

# Incentives and taxes 2022

The Netherlands

INVEST IN  
Holland



# Stimulating Foreign Investment and Entrepreneurship



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# Competitive statutory corporate income tax rate

Corporate income tax is levied at the following rates (2022):

- € 0 - € 395,000: 15%
- € 395,000 and more: 25.8%

A special optional tax rate may be elected for profit resulting from (patented) intangible assets (Innovation Box). See next paragraph.

## Innovation Box: effective tax rate of 9%

- Companies can benefit from an effective tax rate of 9% for profits derived from self-developed intangible assets for which an R&D declaration has been obtained.
- The innovation box has the following relevant features:
  - To qualify for the Innovation Box companies require an R&D declaration. Additionally, large companies require patents, exclusive licenses, software programs, plant breeders' rights or pharmaceutical certifications to qualify.
  - There is a restriction with respect to the level of income that can be allocated to the Innovation Box. Relevant is whether R&D will be performed in-house or not, and how R&D costs are divided between related parties. This implies that the more R&D activities are outsourced to related parties, the less profits can be allocated to the intangible assets resulting from such R&D activities.
  - Development costs of intangible assets and losses on the exploitation of intangible assets can still be deducted against the general tax rate of 25.8%. The effective rate of 9% applies to profits exceeding development costs and losses incurred.
  - The application of the Innovation Box is optional.

# Participation Exemption: drive for European Headquarters

- The participation exemption, an important provision of Dutch corporate income tax legislation, explains the high number of European Headquarters in the Netherlands. The objective of the exemption is to avoid double taxation when the profits of a subsidiary are distributed to its parent company.
- Under the participation exemption, all benefits arising from a qualifying shareholding are exempt from Dutch corporate income tax. Benefits include cash dividends, dividends in kind, bonus shares, hidden profit distributions, and capital gains realized upon disposal of the shareholding.
- The participation exemption may be applicable without additional requirements for shareholdings of 5% or more provided that the shareholding is not considered to be held as a portfolio investment.

# Fiscal Unity Regime: tax consolidation within a group

- A group of Dutch companies (or permanent establishments of foreign companies located within the Netherlands) may upon joint request apply to be treated as a fiscal unity.
- This results in tax consolidation of the Dutch activities within a group and the filing of just one consolidated tax return.
- The main advantages of this regime are:
  - the offset of losses of one company against profits of another company within the fiscal unity.
  - a tax-free transfer of assets.
  - the elimination of most intercompany transactions.

# Losses: carry-back for one year and carry-forward indefinitely

- From 1 January 2022, new rules apply with regard to corporate income tax loss relief. Following these rules, tax loss can be carried back one year and carried forward indefinitely. However, the amount of losses to be deducted in a year has been limited.
- The annual loss compensation is limited to € 1 million, increased with 50% of the annual taxable profit exceeding € 1 million. This applies to both carry back and carry forward of tax losses.
- The new rules apply to all losses that occur after 1 January 2022, and all losses still available at that date.

## Ruling Practice: certainty in advance

- The possibility of obtaining an Advance Tax Ruling (ATR) or an Advance Pricing Agreement (APA) is an attractive feature of Dutch tax law and one of the pillars of the Dutch investment climate. The aim of the Dutch tax ruling policy is to offer nationally and internationally operating companies the opportunity to obtain certainty in advance about their future tax position. The Dutch Tax Authorities have a dedicated International Tax Certainty team operating out of Rotterdam.
- An ATR offers a taxpayer certainty in advance on the tax implications of a planned transaction or combination of transactions in an international context. It concerns the application of Dutch tax laws and regulations in a specific situation for a specific organization or company. For example: the applicability or inapplicability of the participation exemption. An ATR is an agreement on the tax characterization of international corporate structures, such as certainty in advance on the application of the participation exemption.
- An APA offers a taxpayer certainty in advance on the determination of an arm's length remuneration or a method for the determination of an arm's length remuneration for cross-border transactions (goods and services) between affiliated organizations and companies, or between units of the same organization or company. This is done on the basis of the OECD transfer pricing guidelines.

## Transfer Pricing: arm's length principle

- Dutch corporate tax law contains the provision that intra-company pricing for goods and services must be at arm's length.
- Guidelines for intra-company pricing are given by extensive policy based upon the arm's length principle for intercompany pricing as contained in the OECD model tax treaty and the OECD transfer pricing guidelines.

## R&D wage tax deduction (WBSO): incentive to invest in R&D

- The WBSO is intended to provide companies with an incentive to invest in research and development.
- With the WBSO, companies can lower the wage costs for R&D and other R&D costs and expenditures, such as prototypes or research equipment. The tax benefit can be set off in the wage tax return to the Dutch Tax Authorities.
- For companies the R&D payroll tax deduction amounts to 32% of the first € 350,000 of R&D wage and other costs and expenses, and 16% of all further R&D costs and expenses. For start-ups the tax deduction for the first € 350,000 spent on R&D is even higher (40%).
- There is no maximum allowance per calendar year for each company (or corporate entity).

# MIA and Vamil: tax relief schemes for environmentally friendly investments

- The MIA scheme allows companies to deduct up to an extra 45% of the cost of a qualifying environmentally friendly investment from their taxable profits. The investment amount must be at least € 2,500 per asset. The maximum investment amount for which a deduction is granted is € 25 million per calendar year.
- The Vamil scheme allows companies to amortize 75% of the investment costs of a qualifying environmentally friendly investment at once. This leads to an advantage in terms of liquidity and interest. For the other 25% of the investment costs companies follow the regular investment amortization rules.
- The Netherlands Enterprise Agency (RVO) publishes an annual list of qualifying environmentally friendly investments for the MIA and Vamil schemes, the so-called Environmental List.

# Energy Investment Allowance (EIA): tax relief program for sustainable energy

- The EIA provides support for investments in energy saving equipment and sustainable energy. Companies making use of the EIA gain a double benefit: their energy costs are lower and they pay less tax.
- In addition to the deduction of the customary depreciation, a company may also deduct 45.5% of the investment cost of energy saving equipment from their taxable profit. The average tax reduction is 11%.
- The EIA is applicable under certain conditions, such as:
  - the investment is listed on the so-called Energy list published by RVO annually.
  - the amount of the energy-saving investment must be at least € 2,500 and the maximum investment amount for which a deduction is granted is € 126 million per calendar year.
  - it concerns a new fixed asset and the application occurs within 3 months after purchase.
  - any investment grant that was received for the relevant asset must be deducted from the acquisition or production costs (operating subsidies need not be deducted, however).

## 30% facility: special tax regime for expats

- The Netherlands has a special tax regime for expatriates, the so-called 30% facility. Under this facility an employer is permitted under certain conditions to give an employee from abroad a tax-free allowance of up to 30% of his salary for the extra costs involved in his temporary stay in the Netherlands.
- In order to qualify for the 30% facility, the following conditions must be met:
  - the employee possesses specific expertise that is not available, or is scarce in the Dutch labor market, by meeting one of the following minimum taxable income levels:
    - minimum gross salary of € 39,647 (not including the tax-free allowance)
    - minimum gross salary of € 30,001 (not including the tax-free allowance) for masters (MSc) and doctorates (PhD) under 30
    - no minimum income level for scientists and researchers
  - the employee must be recruited (or assigned) from abroad: the employee must have lived outside a 150 km radius from the Dutch borders in at least 16 of the 24 months prior to the start of the Dutch employment.
  - the employer must be a Dutch wage tax-withholding agent and must have a positive decision from the Tax Authorities.
- The facility is available for a maximum period of 5 years (60 months).

## Wide Tax Treaty Network: avoidance of double taxation and reduction of withholding taxes

- The Netherlands has one of the most extensive tax treaty networks in the EU, having concluded bilateral tax treaties with approximately 100 countries to avoid double taxation and to provide reduced withholding tax on dividends, interest and royalties (for interest and royalties often to 0%).
- In case no treaty applies, the Netherlands often unilaterally provides for double tax relief. Most double taxation agreements negotiated by the Netherlands relating to income and capital gains have followed the draft models published by the Organization for Economic Cooperation and Development (OECD).



# EU Membership: access to the benefits of EU Directives

- The Netherlands' EU membership secures access to the benefits of implemented EU Directives such as:
  - the Parent-Subsidiary Directive, which prescribes that no international and economic double taxation may be imposed on participation dividends paid by a subsidiary in one Member State to its parent in another Member State, and
  - the Interest and Royalty Directive, which prohibits withholding taxes on cross-border payments of interest and royalties between affiliated companies.

# Dutch withholding tax on interest and royalty payments: tax only due in certain situations

- As of 1 January 2021, the Netherlands applies a conditional withholding tax on outbound interest and royalty payments.
- This tax is only levied on interest and royalty payments to affiliated beneficiaries in countries with very low taxes, countries on the EU list of noncooperative jurisdictions and in certain tax abuse situations.

# Dutch dividend withholding tax: withholding exemption in tax treaty situations

- Dividends distributed by Dutch resident companies are in principle subject to 15% Dutch dividend withholding tax.
- Dividends paid to qualifying corporate shareholders in countries with which the Netherlands has concluded a tax treaty that contains a dividend article, are exempt from Dutch dividend tax.

# VAT reverse charge mechanism on import: cash-flow advantages

- Based upon its special position as a distribution country in the EU, the Netherlands has implemented the so-called reverse-charge mechanism on import, which gives a complete deferment of import VAT to the periodical VAT filing.
- Pursuant to the application of this reverse-charge mechanism, import VAT is declared on the periodic return and reclaimed in the same form. As a result, the VAT at import generally does not become payable at all.
- To be able to use this procedure, the importing company needs an authorization. To obtain this authorization a company needs to be registered for VAT purposes in the Netherlands as a domestic company, or as a foreign company with a fixed establishment for VAT purposes in the Netherlands and needs to have regular imports to the Netherlands.
- If a foreign company has no fixed establishment in the Netherlands, the company could choose to operate through a fiscal representative for VAT purposes in the Netherlands. This fiscal representative may also obtain an authorization for the reverse-charge mechanism that can be used for imports by the foreign company.

## Dutch Tax Authorities: open and accessible

- The Dutch Tax Authorities understand how vital it can be for investors to know how tax law will be applied in their specific cases. Therefore, the Dutch Tax Authorities seek to be as open and accessible as possible and has set up the so-called Liaison for Potential Foreign Investors'. This Liaison provides foreign investors certainty in advance on the tax consequences of proposed major investments in the Netherlands. The tax inspector for the area where the company is located will be bound by the agreements made with the Liaison. The Liaison works together with the International Tax Certainty team. This team concludes APAs on transfer pricing issues and ATRs on other issues of an international nature.
- The Dutch Tax Authorities have a cooperative attitude towards taxpayers and aim for an enhanced relationship based on trust, transparency and mutual understanding. For this purpose the Netherlands introduced the voluntary so-called 'Horizontal Monitoring' program. The greatest advantage of Horizontal Monitoring is that certainty in advance on tax issues is given as early as possible. As a result, fewer checks afterwards are necessary and the administrative burden is reduced.

# Dutch Customs Authorities: practical and pro-active approach

- Goods that are brought into the European Union (EU) are, from the time of their entry, subject to customs supervision, meeting the requirements laid down in the EU customs legislation. The customs inspector understands the importance of a reliable government partner for enterprises. Where the import and export of goods are concerned, he is open to consultation in order to find the most suitable customs arrangements for your company.
- The Dutch Customs Authorities are well known for their practical and pro-active approach towards facilitating international trade and optimizing customs procedures. This fact underlies the Netherlands' preferred status as a country in which to base importing activities.



January 2022



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