Bird & Bird & Doing business in the Netherlands

Why the Netherlands?

- Attractive tax climate (competitive corporate income tax climate).
- Dutch tax ruling practice to obtain advance certainty on taxation issues (APA/ATR).
- Dutch participation exemption.
- Attractive Dutch tax regime for Dutch cooperative entity (*coöperatie*).
- Wide spread tax treaty network.
- Attractive tax incentives for innovative/R&D activities.
- Attractive 30% allowance rule for foreign employees.
- Strategic location in Europe to serve markets within Europe, the Middle East and Africa.
- International business environment and therefore an obvious choice to locate a pan-European operation.

Corporate Income Taxation (CIT)

- CIT is imposed at a **rate of 25%** (20% on the first € 200.000). CIT is imposed from Dutch resident entities and foreign entities with certain specific Dutch sources of income.
- The **taxable income base** is calculated on the basis of worldwide net income without a distinction between ordinary income and capital gains. Taxable income may differ from accepted accounting principles. An important principle is that unrealized losses are deductible while unrealized profits may be deferred. Interest is deductible except for certain statutory limitations on interest deduction (if applicable).
- The **loss carry back** term is 1 year and the **loss carry forward** term is 9 years.
- The Dutch **participation exemption** exempts dividends from CIT when distributed by a qualifying participation to its parent entity. Capital gains and losses (except for certain liquidation losses) made on the disposal of shares in such participation are also exempt from CIT.

Corporate Income Taxation (CIT) (continued)

- **Tax consolidation** (fiscal unity) is available for a parent company and its at least 95% subsidiaries (provided certain conditions are met). Main benefit of a fiscal unity is that profits and losses of the fiscal unity members are taken into account on a consolidated basis.
- **Tax roll-over relief** provisions are available in particular in relation to business restructurings like business mergers, share for share mergers and legal (de) mergers.
- Attractive **tax incentives** including a low tax rate are available for income generated in relation to qualifying innovative research and development activities (see below).
- Transactions between related parties must take place on the basis of **arm's length** (open market) terms and conditions.

Withholding Taxes

- **Dividend** withholding tax is imposed at a statutory rate of 15%. A full credit or exemption is available in most domestic situations. 10%, 5% or 0% rates are available under tax treaties and EU legislation.
- No **dividend withholding tax** is imposed in the Netherlands.
- No **interest/royalty withholding tax** is imposed in the Netherlands.
- No **branch remittance** tax is imposed in the Netherlands.
- **Wage tax including social security** (excluding social employee insurance). Rates (2013) are as follows (in summary):

	Annual wage (employees < 65 of age)	Rates (incl. social security)
1	€ 0 -€ 19,645	37%
2	€ 19,646 - € 33,363	42%
3	€ 33,364 - € 55,991	42%
4	€ 55,992 - >	52%

Choice of legal entity

A foreign company can carry on a business in the Netherlands either by incorporating a Netherlands legal entity (usually a private company with limited liability (“**BV**”) or by registering a Netherlands establishment or branch, which is considered an extension of the foreign company.

Subsidiary or branch?

Subsidiary	Branch
Limited liability at subsidiary level	Parent company retains liability
Separate legal entity to contract	Parent account shows NL revenue
Incorporation of a BV requires a notarial deed	No notarial deed required in connection with branch registration
No minimum capital requirements	No minimum capital requirements
Flexibility to create shares without voting rights (or different voting rights) or shares without profit rights	Not applicable
Incorporation of a BV takes ± 9 - 14 days upon receipt of signed and legalised registration forms	Registration process takes about 2 – 4 business days upon receipt of legalised registration forms
Appr. cost to incorporate a BV: €1,500	Appr. to register a branch: €1,000
Managing directors do not need to be Netherlands nationals (though may be advisable from a tax perspective)	No need for Netherlands resident managing directors
Meetings can be held outside the Netherlands (from a tax substance perspective it may be better to hold majority of the meetings in NL)	No need for meetings to be held in the Netherlands
In principle, BV accounts to be prepared /filed and possibly audited	Parent company accounts may need to be filed
Higher annual filing & accounting costs	Lower operational costs
CIT on worldwide profits, calculated on the basis of Dutch tax accounting principles (for 2013: 20% and 25%)	CIT (for 2013: 20% and 25%) on profits arising in the Netherlands if to be allocated to a branch from a Dutch tax & double tax treaty perspective
Repatriation of profits normally subject to dividend withholding tax (2013: 15%, may be reduced if double tax treaty or EU parent/subsidiary directive applies)	Repatriation of profits not subject to dividend withholding tax
Can benefit from double tax treaties	Double tax treaties could be applicable

Tax incentives

Payroll tax credits (WBSO) are available for technological companies. The benefit is a reduction in the wage tax and social security contributions paid for qualifying R&D employees. The reduction is 38% (up to 50% for start-up companies) of the first € 200K in R&D wage costs and 14% for such costs exceeding €200K with a maximum of €14M (2013).

Production costs resulting in intangible assets are deductible in the year of expense (free amortization).

R&D investment deduction (RDA) is an additional tax deduction on top of actual R&D costs (excluding wage costs). The maximum rate is 54% of qualifying R&D costs (2013).

The **innovation box** rate is 5% for qualifying net income (after recapture of R&D costs) generated through patents and qualifying R&D assets.

Dutch **expatriate regime** is available for high qualified and skilled employees from abroad allowing certain lump-sum tax free imbursements of costs and/or a fixed 30% tax free allowance (tax free wages).

Certain **R&D subsidies** may be granted by the Dutch Government and may be **tax exempt**.

Investments in cooperation with an academic R&D center/laboratory may benefit from **subsidies** from the Government up to 25% per €.

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