only be subject to tax in the Netherlands on their Dutch income. The qualifying non-resident individual can benefit from the same deductions and tax credits as resident individuals (except in cases where the non-resident individual already benefits from a similar deduction in his/her country of residence).

This tax regime only applies to non-residents who live in an EU or EEA Member State, Switzerland or the BES Islands. At least 90% of the income of the non-resident individual should be subject to income or wage tax in the Netherlands (in line with EU case law, i.e. 10 May 2012, Commission vs. Estonia, C-39/10, exceptions may apply). In order to demonstrate that the 90% criterion is fulfilled, the non-resident individual should provide an official income statement from the Tax Authorities of his home country.

In case X of 9 February 2017 (nr. C-283/15) has been decided that the ‘working state’ has to take into account the personal and family situation of a taxpayer who has no income in his ‘residence state’ from which he can deduct costs; even if in the ‘working state’ the taxpayer earns less than 90% of his income. We expect that the national law will be amended based on this case.

SOCIAL SECURITY AND SOCIAL INSURANCE

The Netherlands social security scheme covers social security (i.e. benefits on retirements and death), social insurance (i.e. benefits on disability, medical aid and sickness) and basic health insurance. In contrast to some EU countries, social security contributions are capped. As this is not the case in some EU Member States like France or Belgium, this makes The Netherlands attractive for highly qualified labour. The Netherlands is a party to various international regulations. Most important are the EC Regulation 1408/71 and 883/2004.

Also, the Netherlands have concluded social security arrangements with, inter alia, Australia, Canada, Israel, Yugoslavia, Norway, New Zealand, the United States and Switzerland.

Usually, international agreements start from the principle that an employee is insured in the country where his employment is exercised. Therefore, an employee working in the Netherlands is covered by Dutch social security, subject to two possible exemptions.

Firstly, most regulations contain special provisions for temporary secondment. Under EC Regulation 1408/71, an employee may remain insured in his home country upon request, provided, inter alia, that his secondment is not expected to last more than 12 months, and that his remuneration is paid by an employer in his home country. An extension of not more than 12 months can be granted if the secondment lasts longer than the first 12 months due to unforeseen circumstances. Secondly, most international regulations permit the authorities to

depart from their basic rules. Under EC Regulation 1408/71, the Netherlands authorities permit the social security scheme of the state of origin remains applicable for a maximum period of five years, or sometimes for an even longer duration of certain projects.

In May 2010 EC Regulation 1408/71 was replaced by EC Regulation 883/2004. The period of the first exemptions in EC Regulation 1408/71 has been extended to 24 months. Extension of 12 months due to unforeseen circumstances is not possible under the new EC Regulation. An employee working in the Netherlands will only be covered by Dutch social security if the employee does not work 25 % of the period in the country where the employee is a resident. The new EC Regulation does not contain special regulations considering international transport. Furthermore, it is no longer possible to be insured in two countries. During a transitional period of no more than 10 years, the provisions of Regulation 1408/71 continue to apply for existing situations (as long as this situation does not change). The employee can also request for application of the new Regulation.

INHERITANCE AND GIFT TAX

Inheritance and gift taxes are imposed if property is acquired by inheritance or gift and the deceased or the donor was a resident of the Netherlands at the time of death or of the gift, or deemed to be a resident of the Netherlands.

Since 2010, Dutch immovable property or assets from a Dutch permanent establishment acquired from a deceased or donor who was a non-resident are no longer subject to inheritance and gift tax.

If the beneficiary/heir is a husband, wife, partner for tax purposes or child, the tax rates are 10% of the first € 122,269 (2017) acquired, and 20% of the remainder. For other persons, the tax rates are 30% of the first € 122,269 (2017) acquired, and 40% of the remainder. As a result some of the major estate planning objectives would be:

- minimizing the taxable basis;
- optimizing the use of gift tax and inheritance tax exemptions;
- optimizing the use of the lower 10% rate.

By far the most important exemption is the exempt amount for the husband/wife/partner for tax purposes: € 638,089 (2017). However, this amount is reduced by the value of pensions and annuities for them, but the minimum exemption remains € 164,842 (2017).

Also the business succession facility can play an important role. The first € 1,063,479 (2017) is fully exempt, while 83% of the amount in excess of € 1,063,479 is also exempt. Furthermore, it may be possible to request for a 10-year extension of payment for the tax which is due on the part which is not exempt.

Parents will often make annual gifts to their children equal to the tax free amounts (€ 5,320 for the year 2017). Once, in the period that the child is between 18 and 40 years old, a higher exemption can be claimed, in 2017:

a. € 25,526;
b. € 53,176 if certain conditions are met, if the amount is intended for tuition of the child, which is significantly more expensive than average;

c. € 100,000 if the gift is used for acquiring a Dutch residence by the child, or repayment of the mortgage loan on such house.

In cross border cases, it is quite common that double taxation arises if only the national gift/inheritance tax regulations are applied. Dutch unilateral regulations for avoidance of double taxation often provide double tax relief, by way of the ordinary tax credit method (i.e. the foreign tax is offset against the Dutch gift or inheritance tax, limited to the amount of such Dutch tax). Furthermore, double (gift/)inheritance tax conventions have been concluded with Austria, Finland, Israel, Sweden, the United Kingdom, the United States and Switzerland.

TRUSTS

In international estate planning, taxpayers have frequently used Dutch and foreign trust and trust-like entities to avoid income tax, inheritance tax, and gift tax. Commonly used trusts are the Anglo-American trust, the Dutch foundation, the "Stiftung", the "Anstalt", the Dutch Antilles "Individual Fund Foundation" ("Stichting Particulier Fonds"), the "Treuhand", etc.

Under anti-abuse legislation, for income tax purposes (and for certain corporate income tax purposes), the assets and liabilities, income and expense of the trust, are attributed to, and taxed with, the contributor (settlor). This attribution rule does not apply to assets and liabilities, income and expenses, in relation to which: (1) they belong to the equity / profit of an enterprise of the trust and (2) the trust itself is subject to a tax which is considered 'real' by Dutch standards (i.e. a tax of at least 10% over a taxable basis which is at least as broad as the Dutch taxable basis would be). After the death of the contributor, the assets and liabilities will be attributed to, and taxed with, the heir(s) (unless an heir can demonstrate that he/she will never be a beneficiary of the trust).

These attribution rules are also applicable for the inheritance and gift tax. Contributions of capital to the trust are therefore not subject to gift tax. The heirs will be taxed with inheritance tax upon the contributors death, since the assets and liabilities will then be attributed to them (this also ,applies when the contribution takes place upon the death of the contributor).

Payments made by the trust to the beneficiaries are treated as payments made by the contributor to the beneficiaries. The beneficiaries are subject to gift tax upon obtaining any legally enforceable right to the capital of the trust.

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