



NETHERLANDS



1. INTRODUCTION

The Netherlands makes multiple options available for legal structures for holding and business activities. Most commonly:

a. Forms of Legal Entity

i Private limited company (“BV”)

A BV is a legal entity with a capital divided into shares. Different types of shares may be created, including non-voting or non-profit-participating shares. A BV is the most frequently used legal entity in the Netherlands due to its flexible character. There is no minimum capital requirement for a BV. BV's are generally subject to company tax.

ii Public limited company (“NV”)

A public limited company is a legal entity with its capital divided into shares. Shares of an NV can be listed on a stock exchange. The minimum share capital for an NV is €45,000. NVs are generally subject to company tax.

iii Cooperative

Similar to the BV and NV, a cooperative is a legal entity (a special type of association). Participants in a cooperative are called members and cooperatives must have a minimum of two members upon incorporation. Some civil law notaries take the view that after incorporation one member is sufficient. Limited liability for the members of a cooperative can be achieved and furthermore a cooperative is generally considered to be a very flexible entity. Unlike the BV and NV, dividends paid by a cooperative formerly were not as a general rule subject to Dutch dividend withholding tax except for abusive situations. Therefore, cooperatives grew to be popular holding entities in international group structures. As a general rule, cooperatives are now subject to Dutch dividend withholding tax, unless specific exceptions apply (see section 9a.).

iv Partnerships

Under Dutch law, different forms of partnerships may be used. Based on our experience, partnerships are less frequently used for M&A purposes.

b. Taxes, Tax Rates

All legal entities are generally subject to Dutch corporate income tax. Following the 2021 budget, the highest corporate income tax rate will remain 25%. Profits up to €245,000 will be taxed at a rate of 15% in 2021. As of 2022, profits up to €395,000 will be taxed at a rate of 15%.

c. Common divergences between income shown on tax returns and local financial statements

Common book-to-tax differences include:

- ❖ Tax exempt dividends and capital gains from subsidiaries under the participation exemption;
- ❖ Limitation on depreciation of assets for tax purposes;
- ❖ Non-deductible expenses, including transaction costs;
- ❖ Application of interest deduction limitation rules;



- ❖ Non-deductible self-developed goodwill; and
- ❖ Foreign exchange results.

2. RECENT DEVELOPMENTS

There are various relevant developments for M&A deals and private equity in the Netherlands. In line with the implementation of the actions under the BEPS Action Plan, the Netherlands ratified the Multilateral Instrument ("MLI") in 2019. The Dutch Senate has adopted the MLI ratification bill, including the motion to opt out of the anti-commissionnaire provision, on 5 March 2019. The Netherlands will therefore make a full reservation on article 12 of the MLI.

The MLI entered into effect on 1 January 2020 for taxes withheld at source and for all other taxes in the first taxable period beginning on or after 16 September 2019.

The EU Anti-Tax Avoidance Directive I - including earnings stripping and CFC legislation – ("ATAD I") has been implemented as of 1 January 2019. The EU Anti-Tax Avoidance Directive II ("ATAD II") has been implemented as of 1 January 2020. From a Dutch tax perspective, the most relevant provisions included in both directives are the reverse hybrid mismatch rule, as this impacts current CV/BV structures, and the introduction of the CFC legislation and the earnings stripping rule. Furthermore, the Dutch Government published the Dutch blacklist of low taxed jurisdictions which is relevant in the application of: (i) the CFC legislation (see paragraph VIII - b), (ii) conditional withholding taxes (see section 9.c and d.) and (iii) the new ruling practice (see section 12.d.).

Another relevant development for private equity deal structures is the introduction of the conditional withholding taxes on interest and royalty payments to blacklisted jurisdictions per 2021. As the conditional withholding tax may also apply on payments to hybrid entities (not being a low taxed jurisdiction), it is key to review this position.

Moreover, the extensive Dutch interest deduction limitation rules have been amended, while, a general interest deduction limitation rule, i.e the earnings stripping rule under ATAD I, has been introduced.

Furthermore, the Dutch government has proposed additional amendments in the near future: (i) the potential introduction of a conditional withholding tax on dividends to low tax jurisdictions from 2024 (see section 9.d.), (ii) the introduction of a new group taxation regime (see section 3.b.) and (iii) increased substance requirements (see section 12.b.).

The 2021 Budget introduced new loss deduction rules for participations and permanent establishments. The new regulations are linked to the public discussion on the tax position of Dutch multinationals. The changes will limit the possibilities to claim a loss at the level of the Dutch taxpayer in relation to a participation or permanent establishment.

Finally, the following tax measures have been taken to reduce the economic impact of COVID-19 as of July 2020:

- ❖ Corona reserve in FY19 accounts and tax return to offset expected FY20 losses due to COVID-19;
- ❖ Upon request postponement of payment of taxes until July 2021, no fines and 0.01% interest on underpaid tax until 1 October 2020;
- ❖ Payment arrangement to pay the accrued tax debt in a maximum of 36 equal monthly installments starting 1 October 2021;
- ❖ Increase of the work-related cost scheme "WKR" (tax free allowances for employees) from 1,7% to 3% for 2020 and 2021 for the first €400.000 of the wage bill, with a maximum of €12.000;



- ❖ Release of the so-called “g-account” (guarantee account) until 1 April 2021 (escrow account solely used for wage tax and VAT payments to the tax authorities);
- ❖ Lowering of provisional tax assessments;
- ❖ Postponement of payment of energy tax and surcharge for sustainable energy (“ODE”) until 1 July 2021;
- ❖ Emergency measure for sustained employment to bridge 80% of the wage bill for companies with a(n) (expected) loss in turnover of 30% (20% in the first three months), starting from 1 October 2020 until July 2021 in equal three month periods (NOW 3.0).

3. SHARE ACQUISITIONS

a. Tax Attributes: Restrictions on use following change in control

Net operating losses (“NOLs”) (at the level of the target company) may be restricted as a result of the transfer of the shares in the target company. Under the anti-abuse rules NOLs cannot be carried forward if the ultimate ownership in the target company has changed substantially (30% or more), compared to the oldest loss year. This restriction is not applicable if the target company is an active trading company which has not substantially decreased its activities and does not intend to decrease its activities substantially in the future. A step-up in asset basis for the amount of hidden reserves (built-in gains) can be claimed if the NOLs will forfeit due to application of these rules. Prior to 2019, NOLs could be carried back one year and carried forward nine years. However, as of 1 January 2019, the carry forward of NOLs is limited to six years while the carry back remains the same.

Upon a merger or demerger, NOLs can be transferred at a joint request if certain conditions are met. Furthermore, the transfer of NOLs should be considered upon an exit from a fiscal unity. Losses in principle remain with the parent company, but so-called pre-fiscal-unity losses and losses of the fiscal unity that are attributable to the target company can be transferred to the target company upon its exit.

b. Tax Grouping

Dutch resident corporate taxpayers can form a fiscal unity when certain conditions are met (e.g. the parent company holds at least 95% of the shares and voting interest in its subsidiaries). In line with EU case law, a fiscal unity can also be formed between Dutch tax resident companies that have a common parent company resident in another Member State of the European Union or by a Dutch resident parent company and a Dutch resident sub-subsidiary that is held by an intermediate company located in another Member State of the European Union.

The main benefit of a fiscal unity is that profits and losses can be offset by companies included in a fiscal unity. Furthermore, companies can reorganise in a tax neutral way, as transactions between companies belonging to the same fiscal unity are, for the most part, disregarded for corporate income tax purposes. Also, only one corporate income tax return must be filed.

Anti-abuse provisions may trigger a tax claw back, however, and should be carefully monitored. In case of a transfer of an asset with built-in capital gain outside the ordinary course of business between companies included in a fiscal unity, a claw-back may arise if the fiscal unity ceases to exist with respect to the transferee or the transferor within six years after the transaction (three years in case of a transfer of a stand-alone business for shares). Furthermore, companies included in the fiscal unity remain jointly and severally liable for Dutch corporate income tax liabilities of the fiscal unity.



Following recent case law of the European Court of Justice, the Dutch government has adopted a legislative proposal – having retroactive effect – to avoid erosion of the tax base due to the partial fictitious application of the fiscal unity regime. Following the new legislation, the fiscal unity regime will be disregarded in certain situations. This may result in interest expenses no longer being deductible at the level of the fiscal unity. It is expected that a new group taxation regime will be implemented in the future. A final legislative proposal for the introduction of a new group taxation regime is expected in 2021.

c. Tax Free Reorganisations

Dutch law provides several mechanisms (“roll-over facilities”) to reorganise in a tax neutral manner at two levels (i.e for the Dutch tax resident shareholders and for the merging or demerging entities), in line with the EU Merger Directive. Taxpayers can in principle claim a reorganisation facility in case of a merger, a (partial) demerger, a business merger and a share-for-share merger. These reorganisation facilities may, under circumstances, also apply in cross border situations within the EU/EEA.

The reorganisation facilities can in principle be claimed by law. In certain situations, however (e.g. if the entities involved report carry forward losses, claim a reduction to avoid double taxation or apply the innovation box regime), the reorganisation facility is only applicable under additional conditions and parties involved should file a request for the application of the reorganisation facility. A reorganisation facility will not be allowed if the reorganisation is primarily aimed at avoiding or postponing taxation, and is not based on sound business reasons, such as a valid restructuring or rationalisation of the corporate structure. It is possible to request a confirmation in advance from the Dutch Tax Authorities (“DTA”) that the reorganisation is based on sound business reasons. A denial of such request is open to appeal.

As a result of the reorganisation facility, the entity receiving the assets or shares will value them at the original book value as reported by the transferring entity. The tax claim is therefore postponed, and possible claw back should be carefully monitored during a future reorganisation (e.g. a claw back may arise if the acquiring entity is sold within three years after the reorganisation took place).

If a real estate company is merged, the Real estate transfer tax (“RETT”) may be imposed unless the transaction qualifies for an exemption for mergers or spin-offs.

See the discussion under b. Tax Grouping above for the effects of reorganisations within a fiscal unity.

d. Transaction costs

Transaction costs (incurred by the acquiring or selling holding company) related to the purchase or sale of a subsidiary to which the participation exemption applies are not tax deductible for Dutch corporate income tax purposes. However, costs incurred during the exploratory phase when it is uncertain whether the transaction will take place, or costs related to the financing of the acquisition, such as advisory fees, are tax deductible. In this regard it is important to carefully document the timing and nature of the costs.

The Dutch Supreme Court recently provided more guidance on the deductibility of acquisition costs. The Supreme Court ruled that (i) costs are non-deductible if there is a direct causal link between those costs and the acquisition or disposal of a specific subsidiary, (ii) the non-deductibility of acquisition or disposal costs applies to both internal and external costs of the taxpayer, (iii) the non-deductibility relates only to the acquisition and disposal costs of a successful acquisition or disposal, (iv) if the disposal of a subsidiary fails, but continues later, it must be determined to what extent costs were incurred that would also have been incurred if the subsequent disposal had not taken place and (v) costs relating to an intended acquisition or disposal of a subsidiary must be recorded on the tax balance sheet as a transitory asset. At the moment that it is certain that an acquisition or disposal of a subsidiary will take place, the transitory asset is written off to extent that cost is deductible.



e. Purchase Agreement

The Dutch acquisition company and target may be included in a fiscal unity for Dutch corporate income tax purposes.

If the Dutch target entity was included in a fiscal unity for Dutch corporate income tax purposes, specific provisions should be included in the share purchase agreement (“SPA”). Specific provisions with respect to the Collection of State Taxes Act may also be relevant to include in the SPA.

In specific situations a cooperative may be beneficial from a Dutch dividend withholding tax perspective (see section 9.a.).

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The Netherlands does not levy capital tax, stamp duties or a minimum tax. If a company is considered to be a real estate company (see section 9.e.), the transfer of shares in the company may trigger a 6% (7% from 2021) (or 2% in case of owner-occupied housing) RETT.

g. Share Purchase Advantages

- ❖ In a stock purchase, the buyer may benefit from the target company's loss carryforwards, subject to change of ownership rules. If the losses will be forfeited under the change of ownership rules, a step-up for the amount of hidden reserves (built-in gains) can be claimed.
- ❖ If the target company owns Dutch real estate, a stock purchase may present better structuring opportunities to mitigate Dutch RETT.
- ❖ The seller may be able to apply the participation exemption, which exempts income (capital gains and dividends) derived from qualifying shareholdings.

h. Share Purchase Disadvantages

- ❖ In a stock purchase, the buyer will not obtain assets that can be depreciated or amortised. Shares can in principle not be depreciated. Costs relating to acquisitions as well as disposals of participations qualifying for the participation exemption are not tax deductible at the level of the acquiring (Dutch) company. In addition, the buyer may incur a potential dividend withholding tax liability on retained earnings, and an interest deduction limitation may apply at the level of the acquiring company.
- ❖ The buyer may bear the burden of the target company's existing tax liabilities, if any.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets generally results in a taxable capital gain.

b. Purchase Price Allocation

Assets should be acquired at fair market value. To substantiate the fair market value of the assets, a valuation report is recommended.

c. Tax Attributes

Tax attributes remain with the company selling the assets. Accordingly, upon an asset acquisition, no tax attributes should carryover and be taken into account by the buyer.



d. Tax Free Reorganisations

Transactions between companies belonging to the same fiscal unity are, mostly, disregarded for corporate income tax purposes. Assets can be transferred between companies in the fiscal unity without taxation of gain. Claw back provisions may be applicable if a company which has been party to intra-fiscal unity transactions exits the fiscal unity. See paragraph III.b for more information regarding the Dutch fiscal unity regime.

e. Depreciation and Amortisation

The acquired assets and goodwill can be depreciated or amortised for tax purposes based on the purchase price (fair market value). Goodwill generated from an asset acquisition can be depreciated over a minimum of 10 years at an annual rate of 10%. Other (in)tangible assets can be amortised over a minimum of 5 years at an annual rate of 20%.

f. Transfer Taxes, VAT

Dutch RETT of 2%-6% on the fair market value of the property or the consideration for the transaction (whichever is higher) may be due if the assets include Dutch real estate.

g. Asset Purchase Advantages

- ❖ The acquired assets and goodwill generated from the transaction can be depreciated or amortised for tax purposes at the purchase price (fair market value). In principle, all acquisition costs are tax deductible.
- ❖ In general, the buyer does not inherit any tax liabilities of the person selling the assets.

h. Asset Purchase Disadvantages

- ❖ The seller will incur capital gains taxation, which should be reflected in the purchase price.
- ❖ Dutch RETT (see above) may be due if the assets include Dutch real estate.
- ❖ Existing loss carryforwards (which are not utilised in connection with the sale) of the target company do not carryover to be used by the buyer.
- ❖ A Dutch acquiring company may be subject to a limitation on the deduction of interest expense.

5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

Generally, a Dutch BV will be established as an acquisition vehicle for the acquisition of a Dutch target entity.

b. Foreign Acquisition Vehicle

The application of the Dutch participation exemption regime should be reviewed if a foreign acquisition vehicle is used by a Dutch group (acting as buyer).



c. Partnerships and joint ventures

A joint venture can be established by using a legal entity (such as a BV) or by establishing a partnership. With regard to partnerships, the qualification of the partnership as tax transparent for Dutch tax purposes should be carefully reviewed.

6. ACQUISITION FINANCING

a. General Comments

In principle, no restrictions should be imposed on a buyer's ability to bring funds into the Netherlands to make an acquisition. The establishment of a BV, for example, can be completed in approximately two weeks. The opening of a bank account may, however, be time-consuming and carries an administrative burden in terms of KYC-procedures.

b. Debt

Under Dutch tax law, the qualification of financial instruments in principle follows the qualification for civil law purposes. Debt is however reclassified as equity if the instrument is considered: (i) a loan for which the legal documentation differs from the commercial intention; that is, if it appears that the parties intended to contribute equity, but that the contribution was documented as a loan, (ii) a bottomless pit loan or (iii) a profit participating loan.

Furthermore, the DTA may try to limit the total amount of debt under the arm's length principle, via a loan-to-value test. Although there is no defined ratio, a loan-to-value ratio of up to 70% is generally acceptable in the context of real estate investments.

Finally, the terms of the loan should also meet the at arm's-length requirements. The DTA may challenge the interest rate applied if a taxpayer cannot demonstrate the arm's-length nature of the loan terms.

The interest deduction limitation rules under Dutch tax law have recently been simplified. As discussed in Section 2. above, the interest deduction limitation rules relating to excessive debt financing and the leveraged acquisition holding regime were abolished in 2019, and the earnings stripping rule was introduced. The earnings stripping rule limits the deductibility of net interest expense in excess of €1 million to 30% of the taxpayer's EBITDA for tax purposes.

For share deals, interest deductions may be denied under application of a specific anti-base-erosion provision. Under this provision an interest deduction is denied in respect of intra-group loans relating to certain tainted transactions, including the acquisition of a subsidiary. Exceptions may apply if both the transaction and loan are based on sound business reasons or if the interest is effectively taxed at a sufficient rate (10% in accordance with Dutch standards) at the creditor's level.

The specific anti-base erosion provision (see above) applies only to related party debt. Related party debt that can be linked to an unrelated party debt may not be targeted by this provision if specific requirements are met.

The earnings stripping rule applies to both related and unrelated party debt and similar financing arrangements.

Debt-pushdowns can be created to a certain extent by including the leveraged acquisition company and the target company in a fiscal unity.



c. Hybrid Instruments

Under the implementation of ATAD II in 2020, hybrid mismatches (including hybrid financial instruments) will be targeted under Dutch tax law. Furthermore, the Dutch participation exemption does not apply to the extent that the payment is treated as tax deductible at the level of the payer.

d. Earn-outs

Earn-out payments related to the acquisition or sale of subsidiaries fall within the scope of the participation exemption regime and are consequently non-deductible or exempt from Dutch corporate income tax.

7. DIVESTITURES

a. Tax Free

Any capital gain realised upon the divesture of qualifying subsidiaries should be exempt from corporate income tax under application of the participation exemption. Subject to certain conditions, a reinvestment reserve may be taken into account for tax purposes.

b. Taxable

As a general rule, any gain realised upon a divesture that is not exempt under the reinvestment reserve exemption or the participation exemption is subject to corporate income tax.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide tax system

Dutch resident taxpayers are subject to Dutch tax on their worldwide income. Double tax relief is granted unilaterally under domestic legislation or under the application of double tax treaties.

b. CFC Regime

As of 2019, CFC legislation applies in the Netherlands. Under the CFC legislation, certain kinds of undistributed income of the CFC (see below) less related costs will be attributed to the tax base of the Dutch parent company and taxed at the standard Dutch corporate income tax rates.

Blacklisted jurisdictions

The Netherlands will apply CFC legislation only in specific situations in relation to low-tax (statutory tax rate <9%) and blacklisted jurisdictions. For this purpose, the government has issued a blacklist with jurisdictions in relation to which the CFC legislation may be applicable.



Controlled entities

CFC legislation may be applicable in situations where a Dutch taxpayer and / or a related entity or person holds a majority interest in an entity or permanent establishment. Related means connected by ownership of 25% or more in share capital, voting rights or profit rights. Majority Interest means 50% or more of the share capital, voting rights or profit rights. The CFC legislation also applies to indirect subsidiaries and to permanent establishments of Dutch taxpayers.

Exceptions are made if the CFC carries out substantial economic activities and if the income of the CFC consists 70% or more of non-CFC income.

Until recently, the CFC was considered to carry out substantial economic activities if the CFC met the “relevant substance” requirements. Following recent case law of the European Court of Justice (“Danish cases”) however, meeting the “relevant substance” requirements is no longer considered a safe harbor. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the Dutch Tax Authorities. If the substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.

The below categories of income are considered CFC income:

- ❖ Interest;
- ❖ Royalties;
- ❖ Dividends and capital gains on shares;
- ❖ Income from a financial lease;
- ❖ Income from insurance and banking activities; and
- ❖ Low value-added invoicing activities.

If all criteria are met, passive CFC income less related costs will be attributed to the Dutch parent company. The CFC income and costs are calculated in accordance with Dutch tax principles.

c. Foreign branches and partnerships

Foreign permanent establishments of Dutch taxpayers are exempt from Dutch corporate income tax under the so-called “object exemption”. The definition of a permanent establishment is aligned with the PE definition under the OECD Model Convention.

d. Cash Repatriation

Distributions received from qualifying participations are exempt from Dutch corporate income tax at the level of the recipient under application of the participation exemption.

The participation exemption generally applies when the Dutch entity holds 5% or more of the share capital and the participation is not held as a passive, low taxed investment.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Domestic dividend withholding tax exemption and dividend withholding tax position of cooperatives

Under the Dutch dividend withholding tax act, dividend distributions are in principle subject to 15% dividend withholding tax. The Netherlands introduced a domestic dividend withholding tax exemption. At the same time, the Dutch dividend withholding tax position of cooperatives has been amended.

Dividend withholding tax exemption - general

Under the domestic dividend withholding tax exemption, distributions to non-resident shareholders may be exempt from withholding tax under certain conditions:

- ❖ the non-resident shareholder is resident in an EU Member State or a tax treaty jurisdiction;
- ❖ the tax treaty between the Netherlands and the state in which the shareholder is tax resident contains an article on dividends (the applicable withholding tax rates are however irrelevant);
- ❖ the non-resident shareholder holds an interest of at least 5% in the Dutch taxpayer;
- ❖ the Dutch participation exemption would have been applicable if the shareholder were tax resident in the Netherlands; and
- ❖ the structure is not considered abusive.

A structure is considered abusive if the following two conditions are met:

- ❖ the principal purpose (or one of the principal purposes) of the shareholding is to avoid dividend withholding tax at the level of another person or entity (“avoidance or subjective test”), and
- ❖ it concerns an artificial structure or a series of artificial structures (“artificiality or objective test”).

Arrangements are considered to be “artificial” to the extent that they are not put in place for valid commercial reasons which reflect economic reality. Valid commercial reasons will be deemed present however in the following ‘safe harbor’ situations:

- ❖ the shareholder conducts operational business activities and the business of the shareholding or lower tier companies is in line with that business (“business link”); or
- ❖ the shareholder functions as a top holding entity within the group and as such is performing substantial managerial, strategic or financial functions for the group.

Following recent case law of the European Court of Justice (“Danish cases”), an intermediary holding company that meets the “relevant substance” requirements is no longer considered a safe harbor. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the relevant substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the Dutch Tax Authorities. If the relevant substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.



Dividend withholding tax position of cooperatives

As a general rule, cooperatives are subject to Dutch dividend withholding tax, similar to other Dutch entities such as BV's. However, the domestic dividend withholding tax exemption (see above) may also apply in relation to cooperatives.

The dividend withholding tax position of cooperatives differs from the position of other companies, such as BVs, in that only so-called "holding cooperatives" and a "qualifying membership interest" are subject to Dutch dividend withholding tax.

Holding cooperatives are those whose activities usually consist 70% or more of owning shareholdings that qualify for the participation exemption or granting – directly or indirectly – loans to affiliated companies or persons. The parliamentary history provides specific guidance with respect to private equity investments. In private equity structures, a cooperative may however very well not qualify as a holding cooperative based on other relevant factors even if the assets of the cooperative consist for 70% or more of participations. Relevant factors in this regard are, amongst others, personnel, office space and the active involved in the management of the participations. Furthermore, the cooperative is subject to dividend withholding tax only in relation to members holding a "qualifying membership interest" of at least 5%.

b. Foreign substantial shareholder regime

Non-resident corporate shareholders may be subject to Dutch corporate income tax under the foreign substantial shareholder regime. The regime may be applicable to non-resident corporate shareholders that hold a share or membership interest of 5% or more in a Dutch entity. Under the foreign substantial shareholder regime, income (dividends, capital gains and interest on shareholder loans) derived from the interest in the Dutch entity is taxed at the applicable corporate income tax rates (2021 : 15/25%).

The regime is applicable in abusive situations and is mirrored to the anti-abuse legislation under the domestic dividend withholding tax exemption. As such, the foreign substantial shareholder regime is applicable if the following two conditions are met:

- ❖ the main purpose or one of the main purposes of the shareholding is to avoid income tax at the level of another person or entity ("avoidance or subjective test"), and
- ❖ it concerns an artificial structure or a series of artificial structures ("artificiality or objective test").

The same safe harbors apply as under the domestic dividend withholding tax exemption (see section 9.a.). Also under the foreign substantial shareholder regime, meeting the "relevant substance" requirements is no longer considered a safe harbor.

c. Conditional withholding taxes on interest and royalties

From 1 January 2021, a conditional withholding tax on interest and royalty payments may be applied. The conditional withholding tax will only be due on interest or royalty payments to related entities in low-tax or EU blacklisted jurisdictions (see CFC legislation: section 8.b.), or in cases of abuse. The conditional withholding tax may also apply on payments to hybrid entities, which is particularly relevant for private equity. The withholding tax rate will be 25% in 2021 (in line with the applicable corporate income tax rates at that time).

Also, when the recipient of the interest or a royalty payment is not located in a low-tax or EU backlisted jurisdiction, the conditional withholding tax may still apply due to anti-abuse rules. A structure is considered abusive if meets both the "avoidance or subjective test" and "artificiality or objective test" (as described above).



Whether a structure is considered artificial is determined on a case by case basis taking into account all relevant facts and circumstances. There are no safe harbors under the anti-abuse legislation for the conditional withholding taxes on interest and royalties. In line with CFC legislation, the domestic dividend withholding tax exemption and the foreign substantial shareholder regime, the substance requirements are relevant in the discussion regarding the burden of proof.

Genuine economic activities in the Netherlands or in the low-tax or EU blacklisted jurisdiction do not prevent the conditional withholding tax in case the payment is made directly to the low-tax or EU blacklisted jurisdiction.

In relation to low-tax jurisdictions, with whom the Netherlands has concluded a tax treaty (such as Bahrain, Kuwait, Qatar and the UAE), the conditional withholding tax will only become effective as from 2024. In the meantime, the Netherlands will start to renegotiate the respective tax treaties.

Note that the interest or royalty payment may be considered non-deductible under e.g. Dutch anti-hybrid rules while also subject to the conditional withholding tax.

d. Conditional withholding tax on dividends

The State Secretary of Finance has announced the introduction of a conditional withholding tax on dividends as of January 2024. The conditional withholding tax on dividends will most likely be levied on dividend payments to related entities in low-tax or EU blacklisted jurisdictions (see also CFC legislation: VIII – b), or in case of abuse.

No draft legislation of the conditional withholding tax on dividends has been published yet, but it is expected that this will be drafted along the lines of the conditional withholding tax on interest and royalties .

e. Special Rules for Real Property, including Shares of “Real Property-Rich” Corporations

The transfer of shares in a real estate company can trigger RETT. RETT is imposed on the party that acquires the shares. As any company that owns Dutch real estate can qualify as a Dutch real estate company, the transfer of shares in a foreign company that owns Dutch real estate may be subject to Dutch RETT, even if the transferor, the transferee and the real estate company itself are not Dutch tax residents.

The transfer of shares in a real estate company is subject to RETT only if the purchaser directly or indirectly acquires an economic interest of 1/3rd or more in the company (including any shares already owned by the purchaser or other group companies) or increases such an economic interest.

A company qualifies as a real estate company if:

- ❖ 50% or more of the company's consolidated assets consist of real estate assets and at least 30% of the assets consist of Dutch real estate assets; and
- ❖ at least 70% of the real estate is exploited by sale or lease, rather than used in the business of the company.

The current RETT rate is 2% for residential real estate and 8% for non-residential real estate. RETT is calculated on the fair market value of the Dutch real estate assets owned by the real estate company. If real estate assets are acquired instead of shares, RETT is calculated on the acquisition price if this is higher than the fair market value. Exemptions may apply, among others in cases where the transfer of the real estate assets itself would be subject to VAT or in the case of reorganisations.

Foreign companies that own Dutch real estate are considered non-resident taxpayers in the Netherlands and any profits derived from that real estate are subject to Dutch corporate income tax. Also, depreciation of real estate held by Dutch resident or non-resident taxpayers is limited.



f. CbC and Other Reporting Regimes

Dutch transfer pricing documentation rules consist of three tiers: (i) a Master File, (ii) a Local File, and (iii) a Country-by-Country Report ("CbCR").

Master File and Local File

Each company in the Netherlands that is part of an international group with a consolidated annual turnover exceeding €50 million should have a Master File and Local File in its records. This obligation applies to each company within the group, no matter the size or nature of the activities. The DTA take the view that the requirements apply even if the Dutch company is not engaged in any intragroup transactions. The requirements do therefore apply to holding, licensing, and financing conduit companies, private equity and conglomerates.

Country-by-Country Reporting

The obligation to prepare and file a CbCR report applies for ultimate parent companies of an international group that are established in the Netherlands. The group's annual consolidated turnover must be at least €750 million.

Under CbCR, the tax inspector must be informed which company within the group will file the report and in what country.

The maximum penalties for failure to satisfy CbCR obligations in the Netherlands amount to €870,000 (2021). Failure to comply may also subject taxpayers to criminal prosecution.

10. TRANSFER PRICING

Under Dutch transfer pricing rules all intra-group transactions must be at arm's length and taxpayers should have sufficient documentation to substantiate the arm's length nature of their transactions.

11. POST ACQUISITION INTEGRATION CONSIDERATIONS

a. Innovation Box

The innovation box regulations in the Netherlands aim to stimulate technical innovation and allow companies to have profits derived from qualifying intellectual property taxed at an effective tax rate of 9%. Under the "modified nexus approach", the innovation box will not be fully available to taxpayers that outsource part of the R&D activities to affiliates. Any income that does not qualify for the innovation box is taxed at the standard Dutch CIT rates.

The innovation box distinguishes between small and medium sized taxpayers (SMEs) and larger taxpayers. SMEs are taxpayers which, over a period of five years, have profits from qualifying intangible assets of less than €37.5 million and consolidated net group turnover of less than €250 million.

Both SMEs and large taxpayers must meet the following conditions to qualify for the innovation box:

- ❖ own a self-developed intangible asset; and
- ❖ have been granted an R&D-certificate for wage tax purposes by the Dutch Tax Administration (WBSO);



In order to qualify, additional requirements apply for large taxpayers, including that the taxpayer have one or more of the following:

- ❖ patents or patent applications;
- ❖ plant variety rights (granted or requested);
- ❖ software (as developed in intra-company transferee projects for which an R&D-certificate for wage tax purposes has been granted);
- ❖ licenses for bringing medicines to the market;
- ❖ registered utility models; or
- ❖ a coherent qualifying intangible asset, being an intangible asset that has been developed and for which an R&D-certificate has been granted and that is analogous to an intangible asset within the meaning of one of the above listed categories.

b. Hybrid Entities

As hybrid entities may trigger adverse Dutch tax consequences under, for example, the domestic dividend withholding tax exemption, ATAD II and the conditional withholding tax on interest and royalties, we highly recommend not having hybrid entities in structures that involve the Netherlands.

c. Hybrid Instruments

As hybrid instruments may trigger application of ATAD II regulations or deny application of the Dutch participation exemption regime, we recommend not having hybrid instruments in structures that involve the Netherlands.

d. Principal/Limited Risk Distribution or Similar Structures

Changes in the supply chain are generally manageable. Depending on the exact business restructuring, often a dialogue is started with the Dutch tax administration, specifically to manage related tax risks. DAC6 reporting should be considered carefully.

e. Intellectual property (licensing, transfers, etc.)

Qualifying IP may benefit from the innovation box regime (see Section 11.a above). The entity holding the IP should in principle perform the so-called DEMPE (Development, Enhancement, Maintenance, Protection and Exploitation) functions in relation to the IP.

Transfer of IP by a Dutch entity may trigger corporate income tax.

f. Special Regimes

Qualifying IP may benefit from the innovation box regime (see section 11.a. above).

In addition, two types of tax exempt investments fund regimes apply in the Netherlands, the so-called FBI and VBI regime. The FBI is typically used by large investors who invest in Dutch real estate. Both regimes are subject to requirements.

Leveraged acquisitions are still possible, also within scope of Dutch tax grouping. The 30% EBITDA rule to be considered.



12. OECD BEPS CONSIDERATIONS

Like other OECD Member States, the Netherlands has committed to the OECD minimum standard concerning treaty abuse. The Dutch State Secretary has announced that the proposed anti-abuse rules will be part of treaty negotiations and no reservations were made with regard to the anti-abuse rules in the MLI. There are ongoing efforts to renegotiate tax treaties with developing countries in order to include an anti-abuse rule.

The MLI entered into effect from 1 January 2020. Furthermore, both treaty partners to a bilateral treaty must ratify the MLI and pass through the transition period before the MLI will apply to a particular treaty.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Under the Dutch dividend withholding tax act, a distribution in repayment of share capital or share premium, among others, is not subject to Dutch dividend withholding tax. The repayment of share premium must be approved in advance by the general meeting of shareholders, and the lower nominal value of the shares must be reflected in amended articles of association of the Dutch entity.

b. Substance Requirements for Recipients

Dutch tax law distinguishes between substance requirements for Dutch taxpayers and foreign taxpayers, as well as between different levels of substance. The level of required substance under Dutch law depends on the activities of the Dutch taxpayer.

In light of international developments and the aim to fight tax avoidance, substance is becoming increasingly important. It is reasonable to expect a further increase in the substance requirements. Furthermore, following recent "beneficial ownership" case law of the European Court of Justice, the State Secretary of Finance announced that the current substance requirements may not - in all cases - meet the criteria set forth in the case law.

c. Substance requirements for Dutch taxpayers

i Tax residency - substance

Entities that are incorporated under Dutch law are considered Dutch tax residents by law, but tax residency issues may arise if, for example, the board of directors of the Dutch entity includes only non-Dutch resident directors. Therefore, substance requirements are also relevant for determining a taxpayer's residency for tax purposes.

ii Financial services companies - minimum substance

Minimum substance requirements apply to companies that qualify as so called "financial services companies", which are entities whose activities consist at least 70% of intra-group financing or licensing activities.



Financial services companies should meet the “relevant substance” requirements:

- ❖ At least 50% of the directors are tax residents of the Netherlands;
- ❖ The Dutch directors have sufficient professional knowledge and expertise to fulfill their tasks, which should include at least preparing and making management decisions and administration of the company's transactions;
- ❖ The company employs qualified staff that is capable of administrating the company's transactions;
- ❖ The board meetings are physically held in the Netherlands;
- ❖ The main bank account of the company is held in the Netherlands (if the bank account is held with a non-Dutch bank, at least Dutch management should be entitled to manage and control the bank account);
- ❖ The administration and management of the company is in the Netherlands;
- ❖ The company has its registered address in the Netherlands and is, to the best of its knowledge, not considered a tax resident of another jurisdiction;
- ❖ The company bears genuine risk with regard to intercompany financing and licensing activities; and
- ❖ The company has a sufficient amount of equity at risk.

Failure to meet the minimum substance requirements may result in furnishing information on the financial services company to foreign tax authorities;

- ❖ The Dutch company incurs annual payroll costs of at least €100,000; and
- ❖ The Dutch company has an office space at its disposal for at least 24 months.

iii Substance requirements for foreign shareholders - Domestic dividend withholding tax exemption and non-resident substantial shareholder regime

Until recently, additional substance requirements (so-called “relevant substance” – see above) may have been required of foreign shareholders under (i) the domestic dividend withholding tax exemption regime and (ii) the non-resident substantial shareholder regime. Following recent case law of the European Court of Justice (“Danish cases”) however, meeting the “relevant substance” requirements is no longer considered a safe harbor. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the Dutch Tax Authorities. If the substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.

d. Application of European Directives

EU Directives (e.g. Parent/Subsidiary Directive, Interest & Royalty Directive and ATAD I & II) are implemented into domestic legislation. Please refer to paragraph VI.b for more information on the implementation of the earning stripping rule and paragraph VIII.b for more information on the implementation of the CFC rules under ATAD I. As indicated in paragraph II, ATAD II has been implemented as of 1 January 2020.



e. Tax Rulings and Clearances

The Netherlands has developed a strong ruling practice which provides taxpayers the opportunity to obtain certainty in advance about their tax position. The Dutch ruling practice is guided by Decrees defining the policy and restrictions for granting Advance Tax Rulings (“ATR’s”) and Advance Pricing Agreements (“APA’s”). The DTA has a dedicated and specialised APA/ATR-team operating from Rotterdam. An APA provides certainty in advance on the transfer pricing of intragroup transactions, while an ATR confirms the tax position of Dutch taxpayers under certain regulations.

Recently, the Dutch Ministry of Finance announced amendments to the international ruling policy. The purpose of the new policy is to limit the ability to obtain a tax ruling in cases of tax avoidance, in cases where the taxpayer has insufficient Dutch nexus, and in transactions with entities in jurisdictions that either are on the EU blacklist or are located in designated low-tax jurisdictions. On 23 April 2019, the Dutch Ministry of Finance informed the Dutch House of Representatives on the status of the proposed amendments and provided further guidance and examples of this new ruling policy. The new policy was published on 28 June 2019 and has become effective from 1 July 2019.

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15. APPENDIX I - TAX TREATY RATES

| Jurisdiction | Dividends % | Interest % | Royalties % | Footnote Reference |
|---------------------------------------|-------------|-------------|-----------------|--------------------|
| Albania | 0 / 5 / 15 | 5 / 10 | 10 | [1] [2] [3] [4] |
| Algeria | 5 / 15 | 0 / 8 | 5 / 15 | [5] [2] [6] |
| Argentina | 10 / 15 | 0 / 12 | 3 / 5 / 10 / 15 | [1] [2] [7] |
| Armenia | 0 / 5 / 15 | 5 | 5 | [5] |
| Australia | 15 | 10 | 10 | |
| Austria | 5 / 15 | | 10 | [1] |
| Azerbaijan | 5 / 10 | 10 | 5 / 10 | [3] [7] |
| Bahrain | 0 / 10 | | | [5] |
| Bangladesh | 10 / 15 | 0 / 10 | 10 | [5] [8] |
| Barbados | 0 / 15 | 0 / 5 | 0 / 5 | [5] [2] [7] |
| Belarus | 0 / 5 / 15 | 0 / 5 | 3 / 5 / 10 | [9] [2] [7] |
| Belgium | 5 / 15 | 0 / 10 | | [5] [10] |
| Bosnia- Herzegovina (was Yugoslavia) | 5 / 15 | | 10 | [1] |
| Brazil | 15 | 10 / 15 | 15 / 25 | [11] [7] |
| Bulgaria | 5 / 15 | | 5 | [1] |
| Canada | 5 / 10 / 15 | 0 / 10 | 0 / 10 | [1] [5] [2] [7] |
| China | 5 / 10 | 0 / 10 | 10 | [1] [2] [12] |
| Croatia | 0 / 15 | | | [5] |
| Czech Republic (was Tsjecho-Slovakia) | 0 / 10 | | 5 | [1] |
| Denmark | 0 / 15 | | | [5] |
| Egypt | 0 / 15 | 0 / 12 | 12 | [1] [2] |
| Estonia | 5 / 15 | 0 / 10 | 5 / 10 | [1] [2] [7] |
| Ethiopia | 5 / 10 / 15 | 0 / 5 | 5 | [5] [13] |
| Finland | 0 / 15 | | | [14] |
| France | 5 / 15 | 0 / 10 / 12 | | [1] [15] |
| Georgia | 0 / 5 / 15 | | | [16] |
| Germany | 5 / 10 / 15 | | | [5] |
| Ghana | 5 / 10 | 0 / 8 | 8 | [5] [10] |

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| Jurisdiction | Dividends % | Interest % | Royalties % | Footnote Reference |
|-----------------------------|-------------|------------------|-------------|--------------------|
| Greece | 5 / 15 / 35 | 8 / 10 | 5 / 7 | [13] [2] [6] |
| Hong Kong | 0 / 10 | | 3 | [17] |
| Hungary | 5 / 15 | | | [1] |
| Ireland* | 0 / 15 | | | [1] |
| Iceland | 0 / 15 | | | [5] |
| India** | 10 | 10 | 10 | [18] |
| Indonesia | 5 / 10 / 15 | 0 / 5 / 10 | 10 | [1] [2] |
| Israel | 5 / 10 / 15 | 10 / 15 | 5 / 10 | [1] [7] [19] |
| Italy | 5 / 10 / 15 | 0 / 10 | 5 | [20] [2] |
| Japan | 0 / 5 / 10 | 0 / 10 | | [20] [2] [10] |
| Jordan | 5 / 15 | 0 / 5 | 10 | [5] [2] |
| Kazakhstan | 5 / 15 | 0 / 10 | 10 | [21] [10] |
| Kuwait | 0 / 10 | | 5 | [5] |
| Korea | 10 / 15 | 0 / 10 / 15 | 10 / 15 | [1] [11] [12] |
| Latvia | 5 / 15 | 0 / 10 | 5 / 10 | [1] [2] [7] |
| Lithuania | 5 / 15 | 0 / 10 | 0** | [1] [2] [18] |
| Luxembourg | 2.5 / 15 | | | [1] |
| Macedonia (North) | 0 / 15 | | | [5] [22] |
| Malaysia | 0 / 15 | 0 / 10 | (0)/8 | [1] [2] [6] [23] |
| Malta | 5 / 15 | 0 / 10 | 10 | [1] [2] |
| Montenegro (was Yugoslavia) | 5 / 15 | | 10 | [1] |
| Morocco | 10 / 25 | 10 / 25 | 10 | [1] [11] |
| Mexico | 5 / 15 | 0 / 5 / 10 | 10 | [5] [2] |
| Moldova | 0 / 5 / 15 | 0 / 5 | 2 | [24] [10] [25] |
| New Zealand | 15 | 0 / 10 | 10 | [2] |
| Nigeria | 12.5 / 15 | 0 / 12.5 | 12.5 | [5] [10] |
| Norway | 0 / 15 | | | [5] |
| Oman | 0 / 10 | | 8 | [5] |
| Pakistan | 10 / 20 | 0 / 10 / 15 / 20 | 5 / 15 | [1] [2] [6] |

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| Jurisdiction | Dividends % | Interest % | Royalties % | Footnote Reference |
|---------------------------------|---------------|-------------|-------------|--------------------|
| Panama | 0 / 15 | 0 / 5 | 5 | [26] [2] [6] |
| Philippines | 10 / 15 | 0 / 10 / 15 | 10 / 15 | [5] [2] [10] |
| Poland | 5 / 15 | 0 / 5 | 5 | [5] [10] |
| Portugal | 10 | 0 / 10 | 10 | [2] [10] |
| Qatar | 0 / 10 | | 5 | [27] [6] |
| Romania | 0 / 5 / 15 | 0 / 3 | 3 | [1] [10] |
| Russia | 5 / 15 | | | [28] |
| Saudi Arabia | 5 / 10 | 0 / 5 | 7 | [5] [10] |
| Serbia (was Yugoslavia) | 5 / 15 | | 10 | [1] |
| Singapore | 0 / 15 | 0 / 10 | | [1] [10] |
| Slovenia | 5 / 15 | 0 / 5 | 5 | [5] [10] |
| Slovakia (was Tsjecho-Slovakia) | 0 / 10 | | 5 | [1] |
| South Africa | 5 / 10** | | | |
| Spain | 5 / 10 / 15 | 10 | 6 | [29] |
| Sri Lanka | 10 / 15 | 0 / 10 | 10 | [1] [10] |
| Suriname | 7.5 / 15 / 20 | 0 / 5 / 10 | 5 / 10 | [30] [2] [10] [7] |
| Sweden | 0 / 15 | | | [1] |
| Switzerland | 0 / 15 | | | [13] |
| Taiwan | 10 | 0 / 10 | 10 | [10] |
| Tajikistan (was Sovjet Union) | 15 | | | [23] |
| Thailand | 5 / 10 / 25 | 10 / 25 | 5 / 15 | [22] [10] [6] |
| Tunisia | 0 / 20 | 0 / 10 | 11 | [5] [10] |
| Turkey | 15 / 20 | 0 / 10 / 15 | 10 | [1] [2] [10] [11] |
| Uganda | 0 / 5 / 15 | 0 / 10 | 10 | [20] [2] [10] |
| Ukraine | 0 / 5 / 15 | 0 / 2 / 10 | 0 / 10 | [24] [2] [10] |
| United Arabic Emirates | 5 / 10 | | | [5] |
| United Kingdom | 0 / 10 / 15 | | | [5] |
| United States of America | 0 / 5 / 15 | | | [31] |
| Uzbekistan | 5 / 15 | 10 | 10 | [1] [13] |

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| Jurisdiction | Dividends % | Interest % | Royalties % | Footnote Reference |
|--------------|-------------|------------|-------------|------------------------|
| Venezuela | 0 / 10 | 0 / 5 | 5 / 7 / 10 | [1] [2] [10] [7] |
| Vietnam | 5 / 10 / 15 | 0 / 10 | 5 / 10 / 15 | [32] [8] [30] [6] [12] |
| Yugoslavia | 5 / 15 | | 10 | [1] |
| Zambia | 5 / 15 | 0 / 10 | 7.5 | [5] [2] [10] |
| Zimbabwe | 10 / 20 | 0 / 10 | 10 | [1] [2] [10] |

* The 2019 tax treaty between Ireland and the Netherlands to replace the 1969 treaty entered into force on 29 February 2020.

** The most-favored nation clause is applicable. South Africa: the most-favored nation clause only applies to treaties concluded after this treaty.

The tax treaties with Malawi, Iraq, Kenya, Liechtenstein, Kosovo and Chile have been signed, but it is not clear when these tax treaties will enter into force.

The new tax treaty with Bulgaria and Poland has been signed, but has not yet entered into force.

The Netherlands has reached official agreement on a tax treaty with Cyprus. The Netherlands and Cyprus are working towards a prompt signature of the tax treaty.

The protocols with Switzerland and Ukraine have been signed but it is not yet clear when they will enter into force.

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Footnotes:

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| 1 | Dividends - The rate of 0%/2.5%/5%/7.5%/10%/15% applies if the share in the participation is at least 25%. |
| 2 | <p>Interest - The rate of 2%/5%/10% applies if the interest paid on a loan that is granted by a bank or any other financial institutions (including investment banks, savings banks and insurance companies); or to interest paid on a loan made for a period of more than two years or in connection with a sale of industrial, commercial or scientific equipment on credit; or interest on loans granted by a bank or financial institution and on bonds and debentures traded regularly on a recognized stock market.</p> <p>Interest -The rate of 0% applies if the interest is paid by or to one of the Contracting States or a political sub-division, the interest is paid to other institutions in respect of loans on preferential terms, for a period of three years or more, or to interest paid in connection with the importation of machinery, or industrial, commercial or scientific equipment; or a bank, insurance company or securities company, or other non-financial institution; or interest is received relating to the sale of industrial, commercial or scientific equipment or to the construction of industrial, commercial or scientific installations as well as of public works; or pension funds;</p> <p>Or Interest paid or credited to a resident of the Netherlands by a person licensed to carry on banking business in Malaysia, or on an approved loan or a longterm loan shall be exempt from Malaysian tax (Malaysia).</p> <p>Rate of 8% applies if the interest is paid to a bank or financial institution (Greece).</p> <p>Rate of 15% applies if the shares in the participation is at least 25% (Pakistan).</p> |
| 3 | Dividends - The rate of 5% applies if the share in the participation is at least 25% and has invested at least €200,000 in the capital of the paying company. |
| 4 | Dividends - The rate of 0% applies if the shares in the participation is at least 50% and has invested at least USD 250,000 in the capital paying the dividends. |
| 5 | Dividends - The rate of 0%/5%/10%/12.5% applies if the share in the participation is at least 10% or a pension fund. |
| 6 | <p>Royalties - The rate of 0%/15% applies to copyright royalties and other like payments for the production or reproduction of literary, dramatic, musical or other artistic works (but not including royalties in respect of motion pictures and television) and royalties for computer software, patents, and information concerning industrial, commercial or scientific experience.</p> <p>Approved industrial royalties (as defined in paragraph 7 of Article 13) derived from Malaysia by a resident of the Netherlands shall be exempt from Malaysian tax (Malaysia).</p> <p>Royalties - The rate of 5% applies if royalties are paid for copyrights of literary, artistic or scientific works, including cinema films; or copyright of a literary, artistic, or scientific work, but excluding cinematograph films and tapes for television or broadcasting; or may elect to be taxed on a net basis as if he/she were a resident of the other Contracting State (Panama).</p> |



Footnotes:

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| | Royalties - The rate of 3%/7% applies to news related royalties (patents and trademarks). The rate of 5% applies to copyright royalties (or equipment). The rate of 10% applies to royalties in respect of trademarks. |
| 7 | The rate of 10% applies to royalties for cinematograph films and films or videotapes for radio or television broadcasting (copyright). The rate of 5% applies to royalties for patents, designs or models, plans, secret formulas or processes, computer software, know-how, etc is not older than 3 years; or paid for the use of industrial, commercial or scientific equipment. The rate of 0% applies to royalties regarding literary, artistic, scientific work, cinematographic films, and films, discs, or tapes for radio or television broadcasting. The rate of 25% applies to trademark royalties. Technical services (like 'know how') are included in the term 'royalty'. |
| 8 | Interest - The rate of 0% applies if (i) interest arises in the Netherlands or Bangladesh, (ii) interest paid by the government (iii) contract of financing or of delay in payment relating to the sale of industrial, commercial or scientific equipment or to the construction of industrial, commercial or scientific installations. (Bangladesh) Interest - As long as the Netherlands does not levy a tax at source on interest then the rate of tax to be applied on interest received by a bank or any other financial institution (including an insurance company) shall not exceed 7.5%; As long as, under the provisions of the Netherlands taxation laws and to the future amendments thereto, the Netherlands does not levy a tax at source on interest paid to a resident of Vietnam, the percentage provided for in this paragraph shall be reduced to 7% of the gross amount of the interest. (Vietnam) |
| 9 | Dividends - No withholding tax applies (exclusive residence taxing right) if the share in the participation is at least 50% and at least €250,000 is paid in. |
| 10 | Interest - The rate of 0% applies to interest received by an enterprise which has not arisen from bearer securities representing loans or deposits of sums of money; interest derived from bearer securities representing loans or deposits of sums of money and the beneficial owner of the interest is an enterprise which carries on a banking or insurance activity and which holds the securities in question for at least three months preceding the date of the interest being payable; or the interest arises from commercial debt-claims resulting from deferred payments for goods, merchandise or services; or paid to the government and interest is paid in respect of a loan granted, guaranteed or insured by the Government; or if interest paid in respect of a bond, debenture or other similar obligation of the Government of that State and the central bank of that State and interest arising in one of the States and paid in respect of loans guaranteed or insured by the Government of the other State and the central bank. |
| 11 | Interest - The rate of 10% applies if the recipient is a bank and the loan is granted for at least seven years (and or) in connection with the purchase of industrial equipment or for the purchase and installation of industrial or scientific units, or the financing of public works (Brazil, Korea). The rate of 10% applies for interest paid by a resident of one of the States to an enterprise of the other State (Morocco). |



Footnotes:

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| 12 | <p>Royalties - Royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment are subject to a 10% withholding tax on 60% of the gross amount (China).</p> <p>The rate of 10% applies for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.</p> <p>The 15% rate applies to royalties paid for the use of, or the right to use, a copyright of literary, artistic or scientific works, including cinematograph films.</p> |
| 13 | <p>Dividends - The rate of 5% applies if a resident of the Netherlands pays dividends to a Greece resident and the share in the participation is at least 25%. The rate of 35% applies if a resident of Greece pays a dividend to a resident of the Netherlands (Greece).</p> <p>As long as, under the provisions of the Netherlands Company Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company which is a resident of Uzbekistan, the percentage provided for in that subparagraph shall be reduced to zero per cent (Uzbekistan).</p> <p>Rate of 10% applies if the company paying the dividends is a resident of Ethiopia. Rate of 15% applies if the company paying the dividends is a resident of the Netherlands (Ethiopia).</p> <p>Where a resident of Switzerland receives dividends that may be taxed in the Netherlands in accordance with paragraph 9 of Article 10, the Netherlands shall grant a refund. The amount of this refund shall be equal to the tax due in Switzerland on this income but shall in no case exceed 10% of this income (Switzerland).</p> |
| 14 | <p>Dividends - The rate of 0% applies if the share in the participation is at least 5% or a pension fund.</p> |
| 15 | <p>Interest - The rate of 0% applies to interest paid in connection with a financing or deferred payment contract for the sale of industrial, commercial or scientific equipment, or the construction of such installations or the carrying out of public works; interest paid on bank loans and interest paid following a formal request for payment or a legal action as a penalty for late payment of a debt for which no interest was stipulated. The 12% rate applies to interest from negotiable bonds issued in France before 1 January 1965 (France).</p> |
| 16 | <p>Dividends - The rate of 0% applies if the share in the participation is at least 50% and at more than USD 2 million capital is paid in.</p> |
| 17 | <p>Dividends - The rate of 0% applies if the shares in the participation is at least 10% provided (i) the shares are regularly traded on a recognized stock exchange, or (ii) at least 50% of the shares of the recipient company are owned by a company whose shares are regularly traded on a recognized stock exchange, paid to the government or paid to a pension fund. A person shall be considered a headquarters company if the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries and the business activities carried on in each of the five countries generate at least 10% of the gross income of the group.</p> |

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Footnotes:

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| 18 | Dividends - As a result of the application of a most-favored nation clause in the tax treaty, the withholding tax rate is reduced from 15% to 10%. Interest - As a result of the application of a most-favored nation clause in the tax treaty, the withholding tax rate on interest is reduced from 15% to 10%. The 10% rate would apply only to interest paid on certain loans made or guaranteed by a financial institution or an enterprise that holds at least 10% of the shares in the participation. Royalties - As a result of the application of a most-favored nation clause in the tax treaty, the withholding tax rate is reduced from 20% to 10%/0%. |
| 19 | Dividends - The rate of 10% applies if the shares in the participation is at least 25%, the payer is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate due to measures to encourage investment. |
| 20 | Dividends - The rate of 0%/5% applies if the share in the participation is at least 50%. |
| 21 | Dividends - The rate of 0% applies if the share in the participation is at least 50% and USD 1 million capital is paid in. |
| 22 | Dividends - Netherlands: The rate of 5% applies if the shares in the Dutch participation is at least 25%, Thailand: The rate of 10% applies if the shares in the Thai participation is at least 25% provided that the highest Thai tax rate on profits of corporations during the financial year in which the dividends are distributed does not exceed 30%, may not exceed the Thai tax on such dividends: The rate of 15% applies if the entity paying the dividends is an industrial corporation. Otherwise, the rate of 20% applies. If the highest Thai tax rate on profits of companies during the financial year in which the dividends are distributed exceeds 30% but does not exceed 40%, the Thai tax on such dividends shall not exceed 15% of the gross amount of such dividends, if the company paying the dividends is not an industrial company. If the foregoing do not apply, the rate of 25% applies (Thailand). Dividends paid by a company which is a Netherlands resident, if according to the law in force in the Macedonian Contracting State taxation of such dividends in the Macedonian Contracting State will result in a tax burden of less than 15% of the gross amount of the dividends, the Netherlands Contracting State may levy a tax not exceeding 15% of the gross amount of the dividends (North Macedonia). |
| 23 | Technical fees - For Malaysia - A technical fee is subject to 10% of the gross amount of the technical fees for payments made on or after 1 January 1990 but before 1 January 1996; and 8% of the gross amount of the technical fees for payments made on or after 1 January 1996. For Tajikistan - there is no withholding tax for technical fees. |
| 24 | Dividends - The rate of 0% applies if the share in the participation is at least 50% and USD 300,000 capital is paid in. |
| 25 | Dividends - The rate of 0% applies if the shares in the participation is at least 50% and more than USD 300,000 is paid in. |
| 26 | Dividends - The rate of 0% applies if the share in the participation is at least 15%. |
| 27 | Dividends - The rate of 0% applies if the share in the participation is at least 7.5%. |
| 28 | Dividends - The rate of 5% applies if the shares in the participation is at least 25% and €75,000 capital is paid in. |



Footnotes:

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| 29 | <p>Dividends - Netherlands: The rate of 5% applies if the receiving company owns 50% or more of the capital of the company paying the dividends, or if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of Spain also owns 25% or more of that capital. Spain: the rate of 10% applies if the receiving company owns 50% or more of the capital of the company paying the dividends, or if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of the Netherlands also owns 25% or more of that capital.</p> |
| 30 | <p>Dividends - The rate of 15% applies if the shares in the participation is below 25%, if such dividends are not included in the basis upon which tax is levied in the country of which the recipient is a resident. The provision of subparagraph (a) of paragraph 2 of Article 10 shall not apply with respect to dividends paid by a company which is a resident of Surinam to a company which is a resident of the Netherlands, if the latter company is liable to corporate tax in the Netherlands on the dividends received (Surinam).</p> <p>Dividends paid by a company which is a resident of the Netherlands, if according to the law in force in Kuwait, will result in a tax burden of less than 10% of the gross amount of the dividends, the Netherlands may levy a tax not exceeding 10% of the gross amount of the dividends (Kuwait).</p> <p>The rate of 5% applies if a resident of the Netherlands pays dividends to a Greece resident and the share in the participation is at least 25%. Rate of 35% applies if a resident of Greece pays a dividend to a resident of the Netherlands (Greece).</p> <p>As long as, under the provisions of the Netherlands Company Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company which is a resident of Uzbekistan, the percentage provided for in that subparagraph shall be reduced to zero per cent (Uzbekistan).</p> <p>As long as, under the provisions of the Netherlands Company Tax Act and to the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company which is a resident of Vietnam the percentage provided for in this subparagraph shall be reduced to 7% of the gross amount of the dividends (Vietnam).</p> |
| 31 | <p>Dividends - The rate of 0% applies if the share in the participation is at least 80%. And: shares representing at least 80% of the voting power in the company paying the dividends prior to October 1st, 1998, is a qualified person (Limitation on benefits), is entitled to benefits under art. 26, paragraph 3, or has received a determination pursuant to paragraph 7 of Article 26. The rate of 5% applies if the shares in the participation is at least 10%.</p> |
| 32 | <p>Dividends - The rate of 5% applies if the shares in the participation is at least 50% and more than USD 10 million capital is paid in. The 10% rate applies if the shares in the participation is at least 25%, but less than 50%.</p> |



16. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The risk of an additional corporate tax charge upon a tax audit continues to exist (even if final corporate tax assessments have been imposed) under strict conditions, for a period of five years from the end of the assessment period during which the liability has accrued. This five year period is extended to twelve years if it concerns income that is kept or has accrued outside the Netherlands.

| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|---------------|---|
| 1 | Tax Due Diligence | General | A structure chart of the group including ownership ratio, ownership structure, legal form, permanent establishments and permanent representatives; |
| 2 | Tax Due Diligence | General | A description of the activities of the company; |
| 3 | Tax Due Diligence | General | Copies of the stand-alone annual accounts for the relevant years; |
| 4 | Tax Due Diligence | Corporate Tax | Please describe how the company controls and manages the tax function, including a list of the company's internal tax representatives and external tax advisors; |
| 5 | Tax Due Diligence | Corporate Tax | Details of any tax planning schemes undertaken and any known areas of tax exposure; |
| 6 | Tax Due Diligence | Corporate Tax | Have any legal mergers or split ups, stock mergers, corporate mergers or similar purchase or sale transaction taken place? Please provide details of the transactions and the tax analysis performed; |
| 7 | Tax Due Diligence | Corporate Tax | An overview of the activities performed abroad by the company and to what extent these activities might be considered as a foreign taxable presence (permanent establishment); |
| 8 | Tax Due Diligence | Corporate Tax | Copies of important correspondence with tax authorities (rulings, discussions, negotiations, assessments etc.); |
| 9 | Tax Due Diligence | Corporate Tax | Confirmation on whether the company concluded a compliance agreement with the Dutch tax authorities on horizontal monitoring ("horizontaal toezicht"); |
| 10 | Tax Due Diligence | Corporate Tax | Memos or opinions prepared by the company's tax advisor or tax advisors on potential tax exposures or tax planning; |
| 11 | Tax Due Diligence | Corporate Tax | A description of any withholding tax obligations, and details of any elimination of double taxation applied or any treaty clearances obtained; |
| 12 | Tax Due Diligence | General | Please describe all tax issues which are currently under discussion with the tax authorities or where a position is taken that might be challenged by the tax authorities; |
| 13 | Tax Due Diligence | General | Information on any past or current tax audits; |
| 14 | Tax Due Diligence | General | Specifications (copies of documents and correspondence) of all current and anticipated objections/ appeals or other litigation pending with respect to any tax authorities' decision, as well as explanations regarding the current state of affairs; |
| 15 | Tax Due Diligence | General | Confirmation whether any fines have been imposed in the past for incorrect / late filing and/or late payment of tax returns; |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|---------------|---|
| 16 | Tax Due Diligence | Corporate Tax | Copies of the corporate income tax returns and related correspondence (incl. letters from the tax advisory firm that prepared the tax return with comments on the tax return) for the relevant years; |
| 17 | Tax Due Diligence | Corporate Tax | Copies of tax assessments (provisional and final, including additional notifications) for the relevant years; |
| 18 | Tax Due Diligence | Corporate Tax | If the assessments were not imposed in line with the returns filed, please provide comments on the deviation; |
| 19 | Tax Due Diligence | Corporate Tax | Copies of dividend withholding tax returns and dividend withholding tax declaration forms (domestic dividend withholding tax exemption); |
| 20 | Tax Due Diligence | Corporate Tax | Copy of the written confirmation of the current existence of the corporate tax fiscal unity (if applicable), including the confirmation of historic changes to the fiscal unity (companies entering or exiting the fiscal unity); |
| 21 | Tax Due Diligence | Corporate Tax | Confirmation on the open tax years and the due dates for these returns; |
| 22 | Tax Due Diligence | Corporate Tax | Information on tax losses and/or exceeding interest expenses (under the earningsstripping rule / article 15b CITA) available for carry forward/back (including a breakdown of the losses and/or exceeding interest expenses per year and information on possible restrictions); |
| 23 | Tax Due Diligence | Corporate Tax | Confirmation whether the company incurred losses attributable to a foreign permanent establishment /permanent representative or real estate; |
| 24 | Tax Due Diligence | Corporate Tax | Details of risk provisions, if any, including the calculation method applied; |
| 25 | Tax Due Diligence | Corporate Tax | Details on the valuation for tax purposes of: i) goodwill ii) work in progress, iii) provisions for bad debt and how the book to tax differences will most likely evolve over the next three years; |
| 26 | Tax Due Diligence | Corporate Tax | Details (including a breakdown) of the current tax position and the calculation of the effective tax rate; |
| 27 | Tax Due Diligence | Corporate Tax | A specification and calculation of the deferred tax asset/liability (if applicable); |
| 28 | Tax Due Diligence | Corporate Tax | Information whether the company uses the Innovation box, WBSO and/or the RDA facility? If so, please provide a copy of the underlying documentation and correspondence with the tax authorities / Agentschap NL; |
| 29 | Tax Due Diligence | Corporate Tax | Please provide details on interest expenses in the relevant years (including details on the debt financing, the loan agreements, the amounts involved and any analysis performed on the deductibility of the interest); |
| 30 | Tax Due Diligence | Corporate Tax | Please confirm whether any of the debt financing relates to the purchase of shares, dividend or capital (re)payment, or capital contributions; |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|---------------|--|
| 31 | Tax Due Diligence | Corporate Tax | <p>Please confirm if the group has any entities, partnerships or conducts any activities in any of the following jurisdictions (from onwards 2019 only):</p> <ul style="list-style-type: none"> ❖ American Samo ❖ Anguilla ❖ Bahama's ❖ Bahrein ❖ Barbados ❖ Belize ❖ Bermuda ❖ British Virgin Islands ❖ Cayman Islands ❖ Fiji ❖ Guam ❖ Guernsey ❖ Isle of Man ❖ Jersey ❖ Kuwait ❖ Oman ❖ Palau ❖ Panama ❖ Quatar ❖ Samoa ❖ Saudi Arabia ❖ Seychelles ❖ Trinidad and Tobago ❖ Turkmenistan ❖ Turks and Caicos Islands ❖ United Arab Emirates ❖ US Virgin Islands ❖ Vanuatu |
| 32 | Tax Due Diligence | Corporate Tax | <p>Please confirm: (i) whether any company may be considered a hybrid entity (e.g. partnerships such as LP's), (ii) whether any hybrid financing arrangements are in place (e.g. PPL's) (i.e. differences in qualification of financial instruments as a result of which payments are deductible in payer jurisdiction but exempt in payee jurisdiction) and (iii) whether any mismatches in relation to permanent establishments are recognized between jurisdictions.</p> |
| 33 | Tax Due Diligence | Corporate Tax | <p>Please confirm all entities that are subject to US check-the-box elections;</p> |
| 34 | Tax Due Diligence | Corporate Tax | <p>Please confirm if any company falls within the scope of ATAD II legislation (hybrid mismatches) and whether the company has complied with the documentation obligation under article 12ag CITA (please provide a copy of the documentation);</p> |
| 35 | Tax Due Diligence | Corporate Tax | <p>An overview and copies of all significant agreements relating to all intercompany transactions / transactions with the shareholder(s) (e.g. service agreements, supply agreements, shareholder loans, loan waivers, etc.);</p> |
| 36 | Tax Due Diligence | Corporate Tax | <p>Description of the transfer pricing mechanism applied to the intercompany transactions;</p> |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|---------------|--|
| 37 | Tax Due Diligence | Corporate Tax | Please describe whether the company is subject to Country by Country reporting or the obligation to file transfer pricing documentation (Masterfile / Local File) in the Netherlands; |
| 38 | Tax Due Diligence | Corporate Tax | Please provide a copy of internal transfer pricing studies or other documents (including Masterfile / Local File if applicable); |
| 39 | Tax Due Diligence | Corporate Tax | Please provide a copy of the Country by Country reporting (if applicable); |
| 40 | Tax Due Diligence | Corporate Tax | Confirmation on any discussions with or rulings provided by the tax authorities on the transfer pricing applied; |
| 41 | Tax Due Diligence | Wage Tax | Confirmation of the number of employees of the company (in the Netherlands or abroad); |
| 42 | Tax Due Diligence | Wage Tax | Confirmation whether a collective labour agreement (CAO) is applicable; |
| 43 | Tax Due Diligence | Wage Tax | Please provide a copy of the latest cumulative payroll overview; |
| 44 | Tax Due Diligence | Wage Tax | Please provide a copy of the general ledger regarding personnel costs, representation costs and costs of freelancers/temporary employees; |
| 45 | Tax Due Diligence | Wage Tax | Confirmation of the social security sector code applied; |
| 46 | Tax Due Diligence | Wage Tax | Please provide a copy of the employee handbook (if available) or overview of employee benefits; |
| 47 | Tax Due Diligence | Wage Tax | Does the company have an option plan or other incentive plan for management and/or employees? If so, please provide details of the plan(s) and documentation; |
| 48 | Tax Due Diligence | Wage Tax | Confirmation and copy of the most recent payroll tax return filed; |
| 49 | Tax Due Diligence | Wage Tax | Does the company apply tax reductions for R&D/WBSO? If so, please provide a copy of the underlying documentation and correspondence with the tax authorities; |
| 50 | Tax Due Diligence | Wage Tax | <p>Please summarize all benefits in kind/fringe benefits provided to employees (e.g. company cars, direct insurance, loans, etc.) listing:</p> <ul style="list-style-type: none"> (i) character of benefit in kind, (ii) employee receiving benefit in kind, (iii) value of benefit in kind, (iv) taxation of benefit in kind; |
| 51 | Tax Due Diligence | Wage Tax | Has the working-cost-scheme been implemented? If so, have the work related expenses been reviewed in line with new legislation? Please provide a summary of the findings and the underlying calculations; |
| 52 | Tax Due Diligence | Wage Tax | Does the company pay fixed cost allowances free of taxes to employees? |
| 53 | Tax Due Diligence | Wage Tax | Please confirm whether the company has personnel working outside the Netherlands. If so, please provide additional information as well as a description of the treatment for Dutch wage tax and social security; |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|--------------|---|
| 54 | Tax Due Diligence | Wage Tax | Does the company engage independent contractors/free lancers? If so, please indicate how many freelancers/other individuals, the amount of payments involved per year and the treatment for wage tax and social security; |
| 55 | Tax Due Diligence | Wage Tax | Please confirm whether the freelancers/non-employees submitted a statement of independence (VAR-verklaring) from the tax authorities and whether the newly introduced regulations for freelancers have been implemented (modelovereenkomst); |
| 56 | Tax Due Diligence | Wage Tax | Please provide a specification of employees making use of the 30% ruling, together with copies of the approved rulings and salary slip showing the 30%-allowance; |
| 57 | Tax Due Diligence | Wage Tax | Are additional cost reimbursed / benefits provided free of taxes besides the 30% allowance? |
| 58 | Tax Due Diligence | Wage Tax | Did the company make use of hired in personnel or performed subcontracting activities and if so, please specify? Please elaborate on the procedures in place for the use of the G-account ('Geblokkeerde rekening') and detail on the agencies that the company works with. |
| 59 | Tax Due Diligence | VAT | Please provide a copy of the VAT returns filed in the last year, including European Sales Listing and the VAT working papers |
| 60 | Tax Due Diligence | VAT | Please provide a copy of the VAT reporting manual, if any; |
| 61 | Tax Due Diligence | VAT | Does the company own any VAT licenses (e.g. art. 23 Import VAT deferment, VAT warehouse license or else)? |
| 62 | Tax Due Diligence | VAT | Can the VAT returns be reconciled with the annual accounts? Please provide the underlying documentation; |
| 63 | Tax Due Diligence | VAT | Concerning the period starting 2013, is the company aware of any omissions in its VAT returns filed that (may) require adjustment in excess of Euro 5,000 per annum? |
| 64 | Tax Due Diligence | VAT | Has the company adjusted (any) VAT returns since 2013 by the filing of supplementary VAT returns or European Sales Listings? If so, please provide copy thereof; |
| 65 | Tax Due Diligence | VAT | Has the companies' VAT accounting system changed significantly in recent years? If so, has the VAT module been reviewed? |
| 66 | Tax Due Diligence | VAT | Has the company undergone internal reviews of the VAT position? If so, what was the outcome? |
| 67 | Tax Due Diligence | VAT | If any questions arise internally regarding VAT, who are the persons to contact? |
| 68 | Tax Due Diligence | VAT | Confirmation whether the company is currently, or has been in the past five years, included in a VAT fiscal unity; |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|--------------|---|
| 69 | Tax Due Diligence | VAT | If the company/companies is/are included in a VAT fiscal unity; a. Please list which companies are included in the VAT fiscal unity; b. Please list which companies have been included or have been deconsolidated in the last 5 calendar years and when; c. Please provide all written decisions of the DTA concerning the VAT fiscal unity, confirmation of forming, change or ending of the VAT fiscal unity; |
| 70 | Tax Due Diligence | VAT | To the extent that a VAT fiscal unity applies, please confirm that the management remained the same and that the activities of the fiscal unity members and their revenue relations towards each member have not significantly changed since the formation or the latest change; |
| 71 | Tax Due Diligence | VAT | If a VAT fiscal unity is or was formed, please confirm that the companies have not invoiced Dutch VAT to other VAT group members during their inclusion in the VAT group; |
| 72 | Tax Due Diligence | VAT | Please provide a sample set of proof for 10 representative transactions regarding the intracommunity supply of goods to other EU member states (box 3b of VAT return). This may include delivery instructions, CMR documents and other transport documentation, proof of payment from abroad, etc.; |
| 73 | Tax Due Diligence | VAT | Does the company periodically validate the EU VAT-id numbers provided by EU resident customers? |
| 74 | Tax Due Diligence | VAT | Please provide a sample set of proof for 10 representative transactions regarding the export of goods from the EU for which the company has acted as exporter. This may include the IE599 customs confirmation of exit or other customs documentation, commercial correspondence, proof of import in destination country, etc |
| 75 | Tax Due Diligence | VAT | Please provide a representative sample set of invoices issued by the company to business customers established outside the Netherlands; |
| 76 | Tax Due Diligence | VAT | Please provide a representative sample set of invoices issued by the company to private individuals outside the Netherlands and in the EU, respectively outside the EU; |
| 77 | Tax Due Diligence | VAT | Is the company registered for VAT purposes outside the Netherlands? If so, please explain |
| 78 | Tax Due Diligence | VAT | Does the company generate VAT exempt income on recipients established within the EU, for example has the company issued interest-bearing loans? |
| 79 | Tax Due Diligence | VAT | Does the company generate other income (aside from dividends) that is not reported in the Dutch VAT return? If so, please list the types of income and resident sources; |
| 80 | Tax Due Diligence | VAT | Does the company also generate income (other than dividends) for which no invoice is issued? If so, please list the types of income; |
| 81 | Tax Due Diligence | VAT | Does the company perform any activities that are out of scope for VAT - e.g. provision of services free of charge?; |
| 82 | Tax Due Diligence | VAT | If the company has any subsidiaries, can it be confirmed that it performs supplies of goods or services to these subsidiaries in return for remuneration? Please disregard subsidiaries held indirectly; |

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| No. | Category | Sub-Category | Description of Request |
|-----|-------------------|--------------|---|
| 83 | Tax Due Diligence | VAT | Does the company recover all Dutch input VAT incurred? If not, please provide details on the limited recovery right of input VAT; |
| 84 | Tax Due Diligence | VAT | Does the company work with a pro rata and/or pre pro rata VAT recovery? If so, please details; |
| 85 | Tax Due Diligence | VAT | Can the company confirm that all input VAT reported regards transactions ordered and engaged for in the name and for account of the company (i.e. directly relate to the business of the company)?; |
| 86 | Tax Due Diligence | VAT | Can the company confirm that purchase invoices mention the full name and establishment address of the company? |
| 87 | Tax Due Diligence | VAT | Can the company confirm that only Dutch VAT is claimed through the Dutch return? |
| 88 | Tax Due Diligence | VAT | Does the company lease real estate subject to VAT? If so, please provide copy of the agreement(s) relevant to the last 5 calendar years; |
| 89 | Tax Due Diligence | VAT | Has the company acquired or sold real estate in the last 10 years? If so, please provide copy of the transaction contract(s); |
| 90 | Tax Due Diligence | VAT | Does the company provide exclusive use of real estate or office space to others such as (group) companies, either inside or outside its premises? If so, please provide details; |
| 91 | Tax Due Diligence | VAT | Has the company received any subsidy or grants in the last 5 calendar years? If so, please provide details; |
| 92 | Tax Due Diligence | VAT | Does the company grant cars to the personnel? If so, does the company make a correction at the end of the year for private use? How is the correction calculated? |
| 93 | Tax Due Diligence | VAT | Has the company applied the so called 'BUA' corrections concerning consumptive benefits (deemed to) be enjoyed by employees below cost price? |
| 94 | Tax Due Diligence | RETT | Please provide a specification of the real estate currently owned by the company (including details on the current use of the real estate); |
| 95 | Tax Due Diligence | RETT | Please provide a description of past discussions/rulings with tax authorities on the RETT position of the company; |



FOR MORE INFORMATION CONTACT:



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