



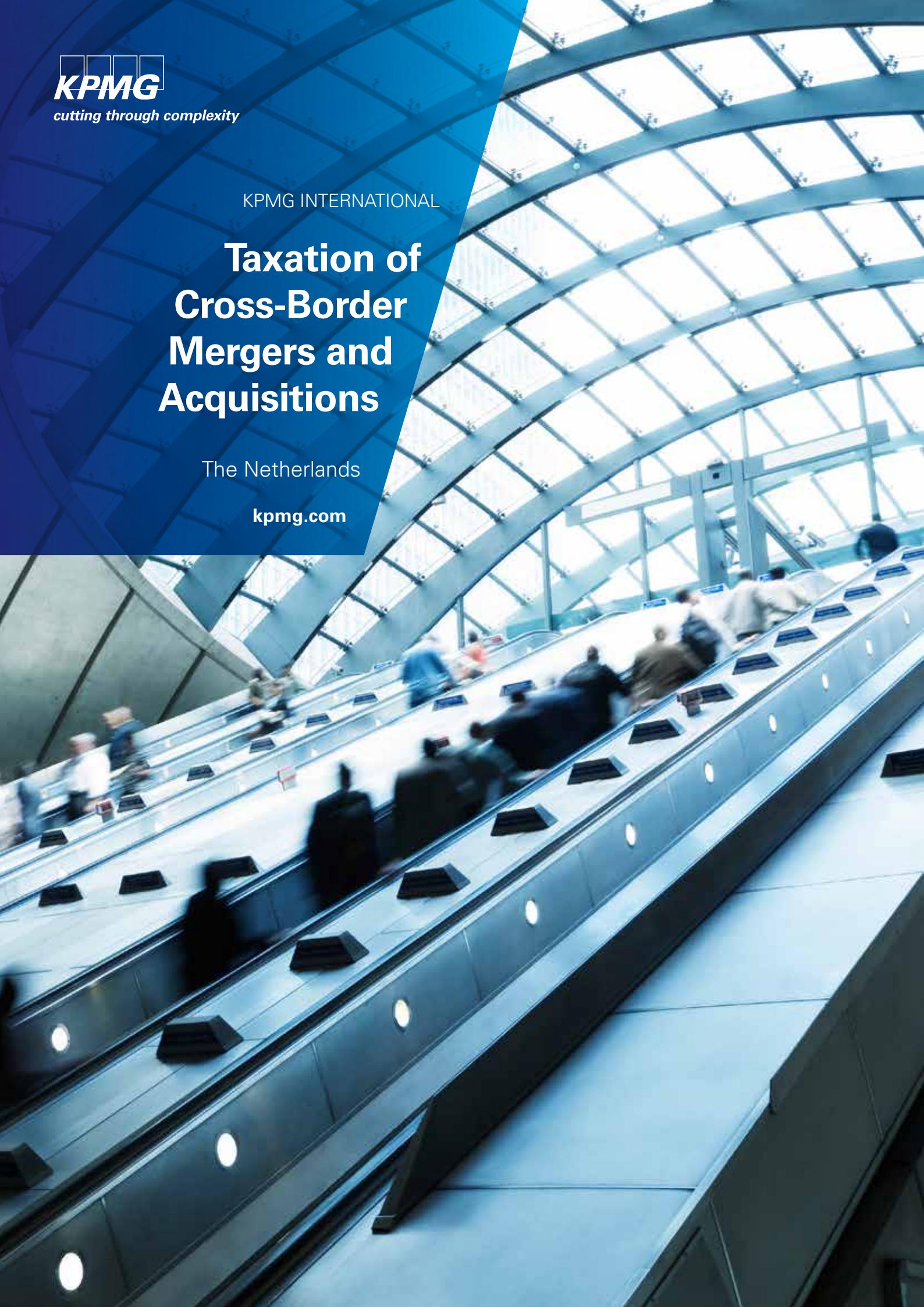
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KPMG INTERNATIONAL

# Taxation of Cross-Border Mergers and Acquisitions

The Netherlands

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# The Netherlands

## Introduction

The Dutch tax environment for cross-border mergers and acquisitions (M&A) has undergone some fundamental changes in recent years. Most of these changes have been implemented as of 2013.

These changes affect fundamental decisions that a prospective purchaser will face:

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

## Recent developments

The following summary of recent Dutch tax developments is based on current tax legislation up to and including the Tax Plan 2014, which was announced in September 2013 and became effective as of 1 January 2014.

### Thin capitalization

Dutch thin capitalization rules that were in effect 1 January 2013 denied the deduction of all or part of the interest for corporate income tax purposes on net related-party debt. These rules effectively restricted the deductibility of interest paid to related entities, broadly speaking, where the total net debt exceeded a debt-to-equity ratio of 3:1. As of 1 January 2013, these thin capitalization rules were abolished.

### Limitation of excessive participation interest

As of 1 January 2013, interest relating to the excessive debt financing of participations (participation debt) is no longer tax-deductible. The non-deductible amount of interest is calculated by dividing the excessive amount of participation debt by the total amount of debt and multiplying the result by the total amount of interest paid. The excessive participation debt is calculated as the value of the participations for tax purposes (historic cost price and capital contributions) less the total amount of equity for tax purposes. An exemption is provided for expansion investments, that is, investments in participations that are an expansion of a group's operating activities. For example, where a Dutch car manufacturer acquires a participation in the share capital of a German subsidiary that owns a factory, the acquisition is considered to be an expansion of the operating activities. The acquisition price of this participation does not have to be taken into

account for the calculation of disallowed interest. However, where a double dip structure or a hybrid entity/instrument is used to finance the subsidiary, for example, the exemption does not apply.

In addition to the new law, there is an implementation decree for internal reorganizations and to avoid overkill as a result of other statutory restrictions of interest deduction. In the case of a transaction with a Dutch group company that holds foreign participations, these rules should be carefully monitored in order to calculate debt capacity.

This deduction limitation applies to financial years commencing on or after 1 January 2013. Transitional rules apply, and the rules also contain a concession with regard to active group financing activities. See this chapter's information on choice of acquisition funding.

### Temporal ring-fencing participation exemption

On 3 September 2013, a bill on temporal ring-fencing was presented to the Lower House. The bill contains new legal rules on how to deal with situations where the participation exemption does not apply to the full period that the shareholding is being held. In the past, Supreme Court case law on temporal ring-fencing dealt with situations where the participation exemption became applicable or no longer applied to an existing shareholding (exemption transition) as a result of a change in the facts. In short, case law on temporal ring-fencing meant that the tax treatment of capital gains realized after such a change was determined on the basis of the tax regime applicable during the shareholding period to which the benefit could be attributed.

According to the bill, temporal ring-fencing must take place either when facts change or when legislation is amended, both in relation to dividends and capital gains. The bill will replace existing Supreme Court case law and apply to all types of exemption transitions in respect of a shareholding. The proposed bill will have retroactive effect to 14 June 2013. However, the substantive retroactive effect of the bill will date back even further and the benefits of the participation exemption received in the distant past may as yet be reclaimed.

### Information obligation service entities

In light of the national and international debate on the taxation of multinationals and developments regarding base erosion and profit shifting (BEPS), the Cabinet introduced a measure that concerns the information obligation for service entities.

In short, service entities are Dutch resident companies whose main activities involve the intragroup receipt and payment of foreign interest, royalties and rental or lease payments. A service entity can request the Dutch Revenue to provide advance certainty on the tax consequences of proposed related-party transactions. The conditions for obtaining advance certainty are laid down in a 2004 decree. In short, these conditions provide for an actual presence in the Netherlands (i.e. substance requirements) and the real risks that must be borne as a result of the functions performed. The substance requirements require, for example, that the management and administration be carried out in the Netherlands and that the amount of equity held is appropriate to the company's functions and risks.

As of 1 January 2014, these substance requirements apply to service entities, regardless of whether advance certainty was requested. They therefore apply to all service entities, which must also confirm in their annual corporate income tax return whether they meet these requirements.

## Asset purchase or share purchase

Generally, from a seller's perspective, a sale of assets is likely to generate a taxable gain or loss unless tax relief applies or the gain can be deferred by creating a reinvestment reserve. This reserve operates by way of a rollover, 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 new asset.

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

Capital gains realized on the sale of shares qualifying for the participation exemption are tax-exempt. For details, see the chapter's information on purchase of shares.

## Purchase of assets

When a Dutch company acquires assets, the assets are reported in the acquiring company's financial statements in accordance with generally accepted accounting principles (GAAP).

Any financing costs relating to the acquisition of assets are generally deductible on an accruals basis for Dutch corporate income tax purposes. See, however, the restrictions discussed in the section on choice of acquisition funding later in this chapter.

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

Generally, any resulting gain (sometimes referred to as tax on hidden, i.e. untaxed, reserves) on 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, unless the transaction qualifies for relief as an asset merger, legal merger or demerger (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. See this chapter's section on group relief/consolidation.

An asset merger essentially involves the transfer of a business (or 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 rollover 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. In practice, the involvement of non-resident companies does have implications (described later in the chapter). The relief applies automatically where certain conditions are met (e.g. ensuring that avoidance opportunities are not present). In other cases, the relief must be specifically requested and may be granted subject to additional conditions. The relief does not apply if the merger is primarily aimed at the avoidance or deferral of taxation. Advance certainty (in the form of an advance tax ruling) can be obtained from the Dutch Revenue. Generally, 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 where a Dutch permanent establishment being integrated into a private limited liability company (*Besloten Vennootschap* – BV) or public limited liability company (*Naamloze Vennootschap* – NV) 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 issues new shares to the shareholder(s) in the transferor(s) in exchange for the transfer.

The tax relief available for a legal merger consists of an exemption from tax for the transferor and a rollover 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 may involve non-Dutch companies, subject to conditions. Generally, the tax relief is not restricted to resident companies but also applies 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 Europaea* (SE). A similar procedure to that of asset mergers is available for obtaining the relief and advance certainty. The transferor's pre-merger losses may be transferred to the acquiring company, and the acquiring company's post-merger losses may be carried back to be set off against the transferor's profits, provided a request is filed and applicable conditions are satisfied.

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

For a legal merger and legal demerger involving an acquisition company that has been debt-funded, the interest deduction limitation rule applies in the same way as for acquisition holding companies that have been included in fiscal unities. See this chapter's section on choice of acquisition funding.

## Purchase price

Acquisition prices from affiliated parties may be challenged under transfer pricing rules. 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 is reported in the acquiring company's financial statements for financial reporting and tax purposes 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 business, provided that their value diminishes over time. Maximum annual amortization and depreciation percentages apply to goodwill (10 percent) and business assets other than goodwill and real estate (20 percent).

Depreciation of real estate is possible until a residual value is reached. For investment properties, the minimum residual value equals the value established by the municipality under the Valuation of Immovable Property Act (WOZ). For properties used as part of one's own business (such as the business premises), the residual value is half the value determined under the WOZ. Under the new depreciation system, it continues to be possible to record impairment to buildings at a lower going-concern value.

Under certain conditions, accelerated amortization/ depreciation can be claimed in 2013 (to a maximum of 50 percent) for certain investments made from 1 July to 31 December 2013. This option was temporary and no longer applies for investments made as of 2014.

## 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 the transfer does not, for example, result in taxable gains. A clawback may apply where the fiscal unity is dissolved within a six-year period following such a transfer.

## Value added tax

Value added tax (VAT) is the most important indirect tax in the Netherlands.

Dutch VAT is levied on the net invoiced amount charged by businesses for supplies of goods and services taxable within the Netherlands. Businesses are only allowed to reclaim the input VAT on their investments and costs attributable to:

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

Input VAT can only be recovered where the business is the actual recipient of the services and a correct invoice is issued to this business.

No VAT is due when all or an independent part of a company's business is transferred and the transferred business continues as before (also known as transfer of a business as going concern – TOGC). These transactions are out of scope for VAT purposes. This relief also applies to legal mergers but not to the sale of a single asset or trading stock (e.g. inventory).

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

An important issue is often the extent to which a business is entitled to reclaim the Dutch VAT levied on its transaction costs for the sale of shares of a subsidiary (generally not taxed for VAT purposes) to an EU-based purchaser. VAT levied on the costs attributable to an asset transaction and a statutory merger generally can be recovered by the seller on a pro rata basis. Under a special decree for majority shareholdings, the VAT on costs attributable to their sale is fully reclaimable.

Where the acquirer in a merger or share acquisition transaction wishes to reclaim VAT on the transaction costs, the acquirer should always ensure it has activities subject to VAT or provides VAT-exempt financial services to non-EU parties. The post-deal VAT recovery position depends largely on the facts and circumstances of the proposed structure.

## Transfer taxes

A real estate transfer tax at the rate of 6 percent (2 percent on homes) of the real estate value (which must equal at least the purchase price) is due on all transfers of titles to Dutch real estate. This tax also applies to shares in Dutch real estate companies, provided the acquirer holds at least one-third of

the economic interest in the real estate company. A company is considered to be a real estate company if the assets (at fair market value) consist of more than 50 percent real estate. Real estate located outside the Netherlands is included, provided the assets consist of at least 30 percent real estate located in the Netherlands (asset test). If the asset test is met, then the actual activities must be assessed to determine whether at least 70 percent of these activities involve the exploitation of this real estate (e.g. investment).

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 generally are acquired through a purchase or exchange of shares. In principle, the acquisition of shares is 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 only relevant for specific purposes, given that a disposal of such a shareholding is tax-exempt. Costs directly related to such acquisitions are generally non-deductible. Costs related 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 are generally 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 company (i.e. generally, 90 percent or more of its assets comprise passive investments and are subject to tax at a rate lower than 10 percent).

Where 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 are only treated as paid-up to the same extent that the target's shares were paid-up. In effect, the potential dividend withholding tax (WHT) that would have been due on profit distributions by the target is shifted to the acquiring company, as and when it distributes profits. To mitigate the impact of this rule, concessionary treatment applies when a Dutch company acquires a foreign target.

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

Where 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 and the excess cannot 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. A company is considered to be a real estate company where its assets (at fair market value) consist of more than 50 percent real estate. Real estate located outside the Netherlands is included, provided that the assets consist of at least 30 percent real estate located in the Netherlands (asset test). Where the asset test is met, then the actual activities must be assessed to determine whether at least 70 percent of these activities involve the exploitation of this real estate (e.g. investment).

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 non-deductible. Costs directly relating to the sale of a qualifying participation are also non-deductible.

In principle, the participation exemption applies to shareholdings in Dutch or non-Dutch companies of at least 5 percent unless the subsidiary can be considered to be held as a passive investment (motive test). A subsidiary is considered to be held as a passive investment if the taxpayer's objective is to generate a return that may be expected from normal active asset management. Where more than 50 percent of the subsidiary's assets comprise shareholdings in companies representing an interest of less than 5 percent or where the subsidiary's main function is to provide group financing, such subsidiary is also considered to be held as a passive investment.

A subsidiary that is considered as a passive investment may still qualify for the participation exemption where one of two conditions are met:

- Less than 50 percent of the fair market value of the assets (on a special consolidated basis) comprise non-business-related, low-taxed investments (asset test).
- The company is taxed at a reasonable tax rate (10 percent or more) based on Dutch tax principles (subject to tax test).

Generally, assets held by subsidiaries are taken into account for the asset test. The relevant entity's activities determine whether an asset qualifies as a non-business-related investment, which is an investment that cannot reasonably be considered necessary for the business operations of the entity holding these investments. The question of whether investments qualify as non-business-related should be answered on a case-by-case basis.

Where the participation exemption becomes applicable or no longer applies to an existing shareholding and a capital gain or dividend is realized, the proposed bill on temporal ring-fencing should be observed (see the section on recent developments earlier in this chapter).

### Tax indemnities and warranties

In a share acquisition, the purchaser takes over the target company together with all related liabilities, including contingent liabilities. Therefore, the purchaser normally requires more extensive indemnities and warranties than in the case of an asset acquisition.

### Tax losses

Generally, tax losses may be carried forward for 9 years and carried back for one year within the same company or fiscal unity. However, the carry over may be restricted or denied in circumstances involving a change of 30 percent or more in the ownership of the company where the company has primarily held passive investments during the years concerned or its business activities have significantly decreased. The carry forward of prior-year losses by a holding and finance company may also be restricted, as may the carry back of losses. According to legislation, a company is a holding and finance company where 90 percent or more of its activities, for 90 percent or more of the financial year, comprise holding participations and/or the financing of affiliated companies. The losses incurred by such companies may only be set off against profits where the company also qualifies as a holding and finance company in the profitable year and where the net amount of affiliated loan receivables is not greater in the profitable year. If the net amount is greater, then this was not primarily done to take advantage of the loss set-off.

The existing rules for setting off losses within a fiscal unity are extensive, but the normal time limits for such set-off still apply. Generally, pre-fiscal unity losses can be set off only where 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 does 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 rollover of the transferor's existing tax basis in the target shares into consideration shares in the acquiring company, effectively deferring any gain.

This relief is available where:

- 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
  - 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
  - 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 EU
  - 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 where the transaction is primarily aimed at avoiding or deferring taxation. Unless the taxpayer can demonstrate otherwise, this motive is presumed where the transaction does not take place for sound business reasons, such as a restructuring or rationalization of the activities of the companies involved. Before carrying out the transaction, the taxpayer can request confirmation from the Dutch Revenue that it will not deny relief on these grounds.

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 generally is limited to those owning at least 5 percent of the target (i.e. holders of substantial interests), as gains on smaller shareholdings are not usually taxable.

The disposal outside a fiscal unity (see the chapter's section on group relief/consolidation) of a subsidiary that has been involved in the transfer of assets within the fiscal unity in the preceding 6 years may give rise to a tax liability from the previously transferred assets. The transferred assets are revalued at market value prior to the fiscal unity being terminated. An exception is made where the transfer of the assets is part of the normal businesses of both companies.

Once a company has left a fiscal unity, it remains jointly and severally liable for taxes payable by the parent company of the fiscal unity (both corporate income tax and VAT fiscal unity) and allocable to the tax periods in which the company was included in the fiscal unity. This liability arises pursuant to the Dutch Tax Collection Act and should be addressed in the sale-purchase agreement.

### **Pre-sale dividend**

The participation exemption applies to a pre-sale dividend, provided it meets the applicable conditions and the seller is a Dutch resident. Where the seller is non-resident, the relevant treaty or the applicable domestic type of relief determines whether the Netherlands will withhold tax on the paid dividend.

## Transfer taxes

A 6 percent real estate transfer tax is due on all share transfers in Dutch real estate companies. A company is considered to be a real estate company if its assets (at fair market value) consist of more than 50 percent real estate. Real estate located outside the Netherlands is included, provided that the assets consist of at least 30 percent real estate located in the Netherlands (asset test). If the asset test is met, then the actual activities should be assessed to determine whether at least 70 percent of the activities involve the exploitation of this real estate (e.g. investment).

## Tax clearances

See the discussion of share mergers earlier in this chapter.

## Choice of acquisition vehicle

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

### Local holding company

Dutch tax law and the Dutch Civil Code contain no specific rules on holding companies. In principle, all resident companies can benefit from the participation exemption if they satisfy the relevant conditions (see this chapter's section on purchase of shares). Under the participation exemption, capital gains and dividends from qualifying shareholdings are exempt from corporate income tax. However, legislation limits the possibility of setting off losses that are incurred by holding and finance companies against profits (again, see the section 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. 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, except that Dutch cooperatives generally are not subject to Dutch dividend WHT, which makes them particularly attractive for foreign inbound investments by non-treaty residents and/or private equity-type funds. Dividend distributions made by cooperatives are not subject to dividend WHT unless it appears that the cooperative is being misused. Interposing a cooperative in order to avoid an existing dividend WHT claim or foreign

tax is generally regarded as abusive. Dividend WHT is not due if the membership rights belong to the business assets of the member in question, except to the extent that 'old' profit is distributed (i.e. profit from the period preceding the interposition of the cooperative).

In principle, funding costs, such as interest incurred by a local holding company, can be deducted from the taxable profit of the acquiring company. Restrictions apply for the deduction of interest from the taxable profit of the target if a fiscal unity is formed. See the sections on choice of acquisition funding and recent developments earlier in this 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 is not normally exposed to Dutch taxation in respect of the shareholding, except for possible WHT on dividends. Dutch WHT on dividends is 15 percent unless reduced by a treaty or a domestic exemption applies. Dividends to foreign EU-based corporate shareholders holding at least 5 percent of the shares normally qualify for an exemption from WHT.

### Non-resident intermediate holding company

Due to the Netherlands' extensive network of tax treaties, there is often no benefit to interposing a treaty country intermediary. However, where the acquirer is resident in a non-treaty country, the dividend WHT may be reduced by interposing a Dutch cooperative (in principle, not subject to dividend WHT; see this chapter's section on local holding company) or a foreign holding company resident in a treaty country between the acquirer and the target company.

### Local branch

A branch of a foreign company is subject to Dutch corporate income tax in the same way as a domestic company. In principle, non-resident entities that have Dutch permanent establishments to which qualifying shareholdings can be attributed can benefit from the participation exemption. In principle, funding costs, such as interest incurred by a local branch can 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). No WHT is levied on distributions to the foreign head office, which can be an advantage when acquiring a Dutch target's assets. If 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, fully exposing the head office to the branch's liabilities. Additionally, the Dutch Revenue generally denies a deduction for interest charged by the head office unless the deduction relates to external loans.

### Joint venture

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 at the level of the partners. Due to the participation exemption, where the conditions are met, the profit or loss on the sale of the shares of a tax-transparent partnership do not lead to taxable profit.

## Choice of acquisition funding

### Debt

Interest expenses are generally deductible on an accruals basis for Dutch corporate income tax purposes. 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. However, see the section on recent developments earlier in this chapter.

### Deductibility of interest

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

The restrictions described earlier do not apply where the taxpayer shows that both the transaction and the related debt were predominately motivated by sound business reasons (double business motivation test) or where the recipient of the interest (or, for 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 or more, computed under Dutch corporate income tax principles). In the latter case, the restrictions still apply where the Dutch Revenue can show that the transaction and the related debt were not both predominately motivated by

sound business reasons. In a decree issued in March 2013, the Deputy Minister of Finance presented his views on, for example, financing structures that he considers are not business-motivated. Loans used to finance an acquisition that are funded by the issuance of a hybrid financing instrument are potentially not business-motivated. Other mismatches resulting from the use of hybrid entities are also mentioned. The facts and circumstances at hand could still provide a good basis for arguing that the interest on such loans should be tax-deductible.

As of 1 January 2013, thin capitalization rules have been abolished.

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

As of 1 January 2013, a new interest deduction limitation rule applies to excessive deduction of interest related to the financing of participations (participation debt). The non-deductible amount of interest is calculated by dividing the excessive amount of participation debt by the total amount of debt and multiplying this by the total amount of interest paid. The excessive participation debt is calculated as the value of the participations for tax purposes (historic cost price and capital contributions) less the total amount of equity for tax purposes. An exemption has been made for expansion investments, i.e. investments in participations that expand a group's operating activities. The acquisition price of these participations does not have to be taken into account for the calculation of disallowed interest. However, where a double dip structure or a hybrid entity/instrument was used to finance these participations, for example, the exemption does not apply.

Generally, no disallowed interest should occur on the basis of the excessive participation debt rules where:

- The amount of equity for tax purposes exceeds the acquisition price of the participations.
- The Dutch taxpayer has included all its participations in the fiscal unity for corporate income tax purposes (not possible for foreign participations).
- The participations of the taxpayer were all historically incorporated or acquired as an expansion of a group's operating activities, no double dip structures or hybrid entity/financing structures were implemented, and the acquisition, expansion and financing were not entered into because of the interest deduction.

- The excessive amount of 'participation debt' is less than 15 million Euros (EUR) (assuming an interest rate of 5 percent), due to a safe harbor amount of EUR750,000. This amount of interest is always deductible under these rules.

The deduction limitation applies to financial years commencing on or after 1 January 2013. Transitional rules allow for an optional fixed amount: the taxpayer may disregard 90 percent of the acquisition price, without the need for further proof, where the participation was acquired or expanded or equity was contributed to the participation during a financial year commencing on or before 1 January 2006. The taxpayer must prove that, in relation to the old participations to which the 90 percent rule has been applied, no double dip structures or hybrid entity/financing structures were implemented.

The participation interest measure also contains a concession for active group financing activities. Under this concession, the test for determining whether there is a participation debt and non-deductible participation interest does not take into account loans and their accompanying interest and costs to the extent that these loans relate to receivables held by the taxpayer in respect of the active group financing activities.

In addition to the new law, there is an implementation decree for internal reorganizations and to avoid overkill as a result of other statutory restrictions of interest deduction.

Further, an interest deduction limitation rule applies to acquisition holding companies that are debt financed where the acquirer and the target enter into a fiscal unity for corporate income tax purposes. This restriction only applies for fiscal unities formed after 15 November 2011. Under this restriction, acquisition debts exist where the debt is related directly or indirectly, by law or by fact, to the acquisition or expansion of a participation in one or more companies.

Interest expenses on the acquisition debt are deductible up to the amount of the acquirer's own profit before deducting the acquisition interest expenses (own profit). Where the acquisition interest exceeds the own profit and the excess amount is less than EUR1 million (franchise), then the new rule does not limit the interest deduction. Where there is no excess acquisition interest (financing escape), the interest also remains fully deductible (subject to other possible limitations). The excess acquisition interest equals the interest on the acquisition debt that exceeds a specific part of the acquisition price: 60 percent in the year in which the acquisition was included in the fiscal unity, 55 percent in the

following year and so on, until a percentage of 25 percent is reached. In the case of multiple acquisition debts, particularly where they relate to companies included in the fiscal unity in different years, the excess acquisition interest must be determined for each of those years separately. Acquisition debts and acquisition prices regarding acquisitions that are included in a fiscal unity in the same year are combined.

If there is excess acquisition interest as described earlier, the non-deductible interest is limited to the lower of the following two amounts:

- acquisition interest less positive own profit minus EUR1 million
- the amount of the excess acquisition interest.

Acquisition interest that is non-deductible in any year is carried over to the following year, where it will again be assessed to see if it falls under the interest deduction limitation. In respect of the interest carried forward, the EUR1 million franchise and the financing escape are not taken into account again.

Corresponding measures apply where the target does not join the fiscal unity but a legal merger or a legal division takes place on or after 15 November 2011. Mergers and divisions that took place before 15 November 2011 are also subject to the transitional rules.

### Withholding tax on debt and methods to reduce or eliminate it

WHT of 15 percent is levied on dividend distributions. 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 WHT on interest, it is often advantageous to fund a Dutch company with debt rather than equity. See, however, the restrictions on interest deduction for profit tax purposes in this chapter's section on choice of acquisition funding.

(For the dividend WHT implications of share-for-share acquisitions, see the section on purchase of shares.)

### Checklist for debt funding

- The deduction of interest may be restricted, especially where the acquisition of shares is financed with an intercompany loan.
- If the target owns subsidiaries (which are not part of the same fiscal unity), the deduction of interest may be restricted in case of excessive deduction of interest related to the financing of participations.

- 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 within the limitations provided by the rules on acquisition holding companies described earlier.

## 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.

## 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 equity to be provided (rather than a loan).
- The conditions of the loan are such that the lender effectively participates in the business of the borrowing company.
- The loan was granted under such circumstances (such as those relating to the debtor's financial position) that, at the time the loan was granted, neither full nor partial repayment of the loan could be expected.

Pursuant to Dutch case law, loans referred to under the second bullet point above may be re-characterized as equity where:

- The term of the loan is at least 50 years.
- The debt is subordinated to all ordinary creditors.
- The remuneration is almost fully dependent on the profit.

Where a loan is re-characterized as equity under the aforementioned conditions, interest payments are non-deductible and may be deemed to be a dividend distribution, triggering 15 percent WHT (unless reduced by treaty or domestic relief).

## Discounted securities

Where securities are issued at a discount, because the interest rate is below the market rate of interest, in principle, the issuer may 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.

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

Where 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

### The seller's concerns

No corporate income tax is due on share transfers, provided the conditions of the participation exemption are met. Relief from corporate income tax may be granted in cases of a share-for-share merger, asset merger, legal merger and demerger. Where available, relief generally takes the form of an exemption for the transferor and a rollover, such that the acquired assets and liabilities retain the same tax basis they had when owned by the transferor. Certain conditions for this rollover must be met. For example, where 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 6 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 where 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. As of October 2012, it is possible to issue shares without voting rights or profit entitlement. Shares of a BV are not freely transferable, which makes this type of company generally preferred as the vehicle for privately held companies. Generally, shares in an NV are freely transferable.

Foreign investment in a Dutch company does not normally require government consent. However, certain laws and regulatory rules may apply 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 cash and/or shares in the company. Such a transfer requires that all assets and liabilities be transferred separately.

In a statutory/legal merger, shareholders generally 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 statutory/legal merger, a number of variations exist, such as a merger between a parent and a subsidiary and a triangular merger under which a member of the acquiring company's group may issue the consideration shares.

Legislation on divisions and demergers/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 Authority for Consumers & Markets in advance.

Legislation for financial reporting is laid down in Part 9 of Book 2 of the Dutch Civil Code. Further, the Council of Annual Reporting (CAR, *Raad voor de Jaarverslaggeving*) publishes Guidelines for Annual Reporting (GAR), which is largely 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 a NV or BV must prepare the financial statements within

a period of 5 months. This period can be extended for up to 6 more 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 legal and economic ownership of the nominal share capital. This 95 percent interest should represent at least 95 percent of the voting rights and should be entitled to at least 95 percent of the profits.

The parent and subsidiaries must be formed under Dutch law (usually as BVs, NVs or cooperatives); 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. Where the company is not a Dutch resident, it should have a permanent establishment in the Netherlands and be resident in either an EU Member State 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 cannot be more than 3 months before the date of the 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 arise. However, interest expense incurred in relation to the acquired company is only deductible from the profit of the parent company where the rules on acquisition holding companies described earlier permit (see also the chapter's information on choice of acquisition funding).

In addition, assets and liabilities generally can 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 6 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 laid down a number of special conditions, in particular, extensive rules 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

In principle, intercompany transactions should be at arm's length for tax purposes. To provide evidence that transfer prices are at arm's length, a taxpayer must submit proper transfer pricing documentation to the Dutch Revenue. If the Dutch Revenue imposes revised assessments, absence of such evidence may shift the burden of proof to the taxpayer (i.e. should the taxpayer wish to argue that a reasonable estimation made by the Dutch Revenue is wrong). Penalties may also be imposed in such cases. Transfer pricing adjustments may entail secondary adjustments, such as hidden dividend distributions or capital contributions.

### Dual residency

In principle, a company that has been incorporated under Dutch civil law is subject to Dutch tax, regardless of whether it is also resident in another country. 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 it may be denied certain types of relief (such as being able to join a fiscal unity).

### Foreign investments of a local target company

In principle, 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. See this chapter's section on purchase of shares.

## 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.
- Generally, 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.
- Seller retains the benefit of any losses incurred by the target company.

### Advantages of share purchases

- Lower capital outlay (purchase of net assets only).
- Likely more attractive to the seller, so the price is likely 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 purchase price.
- Purchaser inherits a potential dividend WHT liability on retained earnings that are ultimately distributed to shareholders.
- Less flexibility in funding options.

## Netherlands – Withholding tax rates

This table is based on information available up to 15 January 2014.

The following table contains the WHT rates that are applicable to dividend, interest and royalty payments by resident companies to non-residents under the tax treaties currently in force as at the date of review. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.

There is no withholding tax under domestic law on interest in general and on royalties. Interest on participation loans is, however, treated as dividends and as such subject to dividend withholding tax. Under some treaties, however, interest on profit sharing bonds, which may be considered as participation loans, is treated as interest.

A reduced treaty rate may be applied at source if the appropriate residence certificate has been presented to the withholding agent making the payment.

Where, in a particular case, a treaty rate is higher than the domestic rate, the latter applies.

Source: *International Bureau of Fiscal Documentation, 2014*

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
<b>Domestic rates</b>				
<i>Companies:</i>	15	0	0/15	0
<i>Individuals:</i>	15	N/A	0/15	0
<b>Treaty rates</b>				
<i>Treaty with:</i>				
Albania	15	0/5 <sup>3</sup>	0/5/10 <sup>4</sup>	10
Argentina	15	10	12	3/5/10/15 <sup>5</sup>
Armenia	15	0/5 <sup>6</sup>	0/5 <sup>7</sup>	5
Aruba	15	5/7.5 <sup>8</sup>	0	0
Australia	15	15	10	10
Austria	15	5	0	0/10 <sup>9</sup>
Azerbaijan	10	5 <sup>10</sup>	0/10 <sup>11</sup>	5/10 <sup>12</sup>
Bangladesh	15	10 <sup>13</sup>	7.5/10 <sup>14</sup>	10
Bahrain	10	0	0	0
Barbados	15	0 <sup>15</sup>	5	0/5 <sup>16</sup>
Belarus	15	0/5 <sup>17</sup>	5	3/5/10 <sup>18</sup>
Belgium	15	0/5 <sup>19</sup>	0/10 <sup>20</sup>	0
Bosnia and Herzegovina <sup>21</sup>	15	5	0	10
Brazil	15	15	10/15	15/25 <sup>22</sup>
Bulgaria	15	5	0	0
Canada	15	5 <sup>23</sup>	0/10 <sup>24</sup>	0/10 <sup>25</sup>
China (People's Rep.)	10	10	10	10

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
Croatia	15	0	0	0
Czech Republic	10	0	0	5
Denmark	15	0	0	0
Egypt	15	0	12	12
Estonia	15	5	0/10	5/10 <sup>26</sup>
Finland	15	0 <sup>27</sup>	0	0
France	15	5	0/10	0
Georgia	15	0/5 <sup>28</sup>	0	0
Germany	15	10	0	0
Ghana	10	5	0/8 <sup>29</sup>	8
Greece	15	5	8/10	5/7
Hong Kong	10	0 <sup>30</sup>	0	3
Hungary	15	5	0	0
Iceland	15	0	0	0
India	10/15 <sup>31</sup>	5	10/15	10/20
Indonesia	10	10	10	10
Ireland	15	0	0	0
Israel	15	5	10/15	5/10 <sup>32</sup>
Italy	15	5/10 <sup>33</sup>	10	5
Japan	10	0/5 <sup>34</sup>	0/10 <sup>35</sup>	0
Jordan	15	0/5 <sup>36</sup>	5	10
Kazakhstan	15	0/5 <sup>37</sup>	0/10	10
Korea (Rep.)	15	10	10/15 <sup>38</sup>	10/15 <sup>39</sup>
Kosovo	15	5	0	10
Kuwait	10	0	0	5
Kyrgyzstan <sup>40</sup>	15	15	0	0
Latvia	15	5	10	5/10
Lithuania	15	5	10	5/10
Luxembourg	15	2.5	0/2.5/15 <sup>41</sup>	0
Macedonia (FYR)	15	0	0	0
Malawi	— <sup>42</sup>	—	0	0
Malaysia	15	0	10	8
Malta	15	5	10	0/10 <sup>43</sup>
Mexico	15	0/5 <sup>44</sup>	0/5/10/15 <sup>45</sup>	10

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
Moldova	15	0/5 <sup>46</sup>	0/5	2
Mongolia	15	0	0/10	0/5 <sup>47</sup>
Montenegro	15	5	0	10
Morocco	25	10	10/25 <sup>48</sup>	10
Netherlands Antilles <sup>49</sup>	15	8.3 <sup>50</sup>	0	0
New Zealand	15	15	10	10
Nigeria	15	12.5	12.5	12.5
Norway	15	0 <sup>51</sup>	0	0
Oman	10	0 <sup>52</sup>	0	8
Pakistan	20	10	10/15/20 <sup>53</sup>	5/15
Panama	15	0 <sup>54</sup>	0/5 <sup>55</sup>	5
Philippines	15	10	0/10/15 <sup>56</sup>	15
Poland	15	5	0/5 <sup>57</sup>	5
Portugal	10	0 <sup>58</sup>	10	10
Qatar	10	0 <sup>59</sup>	0	5
Romania	15	0/5 <sup>60</sup>	0	0
Russia	15	5 <sup>61</sup>	0	0
Saudi Arabia	10	5 <sup>62</sup>	5	7
Serbia	15	5	0	10
Singapore	15	0	10	0
Slovak Republic	10	0	0	5
Slovenia	15	5	0/5	5
South Africa	10	5	0	0
Spain	15	5 <sup>63</sup>	10	6
Sri Lanka	15	10	5/10	10
Suriname	20	7.5/15 <sup>64</sup>	5/10	5/10
Sweden	15	0	0	0
Switzerland	15	0 <sup>65</sup>	0	0
Taiwan	10	10	0/10 <sup>66</sup>	10
Tajikistan	15	15	0	0
Thailand	25	5	10/25	5/15
Tunisia	20	0	7.5	7.5
Turkey	20	5	10/15	10
Uganda	5/15 <sup>67</sup>	0 <sup>68</sup>	0/10	10

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
Ukraine	15	0/5 <sup>69</sup>	0/2/10 <sup>70</sup>	0/10 <sup>71</sup>
United Arab Emirates	10	0/5 <sup>72</sup>	0	0
United Kingdom	15/10 <sup>73</sup>	0 <sup>74</sup>	0	0
United States	15	0/5 <sup>75</sup>	0	0
Uzbekistan	15	0/5 <sup>76</sup>	0/10	0/10
Venezuela	10	0	5	5/7/10 <sup>77</sup>
Vietnam	15	5/7 <sup>78</sup>	7	5/10/15 <sup>79</sup>
Zambia	15	5	10	10
Zimbabwe	20	10	10	10

**Notes:**

- Many treaties provide for an exemption for certain types of interest, e.g. 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.
- Unless indicated otherwise, the lower rate in this column applies if the recipient is a company that owns at least 25 percent of the capital of the voting power in the Netherlands company, as the case may be.
- The zero rate applies if the Albanian company owns at least 50 percent of the capital in the Netherlands company and has invested in it more than USD 250,000.
- 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.
- 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.
- The 5 percent rate applies if the Armenian company owns directly at least 10 percent of the capital in the Netherlands 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.
- The lower rate applies to interest paid to a bank. Conditions may apply.
- The 5 percent rate applies if the recipient company is subject to profit tax at the rate of at least 5.5 percent.
- 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 Netherlands company.
- The 5 percent rate applies if the Azerbaijani company owns directly at least 25 percent of the capital in the Netherlands company and has invested in it at least EUR 200,000.
- The lower rate applies, *inter alia*, to interest paid by public bodies.
- The lower rate applies to royalties for patents and know-how which are not older than 3 years.
- The rate applies if the recipient company owns at least 10 percent of the capital or the voting power in the Netherlands company, as the case may be.
- 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.
- The 0 percent applies if the beneficial owner of the dividends is (a) a company that, under conditions, owns directly 10 percent of the capital in the company paying the dividends; (b) is a bank or insurance company; (c) a contracting state, a political subdivision or local authority; (d) a headquarter company of a multinational group owning at least 10 percent of the capital of the company paying the dividends; or (e) a pension fund.
- The lower rate applies to copyright royalties, including films, etc.
- The zero rate applies if (a) the Belarusian company has a direct shareholding of at least 50 percent with a value of at least EUR 250,000 or (b) the Belarusian company has a direct shareholding of at least 25 percent, which investment is guaranteed by the Belarusian government.
- 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.
- Under this treaty, the exemption applies to dividends qualifying for the EU Parent-Subsidiary Directive. The 5 percent rate applies if the recipient company owns directly at least 10 percent of the capital in the Netherlands company.
- The zero rate applies if the Belgian beneficial owner is an enterprise and (a) the interest has not arisen from bearer securities representing loans or deposits or (b) 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 3 months preceding the date of payment.
- The treaty concluded between the Netherlands and the former Yugoslavia.
- The higher rate applies to trademarks.
- The rate applies if the Canadian company owns at least 25 percent of the capital or at least 10 percent of the voting power in the Netherlands company.
- 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.
- The lower rate applies to computer software, patent royalties and know-how.
- The lower rate applies to equipment rentals.
- The rate applies if the Finnish company owns at least 5 percent of the capital in the Netherlands company.
- 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.
- 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.

30. The 0 percent rate applies if the beneficial owner of the dividends is (a) a company other than a partnership, holding directly at least 10 percent of the capital of the company paying the dividends (under conditions); (b) a pension fund or scheme; (c) a contracting state, or a political subdivision or local authority, or an institution created by the Government of a Contracting Party, or a political subdivision or local authority thereof; or (d) company which does not qualify under the conditions mentioned under (a), provided certain requirements are met.

31. The rate under the treaty is 15 percent for interest and dividends and 20 percent for royalties. However, by virtue of a most-favoured-nation clause (Protocol Art. IV(2)), the rate is reduced to 10 percent (under the treaty between India and Germany) and to 5 percent on qualifying dividends, i.e. a minimum holding of 10 percent (under the treaty between India and Slovenia).

32. The higher rate applies to royalties for films, etc.

33. The 5 percent rate applies if the Italian company owns at least 50 percent of the voting capital in the Netherlands company. The 10 percent rate applies if it owns at least 10 percent of the voting capital.

34. The 0 percent rate applies if the beneficial owner is (a) a company owning, directly or indirectly, shares representing at least 50 percent of the voting power of the company paying the dividends for at least 6 months prior to the date on which the amount of dividends is determined; or (b) a pension fund (under conditions). The 5 percent rate applies if the beneficial owner is a company owning, directly or indirectly, at least 10 percent of the voting power of the company paying the dividends for a period of 6 months ending on the date on which entitlement to the dividends is determined.

35. The 0 percent rate applies to interest payments to certain financial institutions and any other company that in the 3 preceding years derived more than 50 percent of its liabilities from the issuance of bonds in financial markets or from taking deposits at interest (under conditions).

36. The 5 percent rate applies if the Jordanian company owns directly at least 10 percent of the capital in the Netherlands 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).

37. The zero rate applies if (a) the Kazakhstan company owns at least 50 percent of the capital of the Netherlands company and that participation has a value of at least USD 1 million and (b) 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.

38. The lower rate applies to interest on long-term loans (as defined).

39. The higher rate applies to copyright royalties, including films, etc.

40. The treaty concluded between the Netherlands and the former USSR.

41. Interest on loans secured by mortgages on immovable property is exempt. Interest on profit-sharing bonds is treated as dividends.

42. 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.

43. The lower rate applies to copyright royalties, excluding films etc.

44. The 5 percent rate applies if the Mexican company owns at least 10 percent of the capital in the Netherlands 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. VII), which is currently the case, subject to conditions.

45. Until 31 December 2009, the general rate is 15 percent; the zero rate applies to interest paid to pension funds and interest paid in respect of a government bond, debenture or similar obligation; the 5 percent rate applies to interest paid on loans granted by a bank or other financial institution, or paid on bonds and securities substantially and regularly traded on a recognized stock exchange; the 10 percent rate applies to interest paid by a bank. From 1 January 2010, the general rate is 10 percent; the 5 percent rate applies to interest paid on loans granted by a bank or other financial institution, or paid on bonds and securities substantially and regularly traded on a recognized stock exchange.

46. The lower rate applies if (a) the Moldovan company holds at least 50 percent of the shares of the Netherlands company and the investment amounts to at least USD 300,000 or (b) the investment is guaranteed or insured by the Netherlands government or its agency or instrumentality.

47. The zero rate applies as long as the Netherlands does not levy a withholding tax on interest or royalties (as the case may be), which is currently the case.

48. The lower rate applies to interest paid to an enterprise.

49. Following a constitutional reform, the Netherlands Antilles ceased to exist with effect from 10 October 2010. From that date, a tax treaty with the Netherlands Antilles continues to apply to Bonaire, St Eustatius and Saba (BES Islands), Curaçao and St Maarten.

50. The 8.3 percent rate applies if the recipient is a company that owns at least 25 percent of the capital in the Netherlands company and is subject to a tax on profits at a rate of at least 8.3 percent in the Netherlands Antilles.

51. The 0 percent rate applies if the beneficial owner is (a) a company which holds directly at least 10 percent of the capital of the company paying the dividends; or (b) a pension fund.

52. The 0 percent rate applies if the receiving company holds directly at least 10 percent of the capital of the company paying the dividends. Instead of applying the 0 percent rate, the Netherlands may levy, under conditions, a maximum withholding tax of 10 percent on dividends paid by a Dutch company.

53. 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 a company which owns directly 25 percent of the capital of the paying company.

54. The rate is 0 percent if (a) the beneficial owner is a company which owns directly at least 15 percent of the capital and certain other conditions are met; (b) the dividends are received by a contracting state, a political subdivision or local authority thereof; or (c) the beneficial owner is a company which holds directly at least 15 percent and is the headquarter company of a multinational corporate group. If the conditions to qualify for the 0 percent rate are not met, the rate may still apply (under conditions).

55. The 0 percent rate applies to interest paid to (i) entities (including financial institutions) for financing provided on the basis of agreements concluded between the Governments of the contracting states, and (ii) a recognized pension fund.

56. 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.

57. The zero rate applies to interest paid in respect of a government bond, debenture or other similar obligation and interest paid to a bank.

58. Under this treaty, the exemption applies to dividends qualifying for the EU Parent-Subsidiary Directive.

59. The zero rate applies if the Qatar company owns directly at least 7.5 percent of the capital of the Netherlands company.

60. The zero rate applies if the Romanian company owns directly at least 25 percent of the Netherlands company. The 5 percent rate applies if its direct holding is at least 10 percent.

61. The rate applies if the Russian company owns directly at least 25 percent of the Netherlands company and has invested in it at least EUR 75,000.

62. The 5 percent rate applies if the Saudi Arabian company owns directly at least 10 percent of the capital in the Netherlands company.

63. The rate applies if the Spanish company owns at least 50 percent of the capital in the Netherlands company or if the Spanish company owns at least 25 percent of the capital in the Netherlands company and another Spanish company also owns at least 25 percent of such shares.

64. The 15 percent rate applies if the dividends are not included in the recipient's taxable base in Suriname.

65. The 0 percent rate applies if the Swiss company receiving the dividends owns at least 10 percent of the voting power of the company distributing the dividends, or when the dividends are received by a pension fund.

66. The lower rate applies to interest paid between banks and to interest paid by a public body.

67. 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 Netherlands company.

68. The zero rate applies if the Ugandan company owns directly at least 50 percent of the capital in the Netherlands 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.

69. 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.

70. The zero rate applies to interest paid in respect of a government bond, debenture or other similar obligation; the 2 percent rate applies to interest paid to a bank.

71. The lower rate applies to industrial royalties in general.

72. The zero rate applies to dividends paid to a public body or pension fund. The 5 percent applies if the United Arab Emirates company owns directly at least 10 percent of the capital in the Netherlands company.

73. The 15 percent rate applies to dividends received from an investment company mainly investing in real estate.

74. The 0 percent rate applies if the UK company receiving the dividends owns at least 10 percent of the voting power of the company distributing the dividends, or when the dividends are received by a pension fund, or a cultural, scientific or educational organization.

75. The zero rate applies if the US company (i) owns at least 80 percent of the voting power in the Netherlands company for the 12-month period ending on the date the dividends are declared and (ii) 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 US company owns directly at least 10 percent of the voting power in the Netherlands company.

76. The 5 percent rate applies if the Uzbek company owns directly at least 25 percent of the capital in the Netherlands 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.

77. 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.

78. The 5 percent rate applies if the Vietnamese company owns at least 50 percent of the capital in the Netherlands 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. VII), which is currently the case, subject to conditions.

79. The 5 percent rate applies to patent royalties and to scientific know-how. The 10 percent rate applies to trade mark royalties and commercial know-how.

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