



MERGERS AND ACQUISITIONS

The Netherlands

Taxation of Cross-Border
Mergers and Acquisitions

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TAX

The Netherlands

Introduction

The Dutch tax environment for cross-border mergers and acquisitions (M&As) will undergo fundamental changes over the next few years. Some of these changes have already been proposed in the Dutch Ministry of Finance's consultation memorandum, published in June 2009. In response to the memorandum, the Netherlands will most likely amend its interest-deduction limitations or introduce a mandatory group interest box. No bill has been put forward yet.

Under the current legislation and new proposals, three fundamental decisions face a prospective purchaser:

- What should be acquired: the target's shares, or its assets?
- What will be the acquisition vehicle?
- How should the acquisition vehicle be financed?

The legislation on interest deductions is expected to change significantly in the near future. This should be taken into account when developing a structure.

Recent Developments

The following summary of Dutch tax considerations is based on current tax legislation up to and including the Tax Plan 2010, which was proposed in September 2009.

It also refers to anticipated developments as of 5 December 2009.

The Tax Plan 2010 is designed to make it easier for low-taxed, passive-investment participations to qualify for the participation exemption, and to introduce temporary measures regarding loss carry-backs.

Furthermore, the Dutch Ministry of Finance published a consultation memorandum on 15 June 2009 and a letter to the parliament on 5 December 2009, that will most likely lead to amendments in the near future to the existing legislation regarding interest-deduction limitations. This may have a significant impact on the way companies are structured and financed in the Netherlands.

Consultation Memorandum Regarding Interest-Deduction Limitations

The Dutch Ministry of Finance's June 2009 consultation memorandum sets out a package of possible corporate income tax amendments. Representatives from the business sector, tax lawyers, and academics were involved in this research.

This research has not yet resulted in a definite legislative proposal (except for liberalizing the participation exemption), and the Ministry of Finance has decided to hold a public consultation. The consultation memorandum sets out three main proposed amendments. However, by letter of 5 December 2009, the Dutch Deputy Minister of Finance informed the parliament about the proceedings of the consultation and noted that two of the three main proposed amendments were either dropped or unlikely to be established. These three main proposed amendments were:

- A mandatory group interest box: The mandatory group interest box provides for a much lower effective tax rate on group interest payments and receipts. Under this proposal, the group interest income would be taxed at an effective rate of 5 percent, while group interest payments would only be deductible at an effective rate of 5 percent. This amendment is subject to discussion for a few years now and due to the adverse effect it has on foreign investments in the Netherlands and the approving decision of the European Commission on state aid that should be taken into account it is unlikely that this amendment shall hold during the investigation of the committee.
- Two options for possible interest-deduction limitations: In the consultation memorandum measures against excessive debt financing were proposed. The two options were the Bosal fix, coming down to a disallowance of all interest deductions on acquisition loans, and earning-stripping rules, coming down to a permitted deduction of interest up to a certain percentage of the taxpayer's EBITDA (earnings before deduction of interest, tax, depreciation, and amortization) disallowing all interest above that certain

percentage. The latter option is comparable to German earning-stripping rules. In the letter from 5 December 2009, both options were withdrawn for the time being. However, the committee is to review possible changes to these interest-deduction limitations.

- Acquisition holding legislation: Withdrawing the abovementioned two interest-deduction limitations, another possible limitation is added in the 5 December 2009 letter. Currently, by forming a fiscal unit between an acquisition holding and a target company in the Netherlands, the acquisition debt can be offset against profits from the target. The Deputy Minister wishes to limit offsetting the interest on this debt to the own taxable profit of the acquisition holding. To provide a safe harbor, a certain percentage could still be regularly deducted, depending on the debt to equity ratio. Probably this ratio should fit the current debt-to-equity ratio of the Dutch thin-capitalization rules (1:3). Please note that the problematic goodwill gap, resulting from consolidation for tax purposes by entering the fiscal unit, should be taken into account designing possible acquisition holding legislation.

The letter of 5 December 2009 also refers to the establishment of a Tax System Study Committee. This Committee shall further investigate how the Dutch corporate Income Tax Act should be amended. Moreover it should especially review the following issues:

- Acquisition holding legislation (interest deduction): This option was already introduced in the consultation memorandum of June 2009 and remained as a likely amendment
- Foreign permanent establishment loss deduction: In order to achieve a more equal treatment of permanent establishments (PE) and subsidiaries, losses of foreign PE's could no longer be recognized as a part of the world-wide taxable amount of Dutch taxpayers and should therefore not be deductible in the Netherlands. Currently, this is the case in the Dutch participation exemption regime and a comparable regime should be introduced for PE's. In line with this regime, residual losses at discontinuance of a PE should still be deductible. The subject to tax requirement for PE's should be abolished. Hence, by this possible amendment PE's and subsidiaries should be treated equally.

In a January 2010 meeting of the lower house of Dutch parliament, it was decided that the Study Committee would also review possible alternatives to the interest box. With this decision made, it now seems almost certain that the current interest box proposals as included in the consultation memorandum will not be enacted as currently proposed.

Given the possible far-reaching consequences the proposed limitations on interest-deductibility and on foreign permanent establishment losses could have and the opposing interests of the various groups of companies active in the Netherlands, a date of introduction is highly uncertain. The consultation memorandum does not include any transitional rules. An effective date of 1 January 2011, perhaps with the exception of certain elements from the package, thus seems more likely. The committee should present its findings in spring 2010.

Dividend Withholding Tax

The legal-form requirement and the subject-to-tax test for applying the withholding exemption to profit distributions to EU-resident parent companies will be abolished. The withholding exemption will not apply, however, to distributions to institutions that are comparable to the Dutch fiscal investment institution or tax-exempt investment institution.

Participation Exemption for Low-Taxed, Passive-Investment Participations

The Tax Plan 2010 proposes relaxing the current participation exemption rules for low-taxed, passive-investment participations. This relaxation is intended to simplify, and offer more certainty regarding, the application of these rules. The proposals are very similar to those made in the consultation memorandum dated 15 June 2009, with the comments on the latter having been taken into account. The main goals of the proposed amendments are to introduce an intention test, liberalize the assets test, and establish a more practical application of the subject-to-tax test, wherein the latter two factors will function as safe harbors. These rules currently have been implemented and are effective as from 1 January 2010.

Loss Set-Off

The Tax Plan 2010 contains a temporary measure that would offer corporate income taxpayers the opportunity to extend the current loss carry-back term from one year to three years. In exchange, the current term for carrying losses forward would be shortened from nine years to six. Effectively, therefore, the cost of electing

the extended carry-back would be losing a year of availability for set-off. A maximum of EUR 10 million could be set off against each of the extra profitable years. The measure would apply only to the 2009 and 2010 tax years. Taxpayers can, therefore, only choose to make this swap in the tax returns for those loss years. A nine-year carry-forward period will continue to apply to taxpayers who do not choose to avail themselves of the extended carry-back period.

Asset Purchase or Share Purchase

From the seller's perspective, a sale of assets is, in general, likely to generate a taxable gain (or loss) unless one of the forms of relief described above applies, or unless the gain can be deferred by creating a reinvestment reserve. This operates through a roll-over technique, so that the gain on the sale of one business asset can be used to reduce the tax basis of another business asset or assets. The relief is subject to various conditions, including a three-year reinvestment period and, in some cases, the type of the new asset.

If shares or assets are acquired from an associated party at a price that is not at arm's length, this may result in a deemed dividend distribution or capital contribution.

Capital gains realized on the sale of shares qualifying for the application of the participation exemption are tax-exempt. For details, see Purchase of Shares later in the chapter.

Purchase of Assets

When a Dutch company acquires assets, the assets will be reported in the acquiring company's financial statements in accordance with generally accepted accounting principles.

Any financing costs relating to the acquisition of assets are generally deductible for Dutch corporate income tax purposes on an accruals basis. See, however, the restrictions mentioned under Choices of Acquisition Funding.

The transfer of Dutch real estate may be subject to transfer tax at a rate of 6 percent.

As a rule, the sale or other transfer of assets by a Dutch-resident company (or a non-resident company that holds the assets through a Dutch permanent establishment) is subject to Dutch corporate income tax on any resulting gains (sometimes referred to as hidden reserves) unless the transaction qualifies for one of the following types of relief: asset merger, legal merger, or de-merger (division).

Corporate reorganizations involving simple transfers of assets and liabilities between companies forming a fiscal unity for corporate income tax purposes are generally tax-exempt, as are transfers of any other assets or liabilities within a fiscal unity. For more details on fiscal unities, see Group Relief/Consolidation under Other Considerations later in the chapter.

An asset merger essentially involves the transfer of a business (or an independent part thereof) by one company to another company in exchange for the issue of new shares to the transferor. The relief consists of an exemption from tax for the transferor and a roll-over of the transferor's existing tax basis in the transferred assets (and liabilities) to the acquiring company, effectively deferring any gain. In principle, the relief is not restricted to resident companies or companies incorporated under Dutch law, but in practice, the involvement of non-resident companies can have the implications described later in the chapter. The relief will apply automatically if certain conditions are satisfied (generally ensuring that avoidance opportunities are not present) and in other cases needs to be specifically requested and may be granted subject to additional conditions. The relief does not apply if the merger is substantially aimed at the avoidance or deferral of taxation. Advanced certainty (through a ruling) can be obtained from the Dutch Revenue on this. In general, the transferor's pre-merger losses may not be transferred to the acquiring company and the acquiring company's post-merger losses may not be carried back to be set off against the transferor's profits. However, an exception to this rule, subject to conditions, is made in the case of a Dutch permanent establishment being integrated into a BV (a private limited liability company, or Besloten Vennootschap) or NV (a public limited liability company, or Naamloze Vennootschap) by way of an asset merger.

In a legal merger, the assets and liabilities of one or more companies are transferred to another new or existing company, and the transferor(s) then cease(s) to exist. As a rule, the acquiring company, in exchange for the transfer, issues new shares to the shareholder(s) in the transferor(s).

The tax relief under a legal merger consists of an exemption from tax for the transferor and a roll-over of the transferor's existing tax basis in the transferred assets (and liabilities), as well as fiscal reserves, to the acquiring company, effectively deferring any gain. A legal merger is now possible involving non-Dutch companies, subject to conditions. As a general rule, the tax relief is not restricted to resident companies, but

applies also to companies resident in the European Union (EU). A Dutch NV can also merge with similar entities from other EU Member States to form a new *societas europea* (SE). A similar procedure applies to obtaining the relief and advanced certainty as applies to asset mergers. The transferor's pre-merger losses may be transferred to the acquiring company and the acquiring company's post-merger losses carried back to be set off against the transferor's profits if a request is filed and applicable conditions are satisfied.

There are two basic forms of de-merger (division) under Dutch civil law. The first generally results in the division of a company's enterprise between two or more acquiring companies and the transferor ceasing to exist (a pure de-merger). The second involves a transfer of all or part of a company's enterprise, with that company continuing to exist, to one or more new or existing companies (a split-off). In both cases, new shares are issued in consideration for the transfer. Typically, the acquiring company could issue the new shares to the shareholders in the transferor. The tax relief applies in the same way as for legal mergers. A similar procedure applies to obtaining the relief and advanced certainty as applies to asset mergers. For a pure de-merger, pre-de-merger losses can be carried forward and post-de-merger losses carried back, as is the case for legal mergers. However, in that case a request to the tax authorities has to be filed. This facility is not available in the case of a split-off. The tax losses available for carry-forward and carry-back will then remain available at the level of the company that continues to exist.

Purchase Price

Acquisition prices from associated parties may be challenged under transfer pricing principles. There are no particular rules for allocating the purchase price between the assets acquired, other than using the fair market value for each of the assets acquired.

Goodwill

Goodwill will be reported in the acquiring company's financial and tax statements as the difference between the value of the acquired assets and the price paid. The maximum annual amortization of goodwill for tax purposes is 10 percent of the acquisition or development costs

Depreciation

Depreciation is available on the acquired assets that are necessary for carrying on the enterprise, provided that their value diminishes over time.

With effect from 2007, maximum annual amortization and depreciation percentages will apply to goodwill (10 percent) and business assets other than goodwill and real estate (20 percent). The new law provides transitional rules for business assets that were partially amortized or depreciated before 2007.

Under the new legislation, depreciation of real estate may be recorded as a residual value. For investment properties, the minimum residual value equals the value established by the municipality under the Valuation of Immovable Property Act (WOZ), whereas for properties used as part of one's own business (such as the business premises), it will equal half the value determined under the WOZ. Under the new depreciation system, it will continue to be possible to record impairment to buildings to a lower going-concern value. Transitional rules apply to recent investments.

Under certain conditions, accelerated amortization/depreciation can be claimed in 2009 and, according to recent tax proposals, in 2010 and 2011 (up to a maximum of 50 percent per year) with respect to certain investments made in these years. This is meant as a temporary crisis measure.

Tax Attributes

Tax losses are not transferred on an asset acquisition. They remain with the company. However, an exception to this rule is made when a Dutch permanent establishment is integrated into a BV or an NV by way of an asset merger. In such cases, where the transferor is no longer subject to Dutch tax after the merger, a request may be submitted to allow a carry-forward or carry-back of losses, subject to the losses being offset against the profits attributable to the assets that generated the losses. The transfer of assets within a fiscal unity does not generally affect tax attributes, so will not, for example, result in taxable gains. Please note, however, that a claw-back may apply if the fiscal unity is split within a six-year period following such a transfer.

Value-Added Tax (VAT)

VAT is the most important indirect tax in the Netherlands.

Dutch VAT is levied on the net invoice amount charged by entrepreneurs for supplies of goods and services within the Netherlands. Entrepreneurs are allowed to reclaim the Dutch VAT (input VAT) levied on investments and the costs they incur:

- for VAT-taxable activities; and

- for VAT-exempt financial services rendered to non-EU persons and to non-EU permanent establishments.

However, no VAT is due when all, or an independent part, of a company's enterprise is transferred and the transferred enterprise continues as before. This relief also applies to legal mergers. It does not, however, apply to the sale of a single asset or trading stock (e.g., inventory). The availability of the relief depends on the VAT obligations of the seller regarding the assets being transferred to the purchaser.

No VAT is levied on share transactions because the supply of shares constitutes a financial service that is exempt from Dutch VAT.

An important issue is often the extent to which an entrepreneur is entitled to reclaim the Dutch VAT levied on the transaction costs he/she incurs for a sale of shares (of a subsidiary) to an EU-based purchaser. Following two Dutch Supreme Court rulings, the Dutch Revenue has conceded the principle that VAT may be deducted on certain share sales and has set out the conditions that it considers should be satisfied in this respect. VAT levied on the costs incurred for an asset transaction and a statutory merger can generally be recovered by both the buyer and the seller.

Transfer Taxes

A real estate transfer tax at the rate of 6 percent of the real estate value (which must equal at least the purchase price), is due on all transfers of titles to Dutch real estate, including shares in Dutch real estate companies. However, there are some important exemptions, such as those relating to asset mergers or intra-group transfers.

The transferee is liable for the tax, but the contract may stipulate that the transferor will bear the expense.

Purchase of Shares

Shares in a company will generally be acquired through a purchase or exchange of shares. Typically, the acquisition of shares will be capitalized in the acquiring company's financial statements.

In practice, shares that are held as a shareholding qualifying for the participation exemption (see later in the chapter) are carried at cost for tax purposes; this is relevant only for specific purposes, given that a disposal of such a shareholding is tax-exempt. Costs directly related to such acquisitions are generally not deductible. Please note that costs relating to obtaining debt financing may be deducted if and to the extent that

interest on acquisition loans is deductible for tax purposes.

Shares held as a portfolio investment will generally be carried at cost or market value, whichever is lower. Specific regulations apply to a participation of 25 percent or more in a low-taxed investment institution (that is, broadly speaking, 90 percent or more of its assets comprise passive investments and are subject to tax at below 10 percent).

When shares in a Dutch target are acquired in exchange for new shares issued by a Dutch company, as in a share-for-share exchange, the new shares will only be treated as paid-up to the same extent that the target's shares were paid-up. This means that the potential dividend withholding tax (WHT) that would have been due on profit distributions by the target is, in effect, shifted to the acquiring company, as and when it distributes profits. Concessionary treatment applies to mitigate the impact of this rule where a Dutch company acquires a foreign target.

A change in ownership of shares in a Dutch company may, under certain circumstances, result in the company losing its right to carry forward losses (see later in the chapter).

If the price the purchaser pays for the shares is higher than the book value of the underlying assets of the acquired company, the basis of the company's underlying assets may not be stepped up to the price paid for the shares; nor can the excess be treated as payment for amortizable goodwill.

The acquisition or transfer of shares is exempt from VAT.

The transfer of shares in a company owning real estate may be subject to transfer tax at a rate of 6 percent. This will depend on a number of factors, including the proportion of the assets represented by the real estate and the percentage of the relevant shareholding.

The acquisition of shares is not subject to capital contribution tax, other indirect taxes, or local or state taxes.

The sale of a shareholding that qualifies for the participation exemption (as described later in the chapter) is exempt from tax. A loss is accordingly not deductible. Costs directly relating to the sale of a qualifying participation are also not deductible.

The participation exemption will apply, broadly speaking, to shareholdings in Dutch or non-Dutch companies, at a

rate of at least 5 percent, unless the subsidiary can be considered a low-taxed, passive-investment company.

A subsidiary will be a low-taxed, passive-investment company if, broadly speaking, it is not subject to tax at an effective 10-percent rate on a taxable profit established in accordance with Dutch standards (the subject-to-tax test), or if more than 50 percent of its assets comprise non-business-related investments (the assets test). Assets held by subsidiaries are generally taken into account for the assets test. The relevant entity's activities determine whether an asset qualifies as a non-business-related investment. Non-business-related investments are investments that cannot reasonably be considered necessary to the course of the business operations of the entity holding those investments. Assets used in passive group financing activities will be considered non-business-related investments. This will occur automatically, unless these assets, together with other non-business-related investments, represent 50 percent or less of the relevant entity's assets or the situation involves active group financing. In other cases, the question of whether assets qualify as non-business-related investments will be answered on a case-by-case basis.

If the subject-to-tax test is not satisfied, the passive-investment participation will not qualify for the participation exemption. In that case, dividends or gains may be taxed and the tax reduced by way of a special tax credit mechanism.

The Tax Plan 2010 proposes to relax the participation exemption rules, particularly regarding the subject-to-tax and assets tests.

Tax Indemnities and Warranties

In a share acquisition, the purchaser is taking over the target company together with all related liabilities, including contingent liabilities. The purchaser will, therefore, normally require more extensive indemnities and warranties than in the case of an asset acquisition.

Tax Losses

In general, tax losses may be carried forward for nine years and carried back for one year within the same company (or fiscal unity). However, carry-forwards or carry-backs may be restricted or denied in circumstances where there is a change of 30 percent or more in the ownership of the company and the company has had primarily passive investments during the years concerned or has experienced a significant decrease in business activities. The carry-forward of prior-year losses by a holding and finance company may

also be restricted, as may be the carry-back of losses incurred from this date. According to the legislation, a company is a holding and finance company if, for 90 percent or more of the financial year, 90 percent or more of its activities comprise holding participations and/or financing affiliated companies. The losses incurred by such companies may only be set off against profits if the company also qualifies as a holding and finance company in the profitable year and provided, broadly speaking, that the net amount of affiliated loan receivables is not greater in the profitable year (or if it is, this was not done primarily to take advantage of the loss set-off).

The existing rules for setting off losses within a fiscal unity are extensively regulated, but the normal time limits for such set-off remain applicable. In general, pre-fiscal unity losses can be set off only if the fiscal unity as a whole has a profit for tax purposes after setting off the results of the various fiscal unity companies. Thereafter, the total result of the fiscal unity is divided into the parts attributable to the participating companies in the fiscal unity. If the individual participating company still shows a profit, only the pre-fiscal unity losses of that company may be set off against that profit. The same procedure is followed for carrying back the loss incurred by a fiscal unity company to be set off against its pre-fiscal unity profits. Other specific rules apply to the treatment of losses and foreign tax credits after a fiscal unity is dissolved or when a company leaves a fiscal unity.

Crystallization of Tax Charges

A tax charge will not arise on a share transfer if the transfer qualifies as a share-for-share merger. This essentially involves an exchange of shares in the target company for shares in the acquiring company. The relief consists of an exemption from tax for the transferor and a roll-over of the transferor's existing tax basis in the target shares into the consideration shares in the acquiring company, effectively deferring any gain.

This relief is available in the following situations:

- A company resident in the Netherlands:
 - acquires, in exchange for the issue of shares in its own capital (or profit rights), shares in another company resident in the Netherlands; and
 - can exercise more than 50 percent of the voting rights in the latter company after the acquisition.

- A qualifying company resident in an EU Member State:
 - acquires, in exchange for the issue of shares in its own capital (or profit rights), shares in a qualifying company resident in another EU Member State; and
 - can exercise more than 50 percent of the voting rights in the latter company after the acquisition.
- A company resident in the Netherlands:
 - acquires, in exchange for the issue of shares in its own capital (or profit rights), shares in a company resident outside the European Union; and
 - can exercise at least 90 percent of the voting rights in the latter company after the acquisition.

A cash element of up to 10 percent of the nominal value of the shares issued under the share-for-share merger is permitted (but the relief is limited to the share element). Relief is not available if the transaction is substantially aimed at avoiding or deferring taxation. Unless the taxpayer can demonstrate otherwise, this will be presumed if the transaction does not take place for sound business reasons, such as a restructuring or rationalization of the activities of the companies involved. Confirmation from the Dutch Revenue that relief will not be denied on these grounds may be requested prior to carrying out the transaction.

For corporate taxpayers, the importance of the share merger facility is limited by the broad scope of the participation exemption. Moreover, although the share-for-share merger facility also applies for personal income tax purposes, where Dutch individual shareholders are involved, the importance of the facility will generally be limited to those owning at least 5 percent of the target (that is, holders of substantial interests), as gains on smaller shareholdings are not usually taxable.

The disposal outside a fiscal unity (see Group Relief/Consolidation) of a subsidiary that has been involved in the transfer of assets within the fiscal unity in the preceding six years may give rise to a tax liability with respect to the previously transferred assets. The transferred assets are revalued at market value prior to the fiscal unity being terminated. An exception is made if the transfer of the assets is part of the normal businesses of both companies

Once it has left a fiscal unity, a company remains jointly and severally liable for taxes payable by the parent company of the fiscal unity (both corporate income tax [CIT] and VAT fiscal unity) allocable to the tax periods in which the company was included in the fiscal unity. This liability arises on the basis of the Dutch Tax Collection Act and should be addressed in the Sale and Purchase Agreement.

Pre-Sale Dividend

If the conditions are met and the seller is a Dutch resident, the participation exemption applies to a pre-sale dividend. If the seller is non-resident, it depends on the relevant treaty or the applicable domestic type of relief, whether the Netherlands will withhold tax on the paid dividend.

Transfer Taxes

A real estate transfer tax at the rate of 6 percent is due on all share transfers in Dutch real estate companies. A company is considered to be a real estate company if its assets consist more than 70 percent of real estate in the Netherlands at the time of the share transfer or in the year before the transfer.

Tax Clearances

See earlier in the chapter in respect of share mergers.

Choice of Acquisition Vehicle

There are several potential acquisition vehicles available to a foreign purchaser for acquiring the shares or assets of a Dutch target. Tax factors will often influence the choice of vehicle.

Local Holding Company

Dutch tax law and the Dutch Civil Code contain no specific rules on holding companies as such. All resident companies can, in principle, benefit from the participation exemption, if they satisfy the relevant conditions (described under Purchase of Shares). Under the participation exemption, capital gains and dividends from qualifying shareholdings are exempt from CIT. There is, however, legislation that limits the possibility of setting off losses, if incurred by holding and finance companies, against profits (see Purchase of Shares).

In principle, therefore, an acquirer already active in the Netherlands through a subsidiary or branch could have that entity make a qualifying share acquisition. However, in practice, a special-purpose company is often incorporated in the Netherlands for the purposes of such acquisitions. The main types of Dutch corporate entities are the BV, the NV, and the Dutch cooperative.

For Dutch tax purposes, there are no material differences between the types of entities, apart from the fact that the Dutch cooperative is not subject to Dutch dividend WHT, which makes it particularly attractive for foreign inbound investments by non-treaty residents and/or private equity-type funds.

Funding costs, such as interest incurred by a local holding company, can, in principle, be deducted in computing the taxable profits of the target, if a fiscal unity can be formed after the acquisition (see Group Relief/Consolidation). Please note that proposals may be introduced wholly or partially to eliminate this possibility. See Recent Developments earlier in the chapter.

Foreign Parent Company

The foreign purchaser may choose to make the acquisition itself. As a non-resident without a Dutch permanent establishment, the foreign purchaser will not normally be exposed to Dutch taxation in respect of the shareholding, except for possible WHT on dividends. Dutch WHT on dividends is 15 percent unless it is reduced by a treaty or a domestic exemption applies. Dividends to foreign EU-based corporate shareholders holding at least 5 percent of the shares would normally qualify for an exemption from WHT.

Non-Resident Intermediate Holding Company

Due to the extensive network of double-taxation treaties, it is usually unnecessary to use a treaty country intermediary. If the acquirer is resident in a non-treaty country, however, it may be beneficial to interpose a Dutch cooperative (not subject to dividend WHT) or foreign holding company resident in a treaty country between the acquirer and the target company, to reduce the dividend WHT.

Local Branch

A branch of a foreign company is subject to Dutch CIT in the same way as a domestic company. Non-resident entities that have Dutch permanent establishments to which qualifying shareholdings can be attributed, can, in principle, benefit from the participation exemption. Funding costs, such as interest incurred by a local branch, can, in principle, be deducted in computing the taxable profits of the target if a fiscal unity can be formed after the acquisition (see Group Relief/Consolidation later in the chapter and Recent Developments). No WHT is levied on distributions to the foreign head office. This can be an advantage when acquiring a Dutch target's assets. When the deal is properly structured, using a branch to acquire shares in a Dutch target also offers the possibility of distributing profits free from WHT. A negative commercial aspect of

using a branch is that the branch may not be considered a separate legal entity, resulting in the head office's full exposure to the branch's liabilities. Additionally, the Dutch Revenue will deny the head office's deduction of interest charged or allocated to the branch, unless such deduction relates to external loans.

Joint Ventures

Joint ventures can be either incorporated (with the joint venture partners holding shares in a Dutch company) or unincorporated (usually a limited partnership). A partnership may be considered transparent for Dutch tax purposes, if certain conditions are met. In this case, the partnership's losses can be offset against the partners' profits. However, selling the business may lead to taxable profit on the level of the partners. The profit or loss on the sale of the shares of a tax-transparent partnership will, if the conditions are met, not lead to a taxable profit due to the participation exemption.

Choice of Acquisition Funding

Debt

Interest expenses are generally deductible for corporate income tax purposes in the Netherlands on an accruals basis. This also applies to interest relating to a participation to which the participation exemption applies, irrespective of whether the shareholding is in a resident or non-resident company.

Deductibility of Interest

For structuring an acquisition using a fiscal unity to obtain a deduction for financing costs against the profits of the target, see Choice of Acquisition Vehicle.

Specific restrictions on deducting interest expenses (including costs and foreign exchange results) apply for interest paid to affiliated companies and individuals if the loan is used for the acquisition of shares in companies which, after the acquisition, become affiliated to the acquirer as a consequence of such acquisition. Please note that certain guarantees by affiliated companies and individuals may cause a third-party loan to be qualified as a loan by these affiliated companies or individuals.

The restrictions described above do not apply if sound business reasons predominate in the rationales for the transaction as well as the borrowing, or if the recipient of the interest (or, in the case of a conduit company, the ultimate recipient) is subject to effective taxation at a rate that is considered reasonable according to Dutch standards (generally 10 percent, on a basis computed under Dutch tax accounting principles).

The deductibility of the interest can also be restricted by thin-capitalization rules. Dutch tax law restricts the deductibility for corporate income tax purposes of interest payable if, and to the extent that, such interest relates to the excessive financing of a company with debt. The legislation introduces two tests that can be used to determine whether a taxable company is excessively financed with debt:

- Inter-company interest deductions will be limited, based on a debt-to-equity ratio of 3:1. In principle, this ratio will be derived from the company's or the branch's balance sheet for tax purposes. If the debt (defined as interest-bearing loans, and not provisions or interest-free loans), less outstanding interest-bearing loan receivables and a threshold amount of EUR 500,000, exceeds the 3:1 maximum based on the average of the respective amounts at the beginning and the end of the book year, the interest attributable to the excess is not deductible. In this calculation, the equity is deemed to be at least EUR 1 to limit the deduction of interest in the case of an equity deficit. However, if the interest paid to affiliated companies, less interest received from affiliated companies, is lower than the interest attributable to the excess debt, the non-deductibility will be limited to the lower amount. Loans from banks issued under parent-company guarantees that are not granted solely for interest rate-reduction purposes and back-to-back loans are deemed to be group loans, and may thus be denied the interest deduction. The legislation does not apply to loans granted within a fiscal unity.
- The company or branch may prove that the debt-to-equity ratio according to the financial statements for financial reporting purposes (for the highest level of the corporate group) gives a higher ratio. In this situation, debt and equity are defined according to the financial statements. Debt is also not reduced by the amounts of loans receivable, nor does the EUR 500,000 threshold apply in computing excess debt. If the taxpayer's financing ratio is lower than that of the group to which it belongs, the deductibility of interest will not be restricted at all. This alternative method can be applied on a year-by-year basis and only at the taxpayer's request. Taxpayers are not bound by choices made in previous years when selecting a method.

The described legislation on the deductibility of interest will probably be adapted. For further details, see Recent Developments.

Withholding Tax on Debt and Methods to Reduce or Eliminate

WHT is levied only on dividend distributions, at a rate of 15 percent. No WHT is levied on interest (except for interest paid on hybrid loans, as described later in the chapter), royalty payments, or transfers of branch profits to a foreign head office. In the absence of a WHT on interest, it will often be advantageous to fund a Dutch company with debt rather than equity. See, however, the restrictions on interest deduction for profit tax purposes under Choices of Acquisition Funding.

(For the dividend WHT implications of share-for-share acquisitions, see Purchase of Shares.)

Checklist for Debt Funding

- The deduction of interest may be restricted if the acquisition of shares is financed with an intercompany loan. Also, the interest deduction may be restricted by thin-capitalization rules.
- If the level of the purchaser's profits is not sufficient, an effective deductibility of the interest could be achieved by forming a fiscal unity.

Equity

A purchaser may use equity to fund its acquisition, possibly by issuing shares to the seller in satisfaction of the consideration (share-merger). Contributions to the capital of a Dutch company are not subject to capital contribution tax.

An important consideration when using equity is the debt/equity ratio for Dutch thin-capitalization rules.

Hybrids

According to Dutch case law, a loan may be re-qualified as equity for corporate income tax purposes in the following situations:

- the parties actually intended that equity would be provided (rather than a loan);
- the conditions of the loan are such that the lender effectively participates in the enterprise of the borrowing company; or
- the loan was granted under such circumstances (such as those relating to the debtor's financial position) that, by the time the loan was granted, neither full nor partial repayment of the loan could be expected.

The conditions under which loans referred to under the second bullet point above, may be re-characterized as equity have been developed by Dutch case law. If a loan

is re-characterized as equity under the above-mentioned legislative tests, interest payments will not be deductible and may be deemed to be a dividend distribution, triggering 15-percent WHT (unless reduced by treaty or domestic relief).

Interest on a loan between affiliated entities that has no defined term or a term exceeding 10 years and carries remuneration of less than 70 percent of arm's-length remuneration is not deductible.

Discounted Securities

If securities are issued at a discount, because the interest rate is below the market rate of interest, the issuer may, in principle, be able to obtain a tax deduction for the discount accruing over the life of the security.

Deferred Settlement

Payments pursuant to earn-out clauses that result in additional payments or refunds of the purchase price are covered by the participation exemption applicable to the relevant participations.

Likewise, payments related to indemnities or warranties are covered by the participation exemption to the extent that they are to be qualified as an adjustment of the purchase price.

If the settlement of a purchase price is deferred, part of the purchase price may be re-characterized as interest for tax purposes, depending on the agreed terms and the parties' intent.

Other Considerations

Concerns of the Seller

No corporate income tax is due on share transfers, provided the conditions of the participation exemption are met. In other cases, relief from corporate income tax may be granted in cases of a share-for-share merger, asset merger, legal merger, and de-merger. Where relief is available, it generally takes the form of an exemption for the transferor and a roll-over, whereby the acquired assets and liabilities retain the same tax basis they had when owned by the transferor. Please note that certain conditions for this roll-over have to be met. For example, if the shares are sold within a certain period after an asset merger, the granted exemption can be revoked.

The disposal outside a fiscal unity of a subsidiary that has been involved in the transfer of assets within the fiscal unity in the preceding six years may give rise to a tax liability with respect to the previously transferred assets. The transferred assets are revalued at market

value prior to the fiscal unity being terminated. An exception is made if the transfer of the assets is part of the normal businesses of both companies.

Company Law and Accounting

Under Dutch law, a company may operate in the Netherlands through an incorporated or unincorporated entity, or a branch. All legal entities have to register their business with the Trade Registry (Handelsregister) at the local Chamber of Commerce (Kamer van Koophandel).

The most common forms of incorporated companies under Dutch commercial law are the BV and the NV. Both are legal entities and have capital stock divided into shares. The shares of a BV are not freely transferable, which makes this type of company generally preferred as the vehicle for privately held companies. Generally speaking, the shares in an NV are freely transferable.

Foreign investment in a Dutch company normally requires no government consent. However, certain laws and regulatory rules may be applicable to mergers or acquisitions. In a stock merger, the shareholders of the target company either exchange their shares for those of the acquiring company or sell them to the acquiring company. The transfer of title to registered shares is made by a deed of transfer executed before a Dutch civil-law notary.

In a business merger, an enterprise is sold to the acquiring company for either cash or shares in the company. Such a transfer requires that all of the rules relating to conveyance are met.

In a statutory/legal merger, in general, shareholders exchange their shares in the target company for those of the other (acquiring) company (or a new company); the target company is then dissolved. In addition to this basic form of a statutory/legal merger, a number of variations exist, such as a merger between a parent and a subsidiary, or a triangular merger under which the consideration shares may be issued by a member of the acquiring company's group.

Legislation on divisions and de-mergers/split-offs has been in force since 1998. Participants in mergers must adhere to the requirements of the Dutch takeover and merger code (SER Fusiegedragsregels), which protects the interests of shareholders and employees, and the Works Councils Act (Wet op de Ondernemingsraden), which protects the interests of employees and requires notification of mergers. Mergers of large companies that qualify as 'concentrations' within the meaning of

the Dutch Competition Act must be notified to the Dutch Competition Authority beforehand.

Legislation for financial reporting is laid down in Part 9 of Book 2 of the Dutch Civil Code. Furthermore, the Council of Annual Reporting (CAR, Raad voor de Jaarverslaggeving) publishes Guidelines for Annual Reporting (GAR), which, to a large extent, are based on International Financial Reporting Standards (IFRS).

The financial reporting rules contain requirements about the content, analysis, classification, recognition, and valuation of items in the financial statements. The statutory management of an NV or BV should prepare the financial statements within a period of five months. This period can be extended for a maximum of an additional six months, with approval from the shareholders and when special circumstances apply.

Group Relief/Consolidation

A fiscal unity can be formed between a parent company and any companies in which it owns 95 percent of the shares. The parent and subsidiaries must be formed under Dutch law (they will mostly be BVs, NVs, or cooperatives) or, if they are formed under foreign law, their legal form must be comparable to a BV, NV or a cooperative. A company does not actually have to be resident in the Netherlands, but if the company is not a Dutch resident, it should have a permanent establishment in the Netherlands and be resident in either an EU country or a country with a tax treaty with the Netherlands that prohibits discrimination against such a company. If the Dutch permanent establishment is the parent company of a fiscal unity, the shares in the respective subsidiaries should be attributable to the permanent establishment. A number of conditions need to be fulfilled, including identical financial years for both parent and subsidiaries. For newly incorporated companies, the commencement of the first financial year may deviate. A fiscal unity may be deemed to have been formed on the date requested, but the formation date can be no more than three months prior to the date of such request.

Inclusion in a fiscal unity means that, for tax purposes, the assets and activities of the subsidiaries are attributed to the parent company, in effect producing a kind of tax consolidation. The main advantage of a fiscal unity is that the losses of one company can be set off against the profits of another in the year they are incurred. Thus, if a fiscal unity exists, interest expenses incurred by a Dutch holding company to acquire a Dutch subsidiary can, subject to certain conditions, be set off against the profits of that subsidiary (see also Choice of

Acquisition Vehicle). In addition, assets and liabilities can generally be transferred from one company to another without giving rise to tax consequences. Specific rules apply to combat the abuse of fiscal unities. In particular, the disposal outside a fiscal unity of a subsidiary that has been engaged in the transfer of assets within the fiscal unity in the preceding six years may give rise to a tax liability with respect to the previously transferred assets.

To ensure proper assessment and collection of tax, the Ministry of Finance has established a number of special conditions. In particular, extensive rules have been established restricting a taxpayer's ability to carry forward pre-fiscal unity losses to be set off against post-fiscal unity profits and to carry back post-fiscal unity losses to be set off against pre-fiscal unity profits.

Transfer Pricing

For tax purposes, in general, the intercompany transactions should be made at arm's length. To provide evidence that transfer prices are at arm's length, any taxpayer should be able to submit proper transfer pricing documentation to the Dutch Revenue. Absence of such evidence may cause the burden of proof to shift towards the taxpayer if the Dutch Revenue imposes adjustments (that is, if the taxpayer should argue that a reasonable estimation made by the Dutch Revenue is wrong in the specific case at hand). In addition, penalties may also be imposed in such cases. Transfer pricing adjustments may entail secondary adjustments such as hidden dividend distributions/capital contributions.

Dual Residency

A company that has been incorporated under Dutch civil law is, in principle, subject to taxation in the Netherlands whether or not it is also resident in another country. However, in certain circumstances, a Dutch company that is resident under a tax treaty in another country may be deemed non-resident for Dutch tax purposes, or may be denied certain types of relief (such as being able to join a fiscal unity).

Foreign Investments of a Local Target Company

Generally, similar rules regarding the availability of the participation exemption apply to both Dutch and non-Dutch subsidiaries. However, special rules apply to low-taxed, passive-investment companies. For more details, see Purchase of Shares and Recent Developments.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- All or part of the purchase price can be depreciated or amortized for tax purposes.
- A step-up in the cost basis for taxing subsequent gains is obtained.
- In general, no previous liabilities of the company are inherited.
- No acquisition of a tax liability on retained earnings.
- Permits flexibility to acquire only part of a business.
- Greater flexibility in funding options.
- Profitable operations can be absorbed by loss-making companies in the acquirer's group, thereby effectively increasing the ability to use the losses.

Disadvantages of Asset Purchases

- Possible need to renegotiate supply, employment, and technology agreements.
- A higher capital outlay is usually involved (unless a business' debts are also assumed).
- May be unattractive to the seller, thereby increasing the price.
- Higher real estate transfer tax.
- The benefit of any losses incurred by the target company is retained by the seller.

Advantages of Share Purchases

- Lower capital outlay (purchase of net assets only).
- Likely to be more attractive to the seller, therefore the price is likely to be lower.
- May benefit from tax losses of target company.
- Lower real estate transfer tax.
- May benefit from the seller's ability to apply the participation exemption.

Disadvantages of Share Purchases

- No depreciation of purchase price.
- No step-up for taxing subsequent capital gains.
- Liable for any claims against, or previous liabilities of, the entity.

- No deduction for the purchase price.
- Incurring a potential dividend WHT liability on retained earnings that are ultimately distributed to shareholders.
- Less flexibility in funding options.

Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest ¹ (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies ² (%)		
Albania	15	0/5 ³	0/5/10 ^{3a}	10
Argentina	15	10	12	3/5/10/15 ⁵
Armenia	15	0/5 ⁶	0/5 ⁴	5
Aruba	15	5/7.5 ⁷	10	0
Australia	15	15	10	10
Austria	15	5	0	0/10 ⁸
Azerbaijan ⁹	10	5 ⁶³	0/10 ³¹	5/10 ⁶⁴
Bangladesh	15	10 ¹⁰	7.5/10 ¹¹	10
Barbados	15	0 ¹⁰	5	0/5 ¹²
Belarus	15	0/5 ¹³	5	3/5/10 ¹⁴
Belgium	15	0/5 ¹⁵	0/10 ¹⁶	0
Bosnia and Herzegovina ¹⁷	15	5	0	10
Brazil	15	15	10/15 ⁴	15/25 ¹⁸
Bulgaria	15	5	0	0
Canada	15	5/10 ¹⁹	0/10 ²⁰	0/10 ²¹
China (People's Rep.)	10	10	10	10
Croatia	15	0 ¹⁰	0	0
Czech Republic	10	0	0	5
Denmark	15	0 ¹⁰	0	0
Egypt	15	0	12	12
Estonia	15	5	0/10 ⁴	5/10 ²²
Finland	15	0 ²³	0	0
France	15	5	0/10 ⁴	0
Georgia	15	0/5 ²⁴	0	0
Germany	15	10	0	0
Ghana	10	5 ¹⁰	0/8 ²⁵	8
Greece	15	5	8/10 ⁴	5/7 ¹²
Hungary	15	5	0	0
Iceland	15	0 ¹⁰	0	0
India	10/15 ²⁶	10/15 ²⁶	10/15 ²⁶	10/20 ²⁶
Indonesia	10	10	10	10
Ireland	15	0	0	0
Israel	15	5	10/15 ⁴	5/10 ²⁷
Italy	15	5/10 ²⁸	10	5
Japan	15	5	10	10
Jordan	15	0/5 ²⁹	5	10
Kazakhstan	15	0/5 ³⁰	0/10 ³¹	0
Korea (Rep.)	15	10	10/15 ³²	10/15 ³³
Kuwait	10	0 ¹⁰	0	5
Kyrgyzstan ⁹	15	15	0	0
Latvia	15	5	10	5/10 ²¹
Lithuania	15	5	10	5/10 ²¹
Luxembourg ³⁴	15	2.5	0/2.5/15 ³⁵	0
Macedonia	15	0 ¹⁰	0	0
Malawi	— ³⁶	— ³⁶	0	0
Malaysia	15	0	10	8
Malta	15	5	10	0/10 ³⁷
Mexico	15	0/5 ³⁸	0/5/10/15 ³⁹	10
Moldova	15	0/5 ⁴⁰	5	2
Mongolia	15	0 ¹⁰	0/10 ⁴	0/5 ⁴¹
Montenegro ¹⁷	15	5	0	10
Morocco	25	10	10/25 ⁴²	10
Netherlands Antilles	15	8.3 ⁴³	10	0

Country	Dividends		Interest ¹ (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies ² (%)		
New Zealand	15	15	10	10
Nigeria	15	12.5 ¹⁰	12.5	12.5
Norway	15	0	0	0
Pakistan	20	10	10/15/20 ⁴⁴	5/15 ³⁷
Philippines	15	10 ¹⁰	0/10/15 ⁴⁵	10/15 ⁶⁵
Poland	15	5 ¹⁰	0/5 ⁴⁶	5
Portugal	10	0 ⁴⁷	10	10
Romania	15	0/5 ⁴⁸	0	0
Russia	15	5 ⁴⁹	0	0
Serbia ¹⁷	15	5	0	10
Singapore	15	0	10	0
Slovak Republic	10	0	0	5
Slovenia	15	5 ¹⁰	0/5 ⁴	5
South Africa	10	5 ¹⁰	10	0
Spain	15	5 ⁵⁰	10	6
Sri Lanka	15	10	0/10 ⁴	10
Suriname	20	7.5/15 ⁵¹	5/10 ⁴	5/10 ²⁷
Sweden	15	0	0	0
Switzerland	15	0	5	0
Taiwan	10	10	0/10 ⁵²	10
Tajikistan ⁹	15	15	0	0
Thailand	25	5	10/25 ⁴	5/15 ³⁷
Tunisia	20	0 ¹⁰	7.5	7.5
Turkey	20	5	10/15 ³²	10
Turkmenistan ⁹	15	15	0	0
Uganda	5/15 ⁵³	0 ⁵⁴	0/10 ⁴	10
Ukraine	15	0/5 ⁵⁵	0/2/10 ⁵⁶	0/10 ⁵⁷
United Kingdom	15	5	0	0
United States	15	0/5 ⁵⁸	0	0
Uzbekistan	15	0/5 ⁵⁹	0/10 ⁴²	0/10 ⁴³
Venezuela	10	0	5	5/7/10 ⁶⁰
Vietnam	15	5/7 ⁶¹	7	5/10/15 ⁶²
Zambia	15	5	10	10
Zimbabwe	20	10	10	10

Notes

1. Many treaties provide for an exemption for certain types of interest, such as interest paid to the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
2. Unless indicated otherwise, the rate in this column applies if the recipient is a company that owns at least 25 percent of the capital or the voting power in the Dutch company, as the case may be. Special conditions may apply.
3. The zero rate applies if the Albanian company owns at least 50 percent of the capital in the Dutch company and has invested in it more than USD 250,000.
- 3a. The zero rate applies, inter alia, to interest paid by a public body. The 5-percent rate applies to interest paid by a bank or other financial institution.
4. The zero rate applies to interest paid to a bank. Conditions may apply.
5. The 3-percent rate applies to news-related royalties. The 5-percent rate applies to copyright royalties (other than royalties related to films, etc.). The 10-percent rate applies to patents, trademarks, know-how, certain lease-related royalties, and technical assistance.
6. The 5-percent rate applies if the Armenian company owns directly at least 10 percent of the capital in the Dutch company; the 5-percent rate is reduced to zero if the profits out of which the dividends are paid have been effectively subject to the normal rate of corporate income tax in the Netherlands and the dividends are exempt from tax in the hands of the recipient company in Armenia.
7. The 5-percent rate applies if the recipient company is subject to profit tax at the rate of at least 5.5 percent.
8. The rate is half the domestic rate, with a maximum of 10 percent, if the Austrian company owns directly or indirectly more than 50 percent of the capital of the Dutch company.
9. The treaty was concluded between the Netherlands and the former USSR.
10. The rate applies if the recipient company owns at least 10 percent of the capital or the voting power in the Dutch company, as the case may be.
11. The 7.5-percent rate applies to interest received by a bank or any other financial institution (including an insurance company) as long as the Netherlands does not levy a tax at source on interest.
12. The lower rate applies to copyright royalties, including films, etc.
13. The zero rate applies if the Belarusian company has a direct shareholding of at least 50 percent with a value of at least EUR 250,000 or the Belarusian company has a direct shareholding of at least 25 percent, which investment is guaranteed by the Belarusian government.
14. The 3-percent rate applies to royalties for patents, trademarks, etc. The 5-percent rate applies to equipment leasing. The 10-percent rate applies to copyright royalties, including films, etc.
15. Under this treaty, the exemption applies to dividends qualifying for the EC Parent-Subsidiary Directive. The 5-percent rate applies if the recipient company owns directly at least 10 percent of the capital in the Dutch company.
16. The zero rate applies if the Belgian beneficial owner is an enterprise and the interest has not arisen from bearer securities representing loans or deposits or the interest has arisen from bearer securities representing loans or deposits and the enterprise carries on a banking or insurance activity and holds the securities in question for at least three months preceding the date of payment.
17. The treaty was concluded between the Netherlands and the former Yugoslavia.
18. The higher rate applies to trademarks.
19. The rate of 5 percent applies if the Canadian company owns at least 25 percent of the capital or at least 10 percent of the voting power in the Dutch company. The rate of 10 percent applies if it is paid by a non-resident-owned investment corporation.
20. The lower rate applies to interest paid in respect of a government bond, debenture, or other similar obligation and interest paid to pension funds, retirement, or other employee benefits plans.
21. The lower rate applies to computer software, patent royalties, and know-how.
22. The lower rate applies to equipment rentals.
23. The rate applies if the Finnish company owns at least 5 percent of the capital in the Dutch company.
24. The zero rate applies if the Georgian company has a shareholding of at least 50 percent with a value of at least USD 2 million. The 5-percent rate applies to a shareholding of at least 10 percent.
25. The zero rate applies to interest paid by a public body, as well as to interest on loans granted by a bank or another financial institution (including an insurance company) or a pension fund.
26. The rate under the treaty is 15 percent for interest and dividends and 20 percent for royalties. However, by virtue of a most-favored-nation clause (protocol Art. IV(2)), the rate is reduced to 10 percent. (Under the treaty between India and Germany, for example, the rate is currently 10 percent.)
27. The higher rate applies to royalties for films, etc.
28. The 5-percent rate applies if the Italian company owns at least 50 percent of the voting capital in the Dutch company. The 10-percent rate applies if it owns at least 10 percent of the voting capital.
29. The 5-percent rate applies if the Jordanian company owns directly at least 10 percent of the capital in the Dutch company; the rate is reduced to zero if the dividends are exempt from tax in the hands of the recipient company in Jordan (Protocol Art. VII).
30. The zero rate applies if the Kazakhstani company owns at least 50 percent of the capital of the Dutch company and that participation has a value of at least USD 1 million and Kazakhstan has secured the participation; the 5-percent rate applies if the recipient company owns at least 10 percent of the capital of the paying company.
31. The lower rate applies to interest paid by a public body.
32. The lower rate applies to interest on long-term loans (as defined).
33. The higher rate applies to copyright royalties, including films, etc.
34. The treaty does not apply to income paid to exempt Luxembourg holding companies.
35. Interest on loans secured by mortgages on immovable property is exempt. Interest on profit-sharing bonds is treated as dividends.
36. The domestic rate applies; there is no reduction under the treaty. The 1948 treaty between the Netherlands and the United Kingdom is extended to Malawi, but the dividend article of this treaty ceased to have effect from 1963.
37. The lower rate applies to copyright royalties, excluding films, etc.
38. The 5-percent rate applies if the Mexican company owns at least 10 percent of the capital of the Dutch company. The zero rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Mexico (Protocol Art. VIII), which is currently the case, subject to conditions.
39. The zero rate applies to interest paid in respect of a government bond, debenture, or other similar obligation.
40. The lower rate applies if the Moldovan company holds at least 50 percent of the shares of the Dutch company and the investment amounts to at least USD 300,000 or the investment is guaranteed or insured by the Dutch government or its agency or instrumentality.
41. The zero rate applies as long as the Netherlands does not levy a WHT on interest or royalties (as the case may be), which is currently the case.
42. The lower rate applies to interest paid to an enterprise.
43. The 8.3-percent rate applies if the recipient is a company that owns at least 25 percent of the capital in the Dutch company and is subject to a tax on profits at a rate of at least 8.3 percent in the Netherlands Antilles.
44. The 10-percent rate applies to interest paid to a bank or other financial institution. The 15-percent rate applies to interest paid by a company to another company that owns directly 25 percent of the capital of the paying company.
45. The zero rate applies to interest paid in respect of a government bond, debenture, or other similar obligation; the 10 percent rate applies to interest paid to a bank.
46. The zero rate applies to interest paid by a public body and to interest paid to a bank.
47. Under this treaty, the exemption applies to dividends qualifying for the EC Parent-Subsidiary Directive.
48. The zero rate applies if the Romanian company owns directly at least 25 percent of the Dutch company. The 5-percent rate applies if its direct holding is at least 10 percent.
49. The rate applies if the Russian company owns directly at least 75 percent of the Dutch company and has invested in it at least EUR 75,000.
50. The rate applies if the Spanish company owns at least 50 percent of the capital in the Dutch company or if the Spanish company owns at least 25 percent of the capital in the Dutch company and another Spanish company also owns at least 25 percent of such shares.
51. The 15-percent rate applies if the dividends are not included in the recipient's taxable base in Suriname.
52. The lower rate applies to interest paid between banks and to interest paid by a public entity.
53. The 15-percent rate applies to dividends paid to individuals. The 5-percent rate applies to dividends paid to Ugandan companies if they own directly less than 50 percent of the capital in the Dutch company.
54. The zero rate applies if the Ugandan company owns directly at least 50 percent of the capital in the Dutch company as long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Uganda (Protocol Art. IX), which is currently the case, subject to conditions.
55. The zero rate applies if the Ukrainian company has a shareholding of at least 50 percent with a value of at least USD 300,000. The 5-percent rate applies to a shareholding of at least 20 percent.
56. The zero rate applies to interest paid by a public body; the 2 percent rate applies to interest paid to a bank.
57. The lower rate applies to industrial royalties in general.
58. The zero rate applies if the U.S. company owns at least 80 percent of the voting power in the Dutch company for the 12-month period ending on the date the dividends are declared and owned at least 80 percent of such voting power prior to 1 October 1998, or qualifies under certain provisions of the limitation on benefits article of the treaty. The 5-percent rate applies if the U.S. company owns directly at least 10 percent of the voting power in the Dutch company.
59. The 5-percent rate applies if the Uzbek company owns directly at least 25 percent of the capital in the Dutch company. The zero rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Uzbekistan (Protocol Art. VII), which is currently the case, subject to conditions.
60. The 5-percent rate applies to royalties for patents, leasing of equipment, and know-how. The 7-percent rate applies to trademark royalties. The 10-percent rate applies to copyright royalties, including films, etc.
61. The 5-percent rate applies if the Vietnamese company owns at least 50 percent of the capital in the Dutch company or if the value of the participation is at least USD 10 million. The 7-percent rate applies if it owns at least 25 percent of the capital. The 7-percent rate applies so long as a company resident in the Netherlands is not subject to tax in the Netherlands in respect of dividends received from a company resident in Vietnam (Protocol Art. VIII), which is currently the case, subject to conditions.
62. The 5-percent rate applies to patent royalties and to scientific know-how. The 10-percent rate applies to trademark royalties and commercial know-how.
63. The 5-percent rate applies if the company holds at least 25 percent of the shares and a minimum investment of EUR 200,000 has been made.
64. The lower rate applies if the patent, plan, etc. are not older than three years.
65. The 10-percent rate applies to registered companies with activities in appointed areas.

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