INTRODUCTION

Based on the global business environment rankings published by the Economist Intelligence Unit (EIU) and ranked on number 3 in the world by Forbes ‘Best Countries for Business’ 2017 ranking, the Netherlands is one of the best places in the world to do business. One of the most important reasons to do business in or through the Netherlands is the highly educated, flexible and motivated workforce in the Netherlands. Dutch professionals are among the most multilingual in the world, enabling them to successfully operate in companies in any industry, serving customers across the globe. Ninety percent of the Dutch population is fluent in English, the primary business language in the Netherlands. The central geographical position of the Netherlands combined with accessibility and excellent infrastructures are other reasons why many European, American and Asian companies have established offices in the Netherlands. In addition, the Port of Rotterdam is one of the world’s largest seaport, and Schiphol Airport is one of the major business hubs in Europe. As the gateway to Western and Eastern Europe, the Netherlands enables companies to serve markets in the Member States of the European Union, in Asia, and in Africa. Although it is a small and densely populated country with over 17 million citizens, the United Nations Human Development Report ranked the Netherlands in the top five of the best countries in the world to live in. The costs of living, housing, education and cultural activities are lower than in most Western European countries.

The Netherlands is part of the EURO-zone, meaning that the Euro is the currency used in the Netherlands.

The Netherlands has concluded many tax treaties with other countries. These tax treaties provide for a substantial reduction of withholding taxes on in- and outgoing dividends, royalties and interest payments. Moreover, the Netherlands has concluded many so-called Bilateral Investment Protection Treaties (“BITs”), that give investors (including shareholders of companies) protection against e.g. expropriation of their assets (including shares owned in a company located in the other treaty country).

Please find below the legal and fiscal environment that companies need to consider when doing business in the Netherlands.
I. LEGAL FORMS OF COMPANIES IN THE NETHERLANDS

Dutch law distinguishes two types of limited liability companies: the public limited liability company (Naamloze Vennootschap or the “NV”) and the private limited liability company (Besloten Vennootschap met beperkte aansprakelijkheid or the “BV”). The main differences between these two entities are that:

- Since October 1, 2012 BVs (as opposed to NVs) do not have minimum capital requirements and have far greater flexibility in structuring its articles of association than NVs. BVs continue to be closely held companies, and cannot issue bearer shares; and

- NVs can be publicly traded, and are required to comply with strict rules and regulations regarding repurchase of shares, distribution of reserves, and recapitalizations, among others.

A Dutch company may be established and owned by one or more shareholders. The shareholders may be either individuals or legal entities; their nationality is irrelevant. In addition, such company must be registered with the Trade Register of the Chamber of Commerce in the district where the company is situated. BVs are, in most cases, the best vehicle for a foreign company to establish a wholly owned Dutch subsidiary. The issuance and transfer of registered shares or the transfer of a restricted right to the shares (for instance, a pledge) must take place by means of a notarial deed drawn up before a civil-law notary authorized to practice in the Netherlands. This obligation does not apply to NVs whose shares or share certificates are in bearer form (listed).

As of October 8, 2004, the European limited liability company, or Societas Europaea (“SE”), is available as a legal form of a subsidiary in addition to the BV and the NV. Pursuant to Dutch law an SE subsidiary can be formed jointly with another company, partnership or other profit-seeking entity that is formed under the laws of another EU Member State or if the founders each have had a subsidiary or branch in a different Member State for at least two years. The formation and characteristics of a Dutch SE subsidiary are identical to those of an NV, except that an SE may transfer its statutory seat to another EU Member State.

As of November 1, 2015, the ‘Implementation Act Directive Annual Accounts’ (Uitvoeringswet Richtlijn Jaarrekening) came into force, implementing Directive 2013/34/EU concerning the annual accounts, consolidated financial accounts and related reports of certain forms of legal entities. The most important amendment is the introduction of a so-called ‘micro-company’. This micro-company follows the new article 2:395a of the Dutch Civil Code (“DCC”), which introduces a simplification of the set of rules concerning the preparation of the annual accounts. The new rules shall apply mandatorily to the annual
accounts drawn up over the financial year of 2016.

In the international (re)structuring of groups, also the Dutch Cooperative ("Coop") is regularly used, e.g. as intermediate holding company. One of the reasons is that a Coop in principle is not subject to Dutch dividend withholding taxes.

Further, Dutch (tax) laws provide for several legal vehicles (partnerships) that can be considered tax transparent or non-transparent (dependent on the wording of the contract), which vehicles are frequently used in private equity structures.

II. DUTCH CORPORATE INCOME TAX

Dutch resident companies (e.g. NVs, BVs and Coops) are subject to Dutch corporate income tax on their entire worldwide income, with the exception of certain statutory exemptions. Branches are taxed on the income that is attributable to their Dutch operations (Dutch source income).

1. General

a. Tax Rate

As of January 1, 2018, entities (e.g. NVs, BVs and Coops) and branches in the Netherlands are taxed at:

- 20% for taxable profits up to EUR 200,000;
- 25% for any taxable profits in excess of EUR 200,000.

b. Computation of Taxable Profits

The Dutch Corporate Income Tax Act requires that the annual profits be determined in accordance with sound business practices and in a consistent manner from year to year, regardless of the probable outcome.

As from January 1, 1997, Dutch taxpayers may, upon prior request and subject to certain conditions, calculate their taxable income in the functional currency of the group of which they are a part (e.g. the US$ or any other currency (e.g. Russian Ruble, GBP, RMB, etc.)). In this way, currency exchange risks may be eliminated.
c. The Arm’s Length Principle

The arm’s length principle is codified in the Dutch Corporate Income Tax Act. The arm’s length requirement is not met if the terms and conditions of transactions between affiliated entities are such that unrelated parties would not have agreed to them. With the codification of the arm’s length principle, entities must document the information based on which the transfer prices between the affiliated enterprises have been agreed. In this respect, the Netherlands applies the OECD Transfer Pricing Guidelines.

2. Dutch Participation Exemption

a. Basic Rule

Under the Dutch participation exemption, dividends received from a qualifying subsidiary and capital gains realized on the disposition of shares in such a subsidiary are exempt from Dutch corporate income tax. Also, income received on hybrid financing instruments (hybrid loans) may qualify for the Dutch participation exemption. Below are the main conditions that must be met in order to qualify for the Dutch participation exemption:

- the Dutch parent company holds at least 5% in the nominal issued share capital of the (foreign) subsidiary; and

- the shares in the subsidiary may not solely be held as a portfolio investment, whereby the intention/purpose of the shareholder is important.

In some situations, a subsidiary qualifies by law as a portfolio investment (for which the participation exemption does not apply). This is e.g. the case if the assets of the subsidiary for more than 50% consist of shareholdings of less than 5% in other companies, or if the activities of the subsidiary consist for more than 50% of ‘passive’ (intercompany) finance activities. A subsidiary that can be qualified as a real estate company is in principle able to qualify for the participation exemption.

b. Costs related to participations

As of 1 January, 2004 all costs (e.g. interest expenses and foreign currency results) related to participating interests, domestic or foreign, established within or outside the European Union or the European Economic Area are fully deductible (except for costs directly relating to the acquisition or
alienation of a qualifying participation). Income and capital gains earned in relation to participating interests will continue to be exempt under the participation exemption (if the conditions are met). Since 1 January, 2004, the participation exemption no longer applies to currency exchange results on loans that are used to finance the acquisition of foreign participating interests. Consequently, gains and losses realized on such loans must be recognized as soon as they are incurred, whereas a currency gain will normally be taxable upon redemption of the loan.

As per 1 January, 2013, the deductibility of interest paid on loans that (are deemed to) relate to the financing of participations, could be restricted. However, the first EUR 750,000 interest paid during a taxable year remains fully deductible.

3. Deductibility of intercompany interest costs

Dutch corporate income tax laws include several anti-abuse provisions with respect to the deduction of intercompany interest paid by a Dutch entity. In general, (artificially) created intercompany interest costs may not be deductible under these anti-abuse paragraphs.

4. Thin Capitalization rules

Since 2013, the Dutch tax laws do no longer provide for thin capitalization rules. However, on 20 June 2016 the European Council adopted the Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. The Anti-Tax Avoidance Directive contains five legally-binding anti-abuse measures, which all Member States should apply against common forms of aggressive tax planning. Member States should apply these measures as from 1 January 2019. Once of these measure is the introduction of a general interest deduction limitation.

4. Losses

Generally, business losses can be carried forward for nine years, or carried back to the previous tax year.

5. Fiscal Unity

Dutch group companies can opt for a fiscal unity (tax consolidation). The main advantages of the fiscal unity regime are that profits and losses may be set off among the members of the fiscal unity and
members can avoid realization of income on transactions between them. After the formation of a fiscal unity, only the parent company is in fact recognized as a taxpayer for Dutch corporate income tax purposes: any income or expense at the level of the subsidiary company is aggregated automatically at the level of the parent company. Under certain conditions, Dutch permanent establishments of foreign companies may also enter into a fiscal unity with a Dutch (resident) company or another Dutch branch of a foreign company. A Coop can also be included in a fiscal unity.

A cross-border fiscal unity is not possible. However, it does follow from EU law that Dutch resident companies should not be denied to form a fiscal unity merely because of a non-resident parent or intermediary company if located within the EU/EEA. On 16 June 2014, the European Court of Justice decided that the Dutch fiscal unity regime does violate EU law to the extent it denies a fiscal unity between a Dutch resident parent company and its Dutch resident subsidiaries because of a non-Dutch resident EU/EEA intermediary holding company and insofar as it disallows a fiscal unity between two Dutch resident ‘sister’ companies that are held by a non-Dutch EU/EEA parent company (Luxembourg in this case). The Dutch corporate income tax law therefore now explicitly allows a Dutch fiscal unity between Dutch entities that are linked via a non-Dutch resident EU/EEA intermediary holding company or via an EU/EEA parent company.

6. The EU Parent-Subsidiary Directive

This Directive gives full relief from double taxation within the EU on dividend income by abolishing dividend withholding tax on dividends flowing between companies within the EU, provided that the companies have a qualifying parent-subsidiary relationship. The minimum shareholding in the Netherlands to qualify for the benefits granted by the EU Parent-Subsidiary Directive is 5%.

III. DUTCH PERSONAL INCOME TAX

1. General

In the Netherlands, private individuals are subject to personal income tax based on the 2001 Personal Income Tax Act. Every individual who lives in the Netherlands (i.e. a resident) is in principle subject to taxation on his or her worldwide income. An individual who does not live in the Netherlands (i.e. a non-resident) is subject to taxation only on certain income from a Dutch source, as stipulated by law. However, a non-resident may opt to be treated as a resident taxpayer for personal income tax purposes, provided that the individual is a resident of the European Union or of a country that has signed a double taxation treaty with the Netherlands containing a provision on the exchange of information.
2. Tax Reform 2001

The 2001 Personal Income Tax Act distinguishes three types of income that are subject to personal income tax, and classifies them under “Box I,” “Box II,” or “Box III”:

- Box I income includes profits, employment income, income from other activities, and a deemed income from residential home ownership;
- Box II income includes income from a so-called ‘substantial shareholding’ of 5% or more;
- Box III income includes income derived from savings and investments.

Each box has its own rules for determining the tax base and its own tax rate. Income from Box I is taxed at a progressive rate with a maximum of 51.95% (2018), income from Box II is taxed at a flat rate of 25%. As per January 1, 2018 box III has been amended and the ‘deemed earnings’ are being calculated by the formula hereunder and taxed at a flat rate of 30%:

<table>
<thead>
<tr>
<th>Bracket</th>
<th>Box III - Tax Base</th>
<th>Deemed earnings</th>
<th>Deemed earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Up to and including EUR 70,800</td>
<td>61%</td>
<td>33%</td>
</tr>
<tr>
<td>2</td>
<td>From EUR 70,801 up and including to EUR 978,000</td>
<td>21%</td>
<td>19%</td>
</tr>
<tr>
<td>3</td>
<td>From EUR 978,001</td>
<td>0%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3. Income From Employment

a. Managing and Supervisory Directors

Remuneration received by managing directors and supervisory directors of companies located in the Netherlands is in principle subject to Dutch income tax, even if those individuals are non-residents and perform their duties outside the Netherlands. The company paying the remuneration must withhold wage tax (as a pre-levy on income tax) on payments made to the directors.

b. Other Employees

Employment income earned by Dutch resident employees is fully subject to personal income tax (reference is made to paragraph 5 below). Employees who are residents of a non-treaty country are subject to Dutch tax on their employment income to the extent that the employment is deemed to be
performed within the Netherlands. Employees who are residents of a treaty country but who work in the Netherlands are also subject to Dutch tax. In general, employment income is taxed in the country where the work is performed. However, it is possible for employees to be taxed in the country of residence if:

- the employee spends fewer than 183 days a calendar year in the Netherlands;
- the remuneration is not paid by a Dutch employer; and
- the remuneration is not charged to the profit of a branch of the employer in the Netherlands.

4. Income Tax Ruling: the 30% Ruling

The Dutch tax authorities grant special tax benefits for eight years to foreign employees who are temporarily assigned to a Dutch subsidiary or branch from abroad, i.e. employees who are resident in the Netherlands. For qualifying employees, under the so-called 30% Ruling, 30% of the employee’s salary may be paid out as tax-free compensation for costs, and the employee may, at his or her request, benefit from treatment as a non-resident taxpayer. An addendum to the employment contract should typically be drafted to apply the 30% Ruling in respect of the agreed wages. If a 30% Ruling is granted, the employee can opt for treatment as a non-resident for tax purposes (except with regard to employment income). He or she will not be taxed on passive income such as interest. The main conditions attached to the 30% Ruling pertain to:

1. the employee’s professional position;
2. the employee’s prior employment or stay in the Netherlands; and
3. the status of the employer.


a. Levy Rebate (reduction of the income tax due)

The levy rebate is a basic general tax credit that is not specifically related to one of the Boxes and is credited against the combined amount of tax due on Box I, II and III income. Some specific expenses that are not related to one of the boxes, e.g. some personal obligations or exceptional expenses, are deducted by means of a reduction of Box I, II or III income. The levy rebate is EUR 2,265 (2018, and reduces to EUR 0 for taxable income of EUR 67,068 or more). Moreover, a labor bonus and some other specific rebates may apply to employees and/or individuals.

b. Tax Rates (2018) including social security premiums

The following four tax rates apply in 2018 for individuals up to the age of 65 and nine moths who are residents in the Netherlands:
Dutch income tax (including social security premiums) rates (2018):

- 36.55% for taxable income up to EUR 20,142;
- 40.85% for taxable income between EUR 20,142 up to EUR 68,507;
- 51.95% taxable income in excess of EUR 68,507.

IV. REGIONAL HEADQUARTERS IN THE NETHERLANDS

Regional Headquarters are normally established to supervise the operations of European and/or Middle Eastern subsidiaries. Sales coordination, administration and accounting, cash management, central billing, re-invoicing, advertising and public relations, as well as group financing and licensing, are typical activities of a regional headquarters. The Netherlands offers a central location in Europe, excellent airport facilities, a sophisticated banking system, the availability of adequate office space and many tax advantages both for companies and for expatriates.

1. General Advantages

The Netherlands has the most extensive tax treaty network of all the EU-Member States. Regional headquarters can apply the treaties in collecting dividends, interest and royalties from subsidiaries and other (group) companies. Expatriates who are temporarily assigned to a Dutch office may qualify for a special tax regime known as the 30% ruling (see above). In addition, Dutch companies may report taxable income in their functional currency, for example the US$ (or Russian Ruble or Chinese RMB), if certain requirements are met (see above). Moreover, the Netherlands has a relatively low corporate income tax rate of 20% to 25% (2018).

2. Tax Rulings

The Dutch tax authorities may approve an Advance Pricing Agreement (“APA”) determining upfront the arm’s length return for activities performed and services rendered in or through the Netherlands. The Dutch ruling practice consists of an APA practice and an Advance Tax Ruling (ATR) practice. The APA practice relates to agreements on transfer pricing methods, arm’s length results and operating in conformity with the OECD Transfer Pricing Guidelines. The ATR practice concentrates on providing advance certainty as to the fiscal qualification of transactions and international structures. It is also possible to reach an agreement with the Dutch tax authorities providing favorable tax treatment of central invoicing, leasing and foreign exchange clearing within the group. Examples of ATRs are so-called
CV-BV rulings (deferral structures for a.o. US based clients), informal capital contribution rulings, rulings covering Dutch dividend withholding taxes and the application of the Dutch participation exemption, rulings concerning Dutch COOPs, rulings regarding the (non)-tax transparency of certain vehicles (especially interesting in private equity tax planning structures) etcetera.

These aforementioned rulings may still be granted by the Dutch Tax Authorities but (foreign) Dutch taxpayers should be compliant with the anti-abuse measures as adopted in Dutch (tax) legislation, taking into account transparency and substance requirements.

3. Holding of shares

Holding companies have no special tax status under the laws of the Netherlands. Tax benefits are available to all companies that hold shares in Dutch or foreign subsidiaries. Dutch holding companies are therefore quite different from holding companies in a number of other countries, which are excluded from treaty protection. The Dutch tax authorities are willing to issue ATR’s on the applicability of the participation exemption (see above under paragraph II.2) for intermediate holding companies in international situations and for ultimate holding companies.

Tax treaties concluded by the Netherlands generally provide that withholding tax on dividends distributed to a Dutch company that holds at least 25% of the shares (or voting rights) in the distributing company is reduced to a substantially lower percentage, or even to zero.

4. Bilateral Tax Treaties

The Netherlands has one of the most extensive tax treaty networks in the EU (including a favorable tax treaty with e.g. the United States). The treaties generally provide for substantial reductions of withholding tax on dividends, interest and royalties.

The advantageous Dutch participation exemption (for dividends and capital gains), the broad treaty network, the ruling practice and the cooperative attitude of the Dutch tax authorities makes the Netherlands a very attractive country for holding-, sales- and services companies.

On 7 June 2017, the multilateral instrument (“MLI”) was signed covering 68 jurisdictions. The MLI will modify a large number of existing bilateral tax treaties with anti-tax avoidance measures developed in the OECD BEPS project. The impact of these bilateral choices on a specific tax treaty will also depend on
the choices made by the other treaty jurisdiction of that specific tax treaty.

5. Bilateral Investment Protection Treaties

Besides the many tax treaties, the Netherlands has also a very broad Investment Protection Treaty (BIT) network. In general, such BIT protects investments made by e.g. Dutch resident investors into other countries with which the Netherlands has concluded a BIT. Also, a shareholding in a company located in a country with which the Netherlands has concluded a BIT may qualify for that particular BIT protection. Most of the BITs concluded by the Netherlands include a so-called “national treatment” clause, a “most favored nation” clause and a “non-discrimination” clause. In addition, these BIT’s protect the Dutch investor from unfair expropriation by the other treaty partner.

V. SERVICE COMPANIES AND BRANCHES

From a corporate income tax perspective, it may be very attractive for a non-resident company to incorporate a Dutch company or to establish a branch in the Netherlands for handling storage, monitoring agency and distribution agreements, administration, central purchasing, invoicing, after-sales service, goods repairs or research activities.

The activities of such centers are solely of an administrative and supportive nature (as opposed to profit-generating activities like sales). The Dutch Tax authorities may allow for an Advance Pricing Agreement pursuant to which the minimum taxable profit of such a company or branch is fixed on a cost-plus basis. The mark-up will be determined based on comparables and the cost base includes operating costs, such as salaries, lease of office space and general office expenses excluding overhead costs. A transfer pricing study may determine the exact taxable mark-up to be reported in the Netherlands.

VI. SALES SUPPORT, DISTRIBUTION AND PRODUCTION

A foreign company that considers to establish production and/or sales operations in the Netherlands or in Europe is likely to carry out the project in phases.

1. Liaison Office
In the initial phase, a liaison office may be opened to explore the market and to establish contacts with prospective customers. The office may provide information about the company’s products and maintain a supply of goods or merchandise for display. Activities may include delivery, advertising, collecting information for the benefit of the foreign headquarters or it may carry out preparatory or supporting activities exclusively for the benefit of the foreign headquarter. These activities are generally non-taxable under Dutch tax treaties if conducted in such a way that the entity is not deemed to be a permanent establishment for tax purposes.

2. Sales Support

If the start-up phase is successful, the company may decide to expand the activities of the liaison office to include sales support and distribution activities, such as processing, packing or re-packing, (central) distribution, shipping, invoicing, repair, marketing, promotion, etc. The Dutch tax authorities may be requested to issue an APA setting the arm’s length return on the services rendered by the Dutch company. As long as the company performs few functions and bears little risk, the arm’s length return required may be moderate (e.g. on a cost-plus basis).

3. Production

If the company enters into a third and final stage by organizing a full-fledged production and sales operation (with the customary business risks for bad debts, market risks, currency risks, etc.), the company has to report an arm’s length return that allows for remuneration for the risks being incurred. However, it will then also qualify for the tax benefits available to Dutch companies, such as an investment allowance for business assets, accelerated depreciation of certain assets and generous loss compensation privileges. To the extent the company is also involved in innovation activities, this company may apply for the benefits of the so-called Innovation Box. Reference is made to paragraph VII. below.

VII. TAX INCENTIVES FOR INNOVATION ACTIVITIES (R&D)[1]

1. Dutch Innovation Box Incentive in the Dutch corporate income tax Act:

If a company earns profits from qualifying new technological know-how (a "technology intangible asset") in its business, it may elect to use the so-called Innovation Box. If so, instead of taxing the total amount of such profits at the general corporate income tax rate of 20%-25% (2018), a CIT rate of 7% will apply to such profits (including capital gains realized upon the alienation of the know-how). Before the low tax rate starts to apply, an amount of the profits equal to the development expenses of the respective asset must be "recaptured" (i.e., fully taxed at the general rate). The incentive applies to certain self-produced (i.e. not purchased), technology-based intangible assets, e.g. the know-how for a new product or for a new production process.
For small and medium sized companies there is an option to compute the R&D profit based on a forfait. If so, 25% of the total profit, up to an amount of EUR 25,000, is considered R&D profit that is subject to the reduced 7% corporate income tax rate.

There are two ways to apply the Innovations Box benefits:

A. Conditions to qualify for the Innovation Box: patented assets

- The company has a technology intangible asset that is expected to generate a significant technology-based profit. In other words, at least 30% of the expected future profits are expected to be derived from the new technology components, as opposed to from marketing efforts, brands, trademarks, etc.
- The company has a patent (whether Dutch or non-Dutch) for the intangible asset. Patent applications that are still pending do not qualify.
- The company produced the intangible asset; in other words, it did not purchase the complete asset.
- The "self-production test" is met if the company's staff performs the required R&D work, or if they monitor the R&D work carried out by a third party ("contract R&D") in the Netherlands or abroad.
- Brands, trademarks, logos, etc. are not qualifying technology assets.

B. Conditions to qualify for the Innovation Box: R&D certificate assets

- The company has received an R&D certificate from the Dutch authorities (SenterNovem, a Dutch government agency) for the R&D work performed.
- The company can apply for an R&D certificate if it employs staff engaged in qualifying R&D activities in the EU (this may include certain software development). The R&D certificate also allows the company to receive a certain Dutch tax credit against his wage tax obligations in respect of the employees engaged in these qualifying R&D activities. Therefore, the company may benefit from two incentives.
- The company, and not a third party, produces the intangible asset.
- For contract R&D, the "self-production test" is met if the company's staff performs the majority of the R&D work that is required for a particular R&D project, or if they monitor the R&D work carried out by a third party (i.e., if they organize and supervise the work).

2. Determining the technology-based profits and the advantages of the Box

The Innovation Box covers more than just the income generated from licensing know-how or patents granted to other companies. All kinds of current income and cost savings, including capital gains from the sale of assets, may qualify. The company must find a way to separate the portion of profit that is allocable to its new technology-based assets from the profits that are allocable to other profit generators, such as brands, marketing efforts, and general management.

In the Netherlands, it is possible to discuss upfront the practical application of the rules and the profit allocation question with the Dutch tax authorities. Taxpayers may enter into binding agreements with the Dutch tax authorities, which can result in very substantial tax savings.
VIII. OTHER DUTCH TAXES

1. Capital Tax

Dutch tax law does not provide for a capital tax upon contribution of capital into a Dutch entity.

2. Withholding Taxes

a. Dividends

Dividends and other distributions of profits (including interest on profit-sharing debentures, interest on loans which are considered to be equity and liquidation payments in excess of the paid-in capital) paid by companies that are resident in the Netherlands are subject to a 15% dividend withholding tax in the Netherlands (2018). When non-residents receive such dividends, this 15% rate is often reduced pursuant to the provisions of tax treaties concluded by the Netherlands with other countries. Under certain conditions, no dividend withholding tax is due in respect of dividend distributions to certain EU-resident parent companies (see above).

As said, the Netherlands has concluded many favorable tax treaties with – amongst others – Russia, China, The United States of America, Brazil, India, Japan, Korea, etc. Under many of these tax treaties, the dividend withholding tax rates are reduced to 5% (if paid between enterprises) or even to 0%.

On Budget Day, 19 September 2017, the Dutch Ministry of Finance published a legislative proposal that stipulated the proposed changes to the Dutch DWT Act, which is currently in effect (as of the year 2018). The Dutch DWT exemption applies to dividend distributions by Dutch entities to foreign companies that hold a qualifying interest (five percent or more) in such Dutch entities and that reside in a third state with which the Netherlands has concluded a tax treaty or similar arrangement containing a dividend provision (a Dutch anti-abuse provision is applicable).

From 1 January 2018, two additional (substance) criteria should be fulfilled by the corporate shareholder to ensure that no Dutch DWT is due:

- a minimum of EUR 100,000 labour costs relating to the relevant holding activities should be incurred by the corporate shareholder; and
an office space must be owned or rented by corporate shareholder, from where the business activities are performed for at least 24 months.

On 10 October 2017 the new Dutch coalition also presented a coalition agreement in which they announced plans for several tax measures. Under these plans, Dutch DWT will be abolished for regular situations, most likely as from 2020. The coalition agreement itself does not contain the text of the proposed legislation or further explanatory remarks. Consequently, the exact scope and impact of the measures is still unclear. It is expected that the Dutch DWT will remain applicable for dividend distributions (and for interest- and royalty distributions) in specific cases of abuse and therefore, the corporate shareholder should remain compliant with the substance requirements as described above.

b. Interest and Royalties

There is currently no Dutch withholding tax on outgoing interest and royalties paid by companies that are resident in the Netherlands.

3. Value Added Tax (VAT)

Dutch VAT is imposed on:

- the supply of goods or services;
- the acquisition of goods from other EU countries; and
- the importation of goods into the Netherlands from outside the EU.

Dutch VAT is due only if the supply of goods or services can be located in the Netherlands. Under Dutch VAT regulations, goods are supplied (and VAT is due) in the country where the goods are located at the time when the right to dispose of the goods passes. If the goods are transported in relation to the sale, VAT is due in the country where that transport commences. Services are supplied (and are therefore subject to VAT) in the country where the service provider is established. Various exceptions to this rule exist, e.g. advisory services, financial services and telecommunication services are deemed to take place (and taxed) in the country where the (VAT-taxable) recipient of the service is located.

A distinction must be made between VAT-taxable and VAT-exempt activities. Entrepreneurs who perform taxable activities must charge VAT on their remuneration. They can deduct the input VAT on costs that relate to the taxable activities.
Entrepreneurs who perform VAT-exempt activities do not charge VAT with respect to the exempt activities. On the other hand, they may not deduct the input VAT on costs that relate to those exempt activities. In addition, the ultimate consumers do not have the right to deduct VAT. As a result, for those categories VAT is a true burden. The exempt activities generally fall into two categories:

1. exemptions for public policy reasons in the fields of education, culture or social welfare; and
2. exemptions based on a policy to avoid administrative complications for the supplier (such as postal services, banking and other financial transactions).

An entrepreneur who sells and transports goods to entrepreneurs located in another EU Member State performs an intra-community (IC) supply in the Member State from which the goods are sent. This supply is subject to the zero rate. The receiving entrepreneur performs a taxable IC acquisition in the Member State where the goods arrive.[2]

Every entrepreneur (either EU or non-EU based) performing IC supplies or IC acquisitions in the Netherlands is obliged to register for Dutch VAT purposes. This may be done by appointing a Dutch fiscal representative. For supplies to private persons in other EU Member States, a special scheme may be applicable, known as “distance sales.” Depending on how the goods are transported and the turnover of the supplier, those supplies are taxed in the country of dispatch or in the country of destination.

a. Rates

The general Dutch VAT rate is 21%. A reduced rate of 6% applies to a number of essential goods and services, such as food, gas, electricity, pharmaceutical products, etc. A zero rate applies to:

- goods not cleared through customs, either because they are merely passing through the Netherlands or because they are in storage in the Netherlands;
- the export of goods from the EU;
- the intra-community supply of goods, and;
- certain exempted products and services in e.g. the medical industry.

b. Payment, VAT Returns and Administrative Requirements

Normally, Dutch VAT is levied from the supplier who delivers the goods or renders the services in the Netherlands. A reverse charge mechanism applies if the supplier is a non-resident taxable person (without a Dutch branch) supplying to a Dutch entrepreneur. In that case, the Dutch customers/entrepreneurs must account for (i.e. self-assess) the Dutch VAT (which they can simultaneously deduct in their tax return, provided that the goods or services are used for taxable purposes). A reverse charge mechanism may also apply for services relating to the manufacturing of clothing or the activities of contractors. VAT returns are generally filed monthly or quarterly. VAT is due on the aggregate value of the goods and services.
sold during the preceding period. A special scheme exists for qualifying sales of second-hand goods, works of art, antiques and collectors’ items. Under this scheme, VAT can be calculated on the profit margin. Entrepreneurs performing IC supplies must also file quarterly listings, stating names and VAT numbers of customers in other EU Member States and the amount of goods sold to those customers.

The VAT system is built around invoices and the obligation to issue them. Invoices have three functions in the VAT system:

- They contain information as to which VAT regime is applicable.
- They enable the tax authorities to carry out audits.
- They enable taxpayers to prove, if necessary, their right to recover the VAT they paid.

There are several mandatory items that must appear on invoices. Entrepreneurs must have copies of all their sales invoices and originals of all purchase invoices in their records at all times.

If you have any questions or appreciate receiving more information on this legal and tax alert, please contact your regular contact at WLP-Law or any of the undersigned:

For tax matters:

Richard Smeding: smeding@wlp-law.com
Gerwin de Wilde: dewilde@wlp-law.com

For corporate matters:

Neill André de la Porte: andredelaporte@wlp-law.com
Maarten van Buuren: vanbuuren@wlp-law.com
Hans Mouthaan: mouthaan@wlp-law.com

WLP-Law Amsterdam
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[1] Since January 2018, the innovation box has been amended. The adjustments aim to bring the current regime into line with the agreements laid down in BEPS Action 5, as part of its fight against tax evasion and evasion.

[2] On May 1, 2004 the following countries joined the European Union: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia. In 2007 joined Bulgaria and Romania, and in 2013 Croatia joined the EU.