ITPS PRODUCT PORTFOLIO

The Netherlands: Tax Planning Opportunities

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The Netherlands - Products / structures

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General - Features of the Netherlands

- Political stability, acceptance, confidence and professional infrastructure
- Extensive bilateral investments treaty network
- Extensive and appropriate treaty network and access to EU Directives
- Participation exemption
- No withholding tax on interest and royalties
- Possibilities to reduce Dutch dividend withholding tax (Curacao or Cyprus parent company, use of Dutch cooperative)
- No capital tax, no CFC-rules
- Ruling practice
General - rates

Corporate income tax rates 2011:
• Taxable amount up to and including € 200,000: 20%
• Taxable amount exceeding € 200,000: 25%

No withholding tax on interest and royalty payments

Dividend withholding tax rate:
• General: 15%, but possible reductions:
• To qualifying EU parent (owning at least 5%): 0%
• To parent in certain tax treaty countries: 0%
• In case of use of Dutch cooperative: 0%

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General - pitfalls

- Limitation on interest deduction
- Dividend withholding tax
- Taxation of income from substantial interest not forming part of the business capital
- VAT - rules
1. Holding – Features of a preferred holding company location

- Political stability, acceptance, confidence and professional infrastructure
- Extensive and appropriate treaty network and/or access to EU Directives
- No tax on dividends and capital gains
- No (or possibilities to reduce) withholding tax on dividends, interest and royalties
- No limitation on deduction of interest
- No capital tax, no CFC - rules
- Ruling practice
1. Holding – General outline of Dutch participation exemption

Content:
- Dividends received are fully exempt from Dutch corporate income tax
- Capital gains realized are fully exempt from Dutch corporate income tax
- Liquidation losses are in general tax deductible
1. Holding – General outline of Dutch participation exemption

Conditions:

• The corporate tax payer (or a related entity) holds at least 5% of the nominal paid-up share capital of a subsidiary

• The subsidiary is not held as a portfolio investment (portfolio investment: objective is to obtain a return that may be expected with normal asset management) (motive test)

Not held as a portfolio investment:

• Subsidiary and (ultimate) shareholder are in same line of business (business link), or

• Holding company has actual influence or is involved in the business of the subsidiary (link function)
1. Holding – General outline of
Dutch participation exemption

If the subsidiary is (deemed to be) held as a portfolio investment, the participation exemption still applies if:

• The subsidiary is subject to a realistic levy by Dutch standards (generally statutory rate of at least 10%) *(subject-to-tax test)*

or

• The aggregated assets of the subsidiary usually do not (in/directly) largely (i.e. 50% or more) consist of low taxed (i.e. less than 10%) portfolio investments *(asset test)*
1. Holding – Example structure 1 / 4

Parent company

Sole member

Dutch Coop

100%

Dutch company

EU subsidiary

100%

Dutch subsidiary

100%

Other subsidiary

100%

No Dutch dividend withholding tax

Participation exemption at level Dutch Coop

No Dutch dividend withholding tax

Participation exemption at level Dutch company

Foreign dividend withholding tax substantially reduced or nil
1. Holding – Example structure 2 / 4

**Initial structure**

- BVI company
- Spanish company

100%

**Tax optimized structure**

- BVI company
  - 100%
  - E.g. Trustee of a Trust

- Curacao co.
  - Sole member
  - Participation exemption at level Curacao company
  - Neither c.i.t. on sale shares nor dividend withholding tax in Curacao

- Dutch Coop
  - 100%
  - Participation exemption at level Dutch company
  - Neither Dutch c.i.t. on sale shares nor Dutch dividend withholding tax

- Spanish company
  - Neither Spanish c.i.t. on sale shares nor Spanish dividend withholding tax

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1. Holding – Example structure 3/4

**Initial structure**

- **BVI company**
  - 100%
  - 25% Ukrainian c.i.t. on sale shares
  - 25% Ukrainian advance corporate tax and 15% dividend withholding tax

- **Ukrainian company**
  - 100%

**Tax optimized structure**

- **BVI company**
  - 100%
  - E.g. Trustee of a Trust
  - Participation exemption at level BVI company

- **Cyprus co.**
  - 100%
  - Neither Cyprus c.i.t. on sale shares nor Cyprus dividend withholding tax
  - Participation exemption at level Cyprus company

- **Dutch Company**
  - 100%
  - Neither Dutch c.i.t. on sale shares nor Dutch dividend withholding tax
  - Participation exemption at level Dutch company

- **Ukrainian company**
  - 100%
  - Neither Ukrainian c.i.t. on sale shares nor Ukrainian dividend withholding tax
1. Holding – Example structure 4 / 4

Initial structure

BVI company

100%

19% Spanish c.i.t. on sale shares
19% Spanish dividend withholding tax

Spanish company

BVI company

Tax optimized structure

ITPS Group Company

E.g. Trustee of a Trust

Profit sharing loan

Repayment of loan, excess as interest
No Dutch withholding tax on interest

Capital gain not exempt under Dutch participation exemption. Profit offset against interest expense under profit sharing loan

7-8% Spanish transfer tax on sale of (shares company holding) property

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2. Licensing – Example structure

**Initial structure**

- BVI company
  - Head - license
  - 33.3% French withholding tax on royalty payments

- French company

**Tax optimized structure**

- BVI company
  - Head - license
  - No Dutch withholding tax on royalty payment

- ITPS Group Company
  - Sub - license
  - No French withholding tax on royalty payments under Dutch – French tax treaty

- French company

- Owner of the IP rights

No corporate income tax on royalty income

Negotiated spread is by definition at arm’s length
3. Financing – Example 1 / 2

Parent company

Sole member

Dutch Coop

100%

Dutch financing company

Active EU company

No Dutch dividend withholding tax

No Dutch dividend withholding tax

No interest pick-up

No Dutch dividend withholding tax

No Dutch dividend withholding tax

Capital contribution

Hybrid loan

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3. Financing – Example 2 / 2

- Parent company
  - 100%
  - Sole member
  - No Dutch dividend withholding tax

- Irish financing company
  - Capital contribution
  - 100%
  - No interest pick-up at level Irish company
  - Interest free loan

- Dutch Coop
  - 100%
  - No Dutch dividend withholding tax

- Dutch financing company
  - 100%
  - Interest bearing loan

- Dutch financing company
  - 100%
  - No Dutch dividend withholding tax

- Active EU company
  - 100%
  - No Dutch dividend withholding tax
4. Commission – Example structure

**Initial structure**

- BVI company
  - Consultancy agreement
- Spanish company
  - 24% Spanish withholding tax on consultancy payments

**Tax optimized structure**

- BVI company
  - Sub-contracting agreement
  - No Dutch withholding tax on consultancy fees
- ITPS Group Company
  - Consultancy agreement
  - No Spanish withholding tax on consultancy fees under Dutch – Spanish tax treaty
- Spanish company
  - Negotiated spread is by definition at arm’s length
5. Trading – Example

Offshore company

ITPS Group company

Profit not taxed

Profit of € 1,000 less fees

Limited Partner

Limited partner

Dutch C.V.

(Commanditaire vennootschap)

C.V. can obtain a V.A.T.- number

Swiss supplier

French customer

Goods move directly from Switzerland to France

Purchase of goods for € 1,000

Sale of goods for € 2,000

Managing partner
(Beherend vennoot)

Limited Partner

(Christelijke vennoot)
6. Asset protection – Example

Ubo  Economical owner of the shares of ABC

Certificates of shares

Stichting Administratie-kantoor ("STAK")

Legal owner of the shares of ABC

Dutch or foreign holding company “ABC”

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7. Cash box – Example structure

Initial “Dutch Sandwich” structure

Curacao company
(previously Netherlands Antilles)

100%

Dutch company ("BV")

100%

Spanish company

8.3% Dutch dividend withholding tax

Participation exemption at level Curacao company

Sale to third party, Dutch company becomes cash box

Tax optimized structure: Cash box purchased by ITPS

Curacao company

ITPS Group company

Dutch cash box company

Purchase price less discount/8.3% provision on escrow with Dutch notary for 5 years or less

Fiscal unity

Sale shares, Dutch company

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The ITPS Group

Needs of clients
As business is becoming more international, organizations are seeking ways to minimize the incidence of taxation linked to it. On the other hand, organizations as well as individuals are seeking international ways to optimize their profits and to protect their assets. The increasing complexity of (tax) laws necessitates careful planning and consideration of the structure to be established and maintained. Customers require highly specialized professional services.

Mission
The purpose of ITPS is: doing the best the things that the customer values most. The focus is long term customer satisfaction. The mission of the ITPS Group is to create value for its customers through the provision of professional services in the field of international tax planning and structure, designed to optimize the customer’s after tax profits.

Services
The objective of ITPS is to meet customer needs for international tax planning and structure by rendering “total offering” services with the highest standards of professional and personal service combined with complete confidentiality.

This comprehensive offering comprises not only the advice for international tax planning (i.e. for legal and tax questions), but also implementation to establish and maintain structures.

These services include, but are not limited to: International tax planning; Company formation, registered office facility, management, accounting and tax compliance; Trust and foundation formation and administration; Licensing and sub-licensing of intellectual property rights.

The services ITPS does not provide, but which we are rendered by correspondents, include auditing, legal opinions, litigation and portfolio investment.

Why you should use The ITPS Group

1. Market oriented (and not product oriented):
   ITPS focuses on meeting the needs of the clients;
2. Rendering international tax planning and structure (trust) services:
   Tax planning and structure services are complementary. Planning is of no use if you do not structure it. Moreover you can not efficiently structure if you do not take the first step: plan the structure. Therefore, the services of ITPS are not restricted to trust services. Since ITPS has the combined skill and experience for more than ten years, high quality is ensured;
3. All included fixed fees for structure (trust) services:
   In each jurisdiction, tax structure services are charged at annual fixed fees, generally payable in quarterly installments in advance. Tax planning services are charged at an hourly rate;
4. One contact person is possible for several jurisdictions;
5. Independent:
   There is no conflict of interest. ITPS works with all other skilled professionals and (financial) institutions as the client deems appropriate;
6. Personal contact and continuity:
   ITPS focuses on long-term customer satisfaction, providing proactive, personal, attentive and competent services;
7. Regular meetings:
   Customers and correspondents are visited on a regular basis (three to four times a year) to touch base and to discuss opportunities and problems that may have arisen, without a fee being charged;
8. Tax sparring and education:
   ITPS strives to built up a (tax) sparring relationship with customers and correspondents in order to keep each other abreast in a fast changing environment. A quarterly newsletter on international tax planning, the International Tax Planning Newsletter, is sent to inform customers and correspondents on the changes in legislation;
9. An excellent network:
   Since ITPS is not part of an international network, it has built up a network of highly skilled professionals to work with.

Disclaimer:
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