Tax on Inbound Investment 2020

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Getting The Deal Through

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Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2007
Fourteenth edition
ISBN 978-1-83862-167-4

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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A&L Goodbody

Lexology Getting The Deal Through is delighted to publish the fourteenth edition of *Tax on Inbound Investment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on France and Romania.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Peter Maher of A&L Goodbody and Lew Steinberg of Merrill Lynch, for their continued assistance with this volume.

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Getting The Deal Through

London
September 2019

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Netherlands

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ACQUISITIONS (FROM THE BUYER'S PERSPECTIVE)

Tax treatment of different acquisitions

1 What are the differences in tax treatment between an acquisition of stock in a company and the acquisition of business assets and liabilities?

Upon the acquisition of stock, and where the acquisition company is a Dutch entity, the participation exemption may apply. Under the participation exemption, income (including dividends and capital gains) from a qualifying participation is exempt from Dutch corporate income tax. On the other hand, losses on a qualifying participation are in principle non-deductible. Acquisition and sales costs, earn-out payments, payments under (balance sheet) guarantees and indemnities are generally not taxable or tax-deductible under the participation exemption (see question 15 for the participation exemption conditions).

In the case of an acquisition of the legal and economic ownership of at least 95 per cent of the nominal and paid-up stock by the acquisition company, a fiscal unity (tax grouping) may be formed between the acquisition and acquired companies. Companies forming a fiscal unity can set off losses (eg, from interest costs on acquisition financing) and profits (eg, of the acquired company), albeit under certain conditions (see question 8).

Acquisition of stock in a real estate entity may be subject to 6 per cent Dutch real estate transfer tax (RETT). The purchase of stock in a Dutch company is generally not subject to Dutch VAT (see question 6). In the case of a purchase of stock, the book value of the assets reported by the company acquired remains unchanged.

In the case of a purchase of business assets and liabilities (asset transaction), the acquisition company should report the acquired assets at fair market value. The purchase of Dutch real estate is, in principle, subject to 6 per cent RETT. The asset transaction is, in principle, a taxable event for VAT purposes, but may be non-taxable in case of a purchase of 'totality of goods'. For additional taxes, see question 6.

Step-up in basis

2 In what circumstances does a purchaser get a step-up in basis in the business assets of the target company? Can goodwill and other intangibles be depreciated for tax purposes in the event of the purchase of those assets, and the purchase of stock in a company owning those assets?

Only in the event of an asset transaction does a step-up to fair market value apply to the acquired assets and liabilities. The depreciation of those assets (including acquired goodwill and other intangible assets) is tax deductible. However, the annual amount of tax-deductible depreciation is limited to 10 per cent of the cost price for acquired goodwill and 20 per cent of the cost price for other intangible assets.

For tax purposes, acquired stock in a company is booked at historical cost price. If the participation exemption applies, no tax-deductible depreciation of stock is possible. The book value of the assets reported by the company acquired remains unchanged.

Domicile of acquisition company

3 Is it preferable for an acquisition to be executed by an acquisition company established in or out of your jurisdiction?

It is preferable to use a Dutch acquisition company to execute an acquisition for several reasons.

The main advantage of using a Dutch acquisition company for the acquisition of stock in a Dutch target company is the possibility to form a fiscal unity between the Dutch acquisition company and the company acquired. To form a fiscal unity, the Dutch acquisition company would (among other conditions) need to acquire the legal and economic ownership of at least 95 per cent of the nominal and paid-up shares in the company acquired. Subject to certain anti-abuse legislation, forming a fiscal unity would, for instance, allow the Dutch acquisition company to set off losses against the profits realised within the fiscal unity.

For acquisitions of stock in a non-Dutch company, it may be beneficial to use a Dutch acquisition company for the following reasons:

- tax-efficient repatriation of funds (eg, reduced withholding tax rates) by means of the numerous tax treaties concluded by the Netherlands for the avoidance of double taxation, in combination with the participation exemption;
- asset protection through one of the many bilateral investment treaties concluded by the Netherlands; and
- highly skilled professional advisers and support (banks, lawyers) and an efficient court resolution by a separate court for entrepreneurial disputes.

Company mergers and share exchanges

4 Are company mergers or share exchanges common forms of acquisition?

Legal mergers and share-for-share mergers (hereafter jointly referred to as mergers) are not that common as they are not the most straightforward method of acquisition. A possible advantage of a merger lies in the fact that, although subject to the terms of the transaction, it could be possible to minimise the need to attract funding by the acquisition company and limit the spending of cash.

Additionally, when contemplating an asset transaction by way of a business or legal merger, mergers are considered as beneficial, as these provide the opportunity to continue reporting the acquired assets and liabilities at historical cost price (instead of reporting at fair market value) and thus postpone taxation of unrealised profits for the seller.

The main disadvantage of such tax-neutral business or legal mergers is the possible inflexibility of on-selling the merged company within the respective clawback period (generally three years) imposed by anti-abuse measures. If applicable, the clawback rules stipulate that the

postponed taxation of unrealised profit reserves is reversed, resulting in the taxation of the unrealised profit reserves with retroactive effect.

Tax benefits in issuing stock

5 Is there a tax benefit to the acquirer in issuing stock as consideration rather than cash?

It may be beneficial for the buyer to issue stock in the event that cash funding cannot be obtained by the acquisition company, or in case interest costs on acquisition financing cannot be deducted (under anti-abuse legislation). See question 8 for more information on interest deduction limitations.

With reference to question 4, it is possible to postpone taxation when issuing stock as consideration for the acquisition.

Transaction taxes

6 Are documentary taxes payable on the acquisition of stock or business assets and, if so, what are the rates and who is accountable? Are any other transaction taxes payable?

In the case of an acquisition of existing or newly issued stock, no stamp duty (or other documentary taxes) is due.

However, there is a possibility that, upon an acquisition of stock, 6 per cent RETT is due if the target company qualifies as a 'real estate entity'. This is the case if all of the following requirements are met:

- the stock is acquired in an entity with an equity divided into shares, or an entity incorporated under the laws of another state that has the same characteristics of an entity with an equity divided into shares;
- the stock is acquired in an entity of which, at the time of the acquisition or at any time in the preceding year, the assets consist or consisted of 50 per cent or more of real estate, and at least 30 per cent of all assets consist of Dutch real estate;
- the activities pertaining to the real estate consist, at the time of the acquisition or at any time in the preceding year, of 70 per cent or more of the acquisition, disposal or exploitation of that real estate; and
- the buyer directly or indirectly acquires an interest of at least one-third in the entity, including any interest the buyer may already directly or indirectly hold.

For VAT purposes, the acquisition of stock should not be considered a taxable event.

In the case of an asset transaction, no stamp duty (or other documentary taxes) should be due. Upon the acquisition of Dutch real estate, 6 per cent RETT is normally due. However, the acquisition of Dutch real estate may be exempt from RETT if the transaction relates to certain types of mergers, split-offs or internal reorganisations.

The acquisition of assets is normally subject to 21 per cent VAT. The transfer of real estate is generally exempt from VAT, unless the transfer concerns newly developed real estate (ie, construction sites and (part of) buildings including the surrounding terrain, prior to, on or within a period of two years after the moment of first use of the buildings concerned). Should a transfer of real estate indeed be subject to VAT, an exemption generally applies for RETT.

Finally, in the case of an asset transaction where a totality of goods is acquired, the acquisition may be considered as a non-taxable transfer for VAT purposes.

Net operating losses, other tax attributes and insolvency proceedings

7 Are net operating losses, tax credits or other types of deferred tax asset subject to any limitations after a change of control of the target or in any other circumstances? If not, are there techniques for preserving them? Are acquisitions or reorganisations of bankrupt or insolvent companies subject to any special rules or tax regimes?

In the case of an asset transaction, the losses remain with the seller and may be set off by the seller against the capital gains realised with the sale.

In the case of an acquisition of stock in a company (regardless of its status) with a tax-loss carry-forward, the company acquired may still utilise the losses post-acquisition, subject to specific restrictions in case the acquisition of that company results in a change of control. In this respect, a change of control is generally considered to be the case if the transferring shareholder directly or indirectly alienates an interest of 30 per cent or more in the transferred company.

Subject to certain exceptions, losses generally remain available after a change of control, provided that all of the following requirements are met:

- the losses did not occur in a year wherein the assets of the acquired company consisted mostly (50 per cent or more) of passive portfolio investments for a period of at least nine months;
- just prior to the acquisition, the activities of the target company have not been reduced to less than 30 per cent when compared to the activities of the company when it incurred the oldest losses available for compensation; and
- at the time of the acquisition, it is not intended to reduce the activities of the target company to less than 30 per cent (as described in the above point) within three years of the acquisition.

Interest relief

8 Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility generally or where the lender is foreign, a related party, or both? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?

Interest expenses are, in principle, tax deductible. However, various anti-abuse measures may deny the deduction of interest expenses on loans due to related entities. Generally speaking, the acquisition company and a lender are considered related entities if:

- the lender directly or indirectly holds an interest of at least one-third in the acquisition company;
- the acquisition company directly or indirectly holds an interest of at least one-third in the lender; or
- an entity directly or indirectly holds an interest of at least one-third in both the acquisition company and the lender.

First, it is noted that interest costs on loans to related entities exceeding an arm's-length rate are, in principle, requalified (for the part that is not at arm's length) into non-deductible deemed dividends or informal capital contributions. In addition, loans between related parties may be provided under such conditions that, for Dutch tax purposes, these loans are requalified into equity. Consequently, interest payments on such requalified loans are treated as deemed dividends or informal capital contributions.

The following is a short elaboration of the most important interest deduction limitations for debt acquisition financing.

Anti-abuse legislation for specific types of transactions

According to specific anti-abuse legislation, the deduction of interest (including foreign exchange results) may be denied if a Dutch-resident company finances one of the following transactions with a loan obtained from a related party:

- profit distribution or capital repayment to a related party;
- capital contribution in a related party; or
- the acquisition of an interest in a company, which after the acquisition, constitutes a related party.

The deduction of interest expenses will nevertheless be allowed if the company paying the interest can substantiate that:

- the loan, as well as the related transaction, are both mainly based on sound business reasons;
- the interest received by the lender is taxed at a rate that is considered to be reasonable for Dutch tax purposes (10 per cent or more); or
- the loan is ultimately provided by unrelated parties.

The Dutch tax authorities may nevertheless deny the deduction of interest expenses if they successfully demonstrate that the loan has been entered into in anticipation of loss compensation by the lender.

Earnings stripping rule

The earnings stripping rule concerns a new general interest deduction limitation rule, on the basis of which excess net interest expenses (the balance of interest expenses and interest income) is only deductible up to 30 per cent of the adjusted Dutch taxable profit.

In addition, a limited threshold of €1 million applies. This means that interest expenses up to the threshold are always deductible under this rule and any excess interest expenses can be carried forward indefinitely. The earnings stripping rule is applicable to related and unrelated loans. The earnings stripping rule is also applicable to a fiscal unity. Although Anti-Tax Avoidance Directive 1 allows for a number of exceptions to the interest deduction limitation to be included in the legislation, such as a group ratio exception and grandfathering rules for existing loans, Dutch rules do not include any of these.

Protections for acquisitions

9 What forms of protection are generally sought for stock and business asset acquisitions? How are they documented? How are any payments made following a claim under a warranty or indemnity treated from a tax perspective? Are they subject to withholding taxes or taxable in the hands of the recipient? Is tax indemnity insurance common in your jurisdiction?

It is not uncommon that the acquisition company and seller agree on a full indemnity by the buyer for tax costs (increased with interest and penalties) relating to the pre-acquisition (pre-effective date) period and that are not provided for in the acquisition balance sheet of the acquired company for the statutory limitations period. Often the maximum indemnity is limited to the value of the acquisition price.

The tax indemnities are often described in a separate tax schedule to the share-purchase agreement. If the acquired company formed part of a fiscal unity, specific warranties and indemnities are agreed with regard to liabilities relating to the period of such fiscal unity period.

In the case of a purchase of stock, and assuming the participation exemption applies, payments under an indemnification or warranty should generally be tax-neutral for both the acquisition company and the seller, as the payments would normally be considered a non-taxable correction of the initial purchase price or a reimbursement for (future) expenses or liabilities or both.

In case of an asset transaction, only limited tax warranties are provided by the seller as the tax liabilities generally do not pass to the acquisition company.

Tax indemnity insurance (warranty and indemnity insurance) is an insurance that has been gaining more traction in the Netherlands in the past couple of years. Although relatively unknown, it has become a common term among Dutch M&A attorneys. It is used in M&A transactions and utilised for insuring potential tax liabilities.

POST-ACQUISITION PLANNING

Restructuring

10 What post-acquisition restructuring, if any, is typically carried out and why?

The most typical post-acquisition restructuring is the formation of a fiscal unity between the acquisition company and the target company. See question 3 for more details on fiscal unity.

Spin-offs

11 Can tax-neutral spin-offs of businesses be executed and, if so, can the net operating losses of the spun-off business be preserved? Is it possible to achieve a spin-off without triggering transfer taxes?

For Dutch corporate income tax purposes, a spin-off can be executed tax-neutrally if the splitting company and the receiving company meet certain requirements. One of these requirements is that neither the splitting company nor the receiving company may have any net operational losses. In case not all the requirements are met, unrealised profit reserves of the transferred assets are fully taxed unless the spin-off is performed in line with the conditions laid down in a ministerial decree. For transfer taxes, see question 6.

Migration of residence

12 Is it possible to migrate the residence of the acquisition company or target company from your jurisdiction without tax consequences?

In principle, the migration of a company that is resident in the Netherlands for Dutch tax purposes leads to taxation of all unrealised gains and losses, as all assets and liabilities are deemed sold just prior to migration. The migrating company, however, may opt for a deferral of payment of the taxation, subject to certain conditions.

Two different options exist for a deferral of payment upon migration. The first option provides for a deferral of payment of the tax due until the moment the gains and losses have been effectively realised, taking into account the following:

- the deferral only applies insofar as the company migrates to and remains resident of an EU member state or a jurisdiction within the EEA;
- the deferral only includes taxation of unrealised gains and losses, which is annually assessed by information provided by the migrating company (ie, the annual filing of the fiscal balance sheet, profit and loss account and additional information based on which the Dutch tax authorities can determine whether the gains and losses of the underlying assets have effectively been realised);
- the deferred payable amount will be increased with (levy) interest calculated over the amount of tax due as per the migration date; and
- the migrating company has to provide sufficient assurance to the Dutch tax authorities (in most cases a bank guarantee) for the postponed tax liability.

The second option provides for the opportunity to pay the tax due upon migration (to jurisdiction within the EU or EEA) in 10 equal annual instalments. These 10 instalments are payable, regardless of whether the gains and losses of the underlying assets have been effectively realised. Although (levy) interest will be calculated and sufficient assurance must also be provided to the Dutch tax authorities, no further administrative requirements are imposed to the taxpayer opting for payment in 10 instalments.

A migration of a pure Dutch holding company only owning shares in (foreign) subsidiaries would normally not lead to a Dutch corporate income tax liability, as any gains (or losses) on those shares should be exempt under the application of the participation exemption. (See question 15 for more information on the application of the participation exemption.)

Should the migrating company continue to (partially) remain a Dutch resident for Dutch corporate income tax purposes – for instance, as a result of a Dutch permanent establishment – the unrealised gains and losses of the assets attributable to the Dutch permanent establishment would not be taxed as a result of the migration.

In addition to the above, should the migration of the company not only result in the migration of the effective place of management but also realise the migration of the corporate seat, the migration may also trigger Dutch dividend withholding tax. The migration of the corporate seat can (effectively) be realised by a cross-border conversion and a cross-border merger.

Interest and dividend payments

13 Are interest and dividend payments made out of your jurisdiction subject to withholding taxes and, if so, at what rates? Are there domestic exemptions from these withholdings or are they treaty-dependent?

Dividend distributions

Dividends distributed by a Dutch BV (private limited company) or NV (public limited liability company) to a foreign shareholder are generally subject to 15 per cent Dutch dividend withholding tax. However, except for specific abusive situations, an exemption of dividend withholding tax applies if:

- the shareholder is considered tax resident in a member state of the EU, a state of the EEA or a third country that has entered into a tax treaty with the Netherlands that contains qualifying provisions relating to dividend; and
- the shareholder owns an interest to which the Dutch participation exemption would be applicable if the foreign shareholder were a resident of the Netherlands.

If the Dutch dividend withholding tax exemption applies, the Dutch tax authorities have to be notified within a month of the distribution of the dividend. The Dutch dividend withholding tax exemption also applies to distributions made to a hybrid entity, provided certain conditions are met.

A holding cooperative (ie, the activities of the cooperative consist for at least 70 per cent of holding participations or direct or indirect intra-group financing activities) with qualifying membership rights (ie, the holder of the membership rights is eligible to at least 5 per cent of the annual profits or the proceedings from the possible liquidation of the holding cooperative) is treated similar to a Dutch BV or NV. Therefore, a holding cooperative falls within the scope of the dividend withholding tax and the dividend withholding tax exemption as discussed above. However, a regular cooperative is always exempt from dividend withholding tax .

Furthermore, if the shareholding is attributable to a Dutch permanent establishment, dividend distributions would not be subject to dividend withholding tax insofar as the derived income from the shareholding is exempt from Dutch corporate income tax under the application of the participation exemption.

Most tax treaties allow for a reduced dividend withholding tax rate of 5 per cent, or in some occasions zero per cent if the required conditions are met.

Interest payments

Interest payments are, in principle, not subject to (withholding) tax unless, and in as far as, the interest costs on related-entity loans exceed an arm's-length rate or in case the loan is requalified into equity for Dutch tax purposes. Interest distributions that have been reclassified as dividends are taxed as regular dividend distributions.

Substantial interest taxation

Income (including dividend, capital gains and interest payments) derived by a non-resident may also be subject to Dutch corporate income tax in the case where the income is derived from a 'substantial interest' in a Dutch company. As a general rule, a foreign company is considered to have a substantial interest if such entity is entitled to at least 5 per cent of the value or voting rights in a Dutch company. Income derived from a substantial interest is subject to Dutch corporate income tax if:

- the substantial interest is held with the main purpose (or one of the main purposes) being to avoid Dutch individual tax of another person; and
- the structure can be considered artificial or put in place through a series of artificial arrangements.

Tax-efficient extraction of profits

14 What other tax-efficient means are adopted for extracting profits from your jurisdiction?

The Netherlands has an elaborate tax treaty network, providing respective residents with heavily reduced withholding tax rates. In addition, Dutch companies can benefit from EU directives (such as the EU Parent-Subsidiary Directive). The most common method to reduce (or often even avoid) withholding taxes on the repatriation of profits is to organise the corporate structure in such a way that these tax treaty benefits (or European directives) are made use of in an optimal manner.

DISPOSALS (FROM THE SELLER'S PERSPECTIVE)

Disposals

15 How are disposals most commonly carried out – a disposal of the business assets, the stock in the local company or stock in the foreign holding company?

The sale of stock in either a local or foreign company would normally be the most beneficial disposal for a Dutch corporate seller, as capital gains are exempt from Dutch corporate taxation if the participation exemption applies. The participation exemption applies if the following requirements are met:

- the Dutch parent company holds at least 5 per cent of the nominal issued and paid-up capital of a (local or foreign) company of which the capital is partially or wholly divided into shares; and
- the subsidiary company is not considered to be held as portfolio investment (the motive test).

Generally, a participation is held as portfolio investment if it is held with the intention to realise a yield that might be expected in case of regular asset management.

In cases where the motive test is not met, the participation exemption nevertheless applies when the tax rate test or the asset test (or both) is met. These tests are satisfied when:

- the participation is subject to a (foreign) tax rate of at least 10 per cent with a tax base roughly similar to the Dutch tax base (tax rate test); and
- the fair market value assets of the direct and indirect subsidiary consist of less than 50 per cent of low-taxed free portfolio investments (asset test).

In essence, low-taxed portfolio investments are those assets that do not have a function in the business enterprise of the entity holding the asset, and the income related to the assets is not subject to a tax rate of at least 10 per cent.

Disposals of stock

16 Where the disposal is of stock in the local company by a non-resident company, will gains on disposal be exempt from tax? Are there special rules dealing with the disposal of stock in real-property, energy and natural-resource companies?

The gain derived by a disposal of stock in a Dutch company by a non-resident company should, in principle, not lead to Dutch taxation. If the stock qualifies as a substantial interest, however, the capital gains may be taxed with Dutch corporate income tax. For more information on substantial interest taxation, see question 13.

Under most tax treaties concluded by the Netherlands, the levy of capital gains is allocated to the country of residence of the shareholder and is exempt from taxation in the source state (ie, the Netherlands). Thus, if the non-resident company may apply for the application of such tax treaty, the disposal of stock should not be subject to Dutch taxation, regardless of whether or not the income is derived from a substantial interest.

Avoiding and deferring tax

17 If a gain is taxable on the disposal either of the shares in the local company or of the business assets by the local company, are there any methods for deferring or avoiding the tax?

A disposal of shares is generally exempt under the application of the participation exemption. See question 15 for more information on the participation exemption.

A disposal of business assets is, in principle, taxable with Dutch corporate income tax unless the tax payer appeals to a special tax incentive, such as the tax-neutral mergers described in question 4. Additionally, a company selling an asset may also apply for the reinvestment reserve.

The selling company may apply for the reinvestment reserve provided that the taxpayer has a clear intention of replacing the sold assets with assets that perform a similar function within the enterprise. Additionally, the reinvestment reserve only applies for qualifying business assets used in an enterprise (ie, no shares).

UPDATE AND TRENDS

Key developments of the past year

18 Are there any emerging trends or hot topics in the law of tax on inbound investment?

Anti-Tax Avoidance Directive 2 (ATAD2)

As a consequence of ATAD2, the Dutch government has published a legislative proposal implementing the rules regarding hybrid mismatches. The proposed legislation aims to neutralise tax benefits arising from hybrid mismatches. The proposal contains three rules to neutralise the tax effects of hybrid mismatches.

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Denial of deduction (1 January 2020)

The primary rule denies deduction to the extent of which the hybrid mismatch is not regarded as taxable income in the state of the recipient. Not regarding a payment as taxable income or the ability of double deduction needs to be the result of the hybrid mismatch.

Inclusion of income (1 January 2020)

The secondary rule looks to prevent a situation where an exemption is a consequence of a hybrid mismatch. This rule ensures the income will be included in the taxable basis anyway if the underlying payment is deductible in the state of the payer.

Taxation of reverse hybrid entities (1 January 2022)

The third rule concerns reverse hybrid entities. A mismatch between a fiscally transparent entity in the Netherlands and non-transparent entities in residency states of the participants in the entity will be regarded as Dutch corporate taxpayers by the tax authorities. To include them as such, they need to be established, incorporated or registered in the Netherlands.

Hybrid mismatches

The term 'hybrid mismatches' is a broad one and is utilised to combine the following variants of structures:

- hybrid entities;
- hybrid instruments;
- hybrid permanent establishments; and
- dual resident entities.

The preliminary proposal follows the wording of ATAD2 in general. Although the wording can be adjusted and interpreted differently, and the proposal is still subject to parliamentary discussion, this proposal will give a good sense of the ultimate implementation.

Controlled foreign companies

Following the implementation of ATAD1, the Netherlands now has legislation concerning controlled foreign companies (CFCs). As a

consequence of this legislation, the Netherlands includes undistributed 'tainted' income that is derived from related entities that are tax resident in low-tax jurisdictions in its taxable basis.

Related entity/subsidiary

For a foreign entity to qualify as a CFC, the taxpayer must have a direct or indirect interest of more than 50 percent and the entity must reside in a low-tax jurisdiction. A permanent establishment in a low-tax jurisdiction is also considered a subsidiary.

Low-tax jurisdiction

A jurisdiction is considered to be low-tax when:

- there is no corporate income tax;
- corporate income tax is lower than 9 per cent; or
- the jurisdiction is EU-blacklisted.

Tainted income

Non-distributed income components of the CFC, such as dividends, interest, royalties, benefits from the sale of shares and leasing income, minus related costs, classify as tainted income. Furthermore, a clear definition of tainted income is intentionally absent to keep the potential application as broad as possible.

Exceptions

For passive income derived by the subsidiary that constitutes less than 30 per cent of the total income, an exception is given. In addition, if the foreign company carries out substantial economic activities in its country of establishment, an exception is also granted. Relevant substance to meet these requirements include, among others, wage costs of a minimum of €100,000 according to Dutch wage standards, and having an office available for a period of 24 months.

The CFC rules, as a part of ATAD1, entered into effect on 1 January 2019.

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ISBN 978-1-83862-167-4