Incentives & Taxes 2018

Stimulating Foreign Investment and Entrepreneurship in the Netherlands

Netherlands Foreign Investment Agency (NFIA)

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Stimulating Foreign Investment and Entrepreneurship

Introduction

With a competitive corporate income tax rate in Europe—20% on the first € 200,000 and 25% for taxable profits exceeding € 200,000—as well as a number of attractive incentive programs, the Netherlands offers a supportive fiscal climate for international companies. Holland 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 of the current Dutch tax regime include:

- Relatively low statutory corporate income tax rate of 25% (20% for first € 200,000)
- Innovation box resulting in an effective corporate income tax rate of 7% 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
- Carry forward losses for nine years and carry them back for one year
- Advance tax rulings 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% tax ruling)
- 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: 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 (2018):

- € 0 - € 200,000: 20%
- € 200,000 and more: 25%

The basic rate of corporate income tax above € 200,000 is to be reduced from 25% to 21%, while a tax rate of 16% will be levied on the first € 200,000 euros in profits – a reduction of 4 percentage points from the current level. This is proposed in the Government agreement realized in October 2017 (Government agreement). These rate reductions will have a phased introduction: in 2019 the rates will be reduced by one percentage point, in 2020 by a further 1.5 percentage points and in 2021 again by 1.5 percentage points. So, in 2021, the rates will be 21% and 16% respectively.

A special optional tax rate may be elected for profit resulting from (patented) intangible assets. In this box, the net income from intellectual property will be taxed at an effective tax rate of 7%. See also in the next paragraph.

Innovation Box: effective tax rate of 7%

- Companies can benefit from an effective tax rate of only 7% for profits derived from self-developed intangible assets for which a so-called WBSO declaration (for wage tax purposes) has been obtained.

- The innovation box regime has the following relevant features:
  - To qualify for the innovation box taxpayers must have so-called R&D-declarations ("WBSO-verklaringen"). Additionally, large taxpayers need to have for instance 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 ("modified nexus" approach). 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.
  - The lower tax rate of 7% is claimed in the corporate income tax return filed by the taxpayer. The low tax rate is actually an exemption of 72% of the profits that can be allocated to the innovation box. By applying the general Dutch corporate income tax rate of 25% this gives an effective rate of approximately 7%.
  - 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 7% 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, dividends and capital gains/losses are fully exempt from corporate income tax (i.e. for capital gains, this means that gains are not taxed while capital losses are not deductible, except for qualifying liquidation losses).
- 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 a consolidated tax return.
- The main advantages include:
  - 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

Carrying Losses: up to nine years

- Loss carry-over facilities in the Netherlands are liberal.
- Both resident and non-resident taxpayers have a loss carry-back possibility of one year and a carry-forward possibility of nine years. In the Government agreement it is proposed to limit the loss carry-forward possibility to six years, most likely as from 2019.
- The losses need to be confirmed by the tax inspector 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 about their future tax position.

The Dutch Tax Administration has a dedicated APA/ATR-team operating out of Rotterdam.

- An Advance Pricing Agreement 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 Advance Tax Ruling 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 tax credit (WBSO): 32% / 14% wage tax reduction

- The WBSO (R&D tax credit) of the Dutch Ministry of Economic Affairs and Climate Policy is intended to provide entrepreneurs with an incentive to invest in research.
- 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 tax return to the Dutch Tax and Customs Administration.
- For companies the R&D payroll tax deduction amounts to 32% of the first € 350,000 of R&D wage and other costs and expenses, and 14% of all further R&D costs and expenses. For start-ups the tax deduction for the first € 350,000 spent on R&D is even higher (40%).
- Self-employed entrepreneurs are entitled to a fixed R&D tax deduction of € 12,623 and start-up self-employed entrepreneurs are entitled to an additional deduction of € 6,315.
- There is no longer a maximum allowance per calendar year for each company (or corporate entity).

MIA/Vamil: tax relief schemes for environmentally friendly investments

- The MIA scheme allows entrepreneurs to deduct up to 36% of the cost of an environmentally friendly investment from the fiscal profit, provided that the investment is included in the published ‘Environment list’. The investment amount must be at least € 2,500 per asset. The maximum investment amount for which a deduction is granted is € 25,000,000 in 2018.
- The Vamil scheme lets entrepreneurs decide for themselves when to write off 75% of their investment costs included in the Environment list. That leads to an advantage in terms of liquidity and interest. For the other 25% of the investment costs entrepreneurs follow the regular investment amortization.
- All Dutch entrepreneurs paying income or corporate income tax are eligible to apply for the MIA/Vamil schemes.

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.
- 54.5% of the relevant expenditures is deductible from the taxable earnings in the year in which the equipment is purchased.
- Each business can qualify for the EIA for energy investments of a minimum of € 2,500 and a maximum of € 121 million in 2018.
- EIA is applicable under certain conductions, such as:
    - the investment is included in the 'Energy list'
    - 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% Ruling: special tax regime for expats

- The Netherlands has a special tax regime for expatriates, the so-called 30% ruling, which provides a substantial wage/income tax exemption of up to 30%, for a period of up to 96 months. This is viewed as a reimbursement for the extra costs involved in living abroad.
- According to this rule, 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.
- In order to qualify for the 30% ruling, 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 the following minimum taxable income levels:
        - minimum gross salary of € 37,296 (not including the tax-free allowance).
        - minimum gross salary of € 28,350 (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 should 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 8 years (96 months). After a period of five years, the tax authorities can request that the employer demonstrate that the employee still meets the conditions. In the Government agreement it is proposed to reduce the duration of the 30% ruling to 5 years, most likely as from 2019.

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 nearly 100 countries. In case no treaty applies, the Netherlands often unilaterally provides for double tax relief. Taxpayers 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 Netherlands does not levy any withholding tax on interest payments or royalty payments by a Netherlands-based establishment. Additionally, tax treaties usually reduce or eliminate the foreign withholding tax on interest or royalties paid to a Netherlands-based establishment. Furthermore, the implementation laws based on the EU Interest and Royalty Directive eliminate the withholding tax for qualifying EU royalties and interest.
- In the Government agreement it is proposed to introduce a withholding tax on outgoing royalty and interest payments in specific cases of abuse, most likely as from 2020.
- The Dutch statutory dividend withholding tax rate is 15%. However, the tax rate is reduced when a dividend distribution is made to a tax treaty protected shareholder (generally reduced to 5% or even 0%). Dividends paid to qualifying EU parent companies are exempt from dividend tax due to the implementation laws based on the EU Parent/Subsidiary Directive. Also, under certain conditions, since 2018 a new exemption is applicable to dividends paid to a parent company in a country with which the Netherlands has a bilateral tax treaty.
- In the Government agreement it is proposed to abolish dividend withholding tax, most likely as from 2020. However, the withholding tax will remain in abuse situations and in case of dividend distributions to low tax jurisdictions.

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 entrepreneur, or as a foreign entrepreneur with a permanent business establishment for VAT purposes in the Netherlands and needs to have regular imports to the Netherlands.
- If a foreign entrepreneur has no permanent business 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 entrepreneur.

Dutch Tax Authorities: access to the tax inspector

The Dutch tax and customs administration understands how vital it can be for investors to know for certain, in advance, how tax law will be applied in a specific case. It therefore seeks to be as open and accessible as possible and has set up the so-called 'Central Point for Potential Foreign Investors'. The Central Point 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 business is located will be bound by the agreements made with The Central Point. The Central Point works together with the APA/ATR team. This team concludes advance pricing agreements on transfer pricing issues and advance tax rulings on other issues of an international nature.

The Dutch Tax Administration has a cooperative attitude towards taxpayers and aims for an enhanced relationship based on trust, transparency and mutual understanding. For this purpose the Netherlands introduced a voluntary '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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