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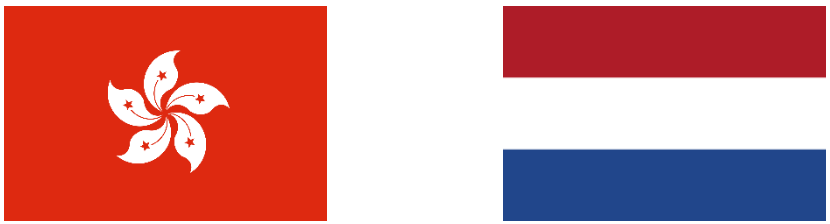
TTN Hong Kong Conference

Developments in Dutch tax law



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1. Glossary

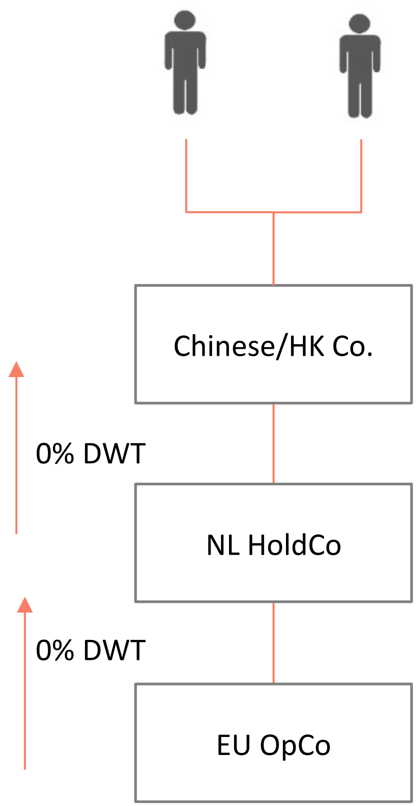
CIT	=	corporate income tax
DWT	=	dividend withholding tax
PIT	=	personal income tax
DTT	=	double tax treaty
UBO	=	ultimate beneficial owner
EU	=	European Union
HK	=	Hong Kong
ATR/APA	=	Advanced Tax Agreement / Advanced Pricing Agreement

2. Purpose of this presentation

- In this presentation, we would like to inform you of the recent developments in Dutch tax law. More specifically:

  - Dividend withholding tax
  - Cross-border fiscal unity
  - Substance requirements
  - Varia Dutch tax changes and OECD & EU developments

3. Introduction dividend withholding tax exemption



Proposed legislation

- The Dutch State Secretary of Finance proposed amendments that will provide for an exemption of Dutch dividend withholding tax if (in short):
  - The recipient of the dividend holds an interest of at least 5% in the Dutch distributing entity; and
  - The recipient of the dividend is an operating company (i.e. operational business); and
  - A tax treaty has been concluded between the Netherlands and the state of residence of the receiving entity (unless the structure can be considered abusive).
- Holding cooperatives become in principle subject to Dutch dividend withholding tax, unless the above exemption is applicable.
- Operational cooperatives (i.e. cooperatives not qualifying as holding cooperatives) should not be affected by the proposed amendments and distributions by these real cooperatives remain not subject to Dutch dividend withholding tax.

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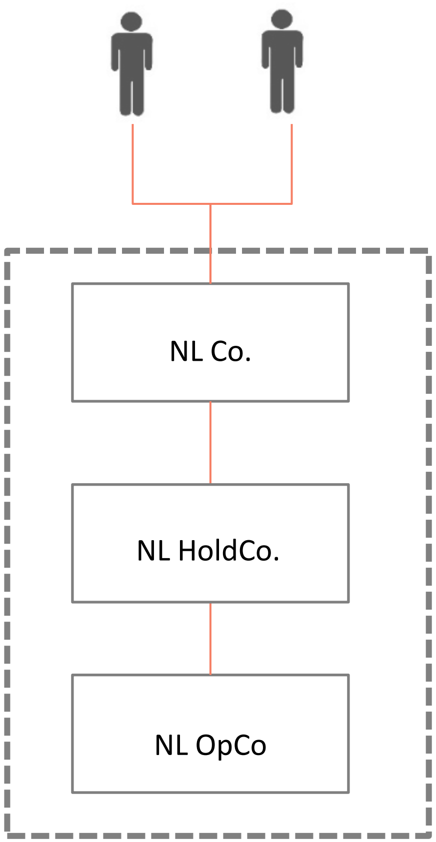
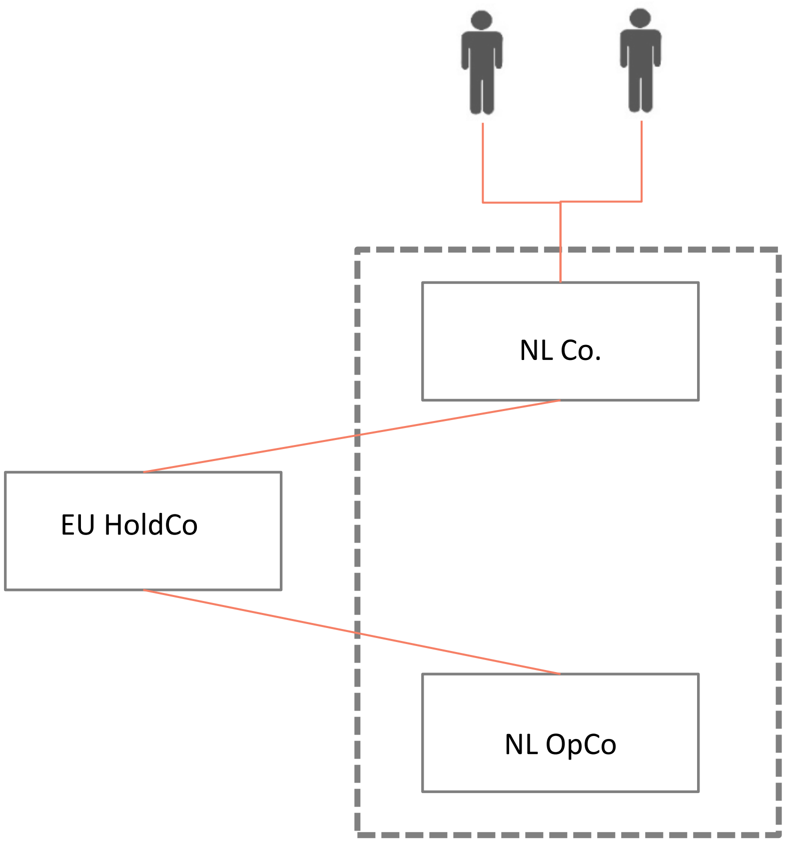
4. Fiscal unity – Advantages



Current Legislation

- According to Dutch tax law, Dutch companies are required to individually file their own taxes on a stand-alone basis. This might not always be feasible or efficient.
- The fiscal unity regime allows groups of companies to file one single tax return offering great advantages.
- The main feature of the fiscal unity regime is that losses incurred by one group company can be offset against profits derived from another group company.
- Intercompany transactions are eliminated.
- Furthermore, the parent company is required to have an interest equal to 95%> of the shares.

4.1 Fiscal unity – recent developments



Recent developments EU holding company

- Due to a decision by the Dutch High courts, the Dutch Ministry of Finance has amended its fiscal unity legislation in order to comply with EU Law.
- Dutch resident companies should not be denied application of the fiscal unity regime due to the fact that they are linked to non Dutch/EU entities.

The Fiscal Unity regime is now applicable in the following 2 situations

Option 1: EU holding company

- Dutch companies that are linked by an intermediate EU company can now opt for the fiscal unity regime once all additional conditions have been met.

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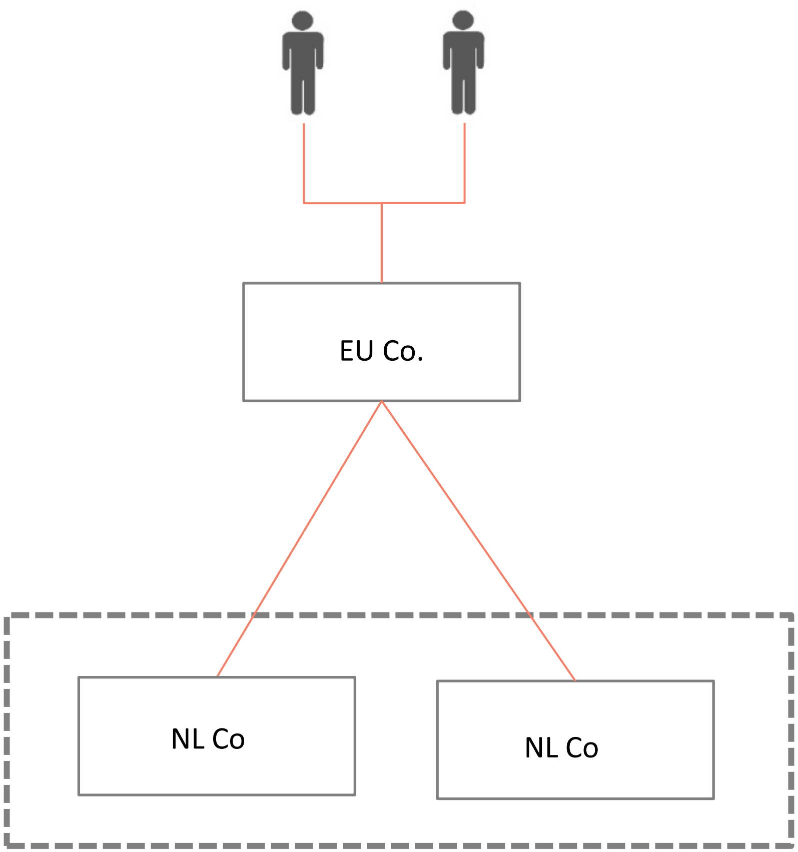
4.2 Fiscal unity – recent developments



Option 2: EU parent company

- Dutch companies that both share an EU parent company can now opt for the fiscal unity regime once all additional conditions are met.

Application Non-EU companies

- These amendments do not apply to Dutch companies that both share a non EU parent or are linked by intermediate non-EU companies. However, there are currently cases pending questioning this restriction.

5. Substance requirements

Proposed legislation

- Due to recent developments regarding BEPS measures from the OECD, a discussion is currently ongoing within the Dutch parliament advocating further increase of substance requirements. In a letter directed to parliament, the Dutch State Secretary of Finance discussed the following possible amendments (in short):

    - Substance requirements: the Dutch State Secretary of Finance mentions the following three additional requirements: (i) minimum amount of costs, (ii) minimum number of employees and (iii) higher equity requirements for holding companies (compared to the current 15% requirement for holding companies).

    - Increased equity requirements for group finance companies. The Dutch State Secretary of Finance mentions the possibility to either increase the maximum amount of equity needed (currently EUR 2 million) or to abolish the current maximum amount and replace this with a 1% equity requirement for all companies. This may only have an impact on current structures in case there are loan amounts of more than EUR 200 million in a specific company.

6. Other updates

Varia

- The deadline for disclosing CBC reporting entity has been moved from December 31, 2016 (or the end of the financial year) to August 31, 2017.
- 20% CIT threshold to be moved to EUR 250,000 in 2018, EUR 300,000 in 2020 and EUR 350,000 in 2021.
- Automatic exchange cross border rulings (ATR/APA). The information to be automatically exchanged includes identification details of the entities to which the ruling relates and reference to the respective Member States likely concerned by the ruling. Transitional arrangements are as follows:
  - 1-1-2017 and following years: to be exchanged within 3 months after the half year period within which the rulings is obtained/renewed;
  - 1-1-2012/1-1-2017: exchange prior to 1-1-2018;
  - 1-1-2012/1-1-2014: exchange only in case the ruling was still valid on 1-1-2014.
- No exchange of information on rulings existing on 1 April 2016, obtained by companies with an annual net turnover of less than €40 million at a group level and not mainly involved in financial or investment operations.

European Union/OECD

- The EU member states have agreed on the Anti-Tax Avoidance Directive (“ATAD”).
- The ATAD will provide for common minimum rules in the areas of (i) interest limitation (30% EBITDA limit; 1-1-2024), (ii) exit taxation (1-1-2020), (iii) general anti-abuse rules (GAAR), (iv) rules concerning controlled foreign companies (CFC) and (v) hybrid mismatches. The switch-over clause which was also proposed has been deleted.
- The Netherlands confirmed that Dutch regulation is already largely in line with the ATAD.

7. Taxture (Partners)

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Ferruh started his career in 1999 at the Istanbul office of Arthur Andersen where he performed tax audits and tax due-diligence studies mainly for multinational companies operating in pharmaceutical, finance, and energy industries.

He joined the tax department of Ernst & Young's Turkey practice as a senior tax auditor in 2002. Ferruh obtained a Turkish Certified Chartered Accountant (SMMM) degree in 2003. Ferruh moved to the Netherlands in 2007 as being one of the co-founders and the head of the Turkish Business Centre at Ernst & Young Amsterdam office where he served several Turkish and European multinational companies until June 2009. He has a vast experience in tax efficient structuring services (i.e. future capital gain exit, constructive yearly dividend policy and cash flow oriented solutions) to Turkish and European based companies making investments especially in former CIS countries (i.e. Russia, Poland, Romania). Ferruh is a native Turkish speaker and fluent in English. He holds a Turkish Certified Chartered Accountant degree.

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Before joining Taxture as a tax partner in 2008, Robert worked for more than seven and a half years for Arthur Andersen, KPMG and Ernst & Young, where he primarily advised multinational corporate clients.

During his Ernst & Young period he was one of the co-founders of the Turkish Business Centre where he served a vast amount of Turkish investors (i.e. Turkish multinational companies, medium-sized Turkish family businesses and individuals) investing outside Turkey and able to benefit from tax efficient structures through the Netherlands.

Robert is an all-round adviser in the Dutch international tax practice with an extensive experience in international taxation and the coordination and implementation of various global structuring projects. Furthermore, Robert has a vast experience in designing and implementing complex international financing (i.e. using among others non-conventional and Islamic financing tools), royalty and investment (i.e. private equity and venture capitalist) structures for his globally operating multinational clients. Robert is a native Dutch and Turkish speaker and fluent in English. He holds a Master Degree in Tax Law, Civil Law and Corporate Law from the University of Leiden.

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Boian is an all-round adviser in the Dutch international tax practice with an extensive experience in international taxation respectively the coordination and implementation of various global projects.

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At the Amsterdam practice of Ernst & Young he was a member of Multinational Tax Department focusing on the development and implementation of tax efficient structures involving the Netherlands. He became a manager in the Ernst & Young Multinational Tax Department in 2009.

Boian also specializes in Eastern Europe and Russia related international restructuring projects. Boian is a native Bulgarian and Dutch speaker and fluent in English. He holds a Master Degree in Tax Law from the University of Leiden.

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