Incentives and taxes 2021

The Netherlands

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Stimulating Foreign Investment and Entrepreneurship

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Introduction

With a competitive corporate income tax rate in Europe—15% on the first € 245,000 and 25% for taxable profits exceeding € 245,000—as well as a number of attractive incentive programs, the Netherlands offers a supportive fiscal climate for international companies. The Netherlands offers a wide tax treaty network, special measures for highly skilled expats and certainty in advance of future tax positions—just a few of the features that help multinational companies to thrive in the Netherlands.

Attractive features

- Relatively low statutory corporate income tax rate of 25% (15% for first € 245,000)
- Innovation box resulting in an effective corporate income tax rate of 9% for qualifying profits
- Participation exemption regime, making all benefits related to qualifying shareholding exempt from Dutch corporate income tax to prevent double taxation
- Fiscal unity regime providing tax consolidation of companies within a corporate group
- Loss carry-back for one year and carry-forward losses for six years
- Advance Tax Rulings (ATR) from the Dutch Tax Authorities giving certainty on future tax position.
- Transfer pricing practice in accordance with OECD Transfer Pricing Guidelines and the possibility to obtain an Advance Pricing Agreement (APA)
- R&D tax credit for qualifying R&D wage costs and other R&D expenses and investments (WBSO)
- Tax relief schemes for environmentally friendly investments (MIA/Vamil)
- Tax relief program for investments in sustainable energy (EIA)
- Special tax treatment on wages for expats (30% facility)
- Wide tax treaty network to avoid double taxation and reduce withholding taxes on dividends, interests and royalties (for interest and royalties often to 0%)
- No statutory withholding tax on outgoing interest and royalty payments
- VAT deferment upon importation: no actual payment of VAT
- Dutch Tax Authorities: easy access to the tax inspector
- Dutch Customs Authorities: practical and pro-active approach

Competitive statutory corporate income tax rate

Corporate income tax is levied at the following rates (2021):

- **€ 0 - € 245,000: 15%**
- **€ 245,000 and more: 25%**

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%. 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, one of the most important provisions 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: consolidated tax returns

- 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 for six years

- Both resident and non-resident companies have a loss carry-back possibility for one year and a loss carry-forward possibility for six years.
- Losses incurred before 2019 can be carried forward for nine years.
- The losses need to be confirmed by the Dutch Tax Authorities by means of a loss statement.

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. The aim of the Dutch tax ruling policy is to support international investors to the Netherlands by providing them the possibility of receiving certainty in advance about their future tax position. The Dutch Tax Authorities have a dedicated International Tax Certainty team operating out of Rotterdam.

- An APA provides certainty in advance on the fiscal acceptability of the price (transfer pricing) that the Dutch group company pays to or receives from a foreign group company for receiving or delivering services or goods.
- 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.

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 40% 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 (50%).
- 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 36% 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

- Companies that invest in energy-saving installations, or that make use of sustainable energy, may deduct a certain percentage of the invested sum from their taxable profits from the year in which the goods are purchased.
- 45.5% of the relevant expenditures is deductible from the taxable earnings in the year in which the equipment is purchased.
- The amount of energy-saving investment must be at least € 2,500. The maximum investment amount for which a deduction is granted is € 126 million per calendar year.
- EIA is applicable under certain conductions, such as:
  - — the investment is listed on the so-called Energy list published by RVO annually
  - — 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, which provides a substantial wage/income tax exemption of up to 30%. This is viewed as a reimbursement for the extra costs involved in living abroad.
- According to this facility, the employer may grant the employee a tax-free allowance of up to a maximum of 30% of his or her remuneration. The remuneration includes incidental and flexible forms of income such as bonus payments and stock options. Termination and pension payments are excluded from the 30% ruling.
- In order to qualify for the 30% facility, the following conditions must be met:
    - the employer must make a reasonable case that 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 € 38,961 (not including the tax-free allowance).
        - minimum gross salary of € 29,616 (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 employer must be a Dutch wage tax-withholding agent
- The employee must have lived outside a 150 km radius from the Dutch borders in at least 2/3rd of the 24 months prior to the start of the Dutch employment.
- The exemption is available for a period of 5 years (60 months).

Wide Tax Treaty Network:
avoidance of double taxation

The Netherlands has one of the most extensive tax treaty networks in the EU, having concluded treaties for the avoidance of double taxation on income and capital with approximately 100 countries. In case no treaty applies, the Netherlands often unilaterally provides for double tax relief. Companies may also benefit from favorable rules provided by EU directives and EU law. 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).

Treaty-based tax rate reductions

- The basic principle is that the Netherlands does not levy withholding tax on outgoing interest and royalty payments. As from 1 January 2021 a conditional source tax will be levied on outbound interest and royalty payments to affiliated beneficiaries in countries with very low taxes, countries on the EU list of non-cooperative jurisdictions and in certain tax abuse situations.
- Tax treaties usually reduce or eliminate the foreign withholding tax on interest or royalties paid to Netherlands-based corporate shareholders. Furthermore, the EU Interest and Royalty Directive eliminates the foreign withholding tax for qualifying EU royalties and interest.
- The Dutch statutory dividend withholding tax rate is 15%. However, dividends paid to qualifying EU corporate shareholders and corporate shareholders in countries with which the Netherlands has concluded a tax treaty that contains a dividend article, are exempt from dividend tax.
- Tax treaties usually reduce or eliminate the foreign withholding tax on dividends paid to Netherlands-based corporate shareholders. Dividends paid by EU-based establishments to qualifying corporate shareholders in the Netherlands are exempt from foreign dividend tax based on the EU Parent Subsidiary Directive.

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: easy access to the tax inspector

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 aims 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.

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