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Budget Day 2019

Program

09:00	Opening
09:05	Changes to payroll taxes
09:25	Main features Tax Plan 2020 Liquidation and cessation loss scheme
09:45	Substance requirements Withholding tax interest and royalties
10:05	ATAD 2 Other tax developments
10:25	Conclusion / Questions

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Changes to payroll taxes

Program

- Definition of permanent establishment in the Payroll Tax Act
- R&D remittance deduction
- Changes to the work-related costs rules
- Change to sector classification
- The two-bracket regime
- Increase in the addition to income for private use of company electric cars

Permanent establishment in the Payroll Tax Act

- The definition of the terms ‘permanent establishment’ and ‘permanent representative’ for the purposes of payroll tax is brought into line with corporate income tax
- Consequence: possibly faster withholding obligation for employers

R&D remittance deduction

- Submitting and granting a S&O-application is simplified and shortened
- It is proposed to increase the number of times that the R&D declaration can be applied for from three to four per year
- The deadline for submitting an application is set at the day prior to the period to which the application relates. An exception applies for applications starting on January 1 of a calendar year

Changes to the work-related costs rules

- The percentage of the fixed exemption in the WKR increases to 1.7% for the first EUR 400,000 of the payroll for tax purposes
- There will be a specific exemption for the costs of a statement of good conduct (Verklaring Omtrent het Gedrag; VOG) or a comparable foreign statement
- Employers are given more time to determine, file and remit the final levy payable as a result of exceeding the fixed exemption
- The industry-specific product will be recognized at fair value, this is usually the consumer price

Change to sector classification

- The Labor Market Improved Equilibrium Act (Wet arbeidsmarkt in balans; WAB) ensures that the sectoral differentiation in the WW (Unemployment Benefit Act) contribution calculation will be replaced by differentiation according to the nature of the contract
- Two WW-contributions: the low contribution applies to fixed contracts and the high contribution applies to flexible contracts
- Provisional contributions are 2,94% for a permanent contract and 7,94% for a flexible contract
- Final contributions are set in October
- Fixed WW-contribution (now 3,6%) expires

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The two-bracket regime

- New tax rates for income tax ensure that only two brackets still apply:

Taxable salary of more than	But not more than	Tax rate	National Insurance Contributions	Combined rate
	EUR 34,712	9.70%	27.65%	37.35%
EUR 34,712	EUR 68,507	37.35%	-	37.35%
EUR 68,507	-	49.50%	-	49.50%

Private use of company electric cars

- The reduced addition to income for company electric cars (zero-emission cars) will be increased. The maximum catalog value on which the reduced addition is calculated is reduced.
- The cap on the list price will not apply to hydrogen cars. With effect from January 1, 2021, this will also be extended to solar cell cars.

Year	Addition	Maximum list price	Addition above maximum list price
2020	8%	EUR 45,000	22%
2021	12%	EUR 40,000	22%
2022	16%	EUR 40,000	22%
2023	16%	EUR 40,000	22%
2024	16%	EUR 40,000	22%
2025	17%	EUR 40,000	22%

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Main features Tax Plan 2020

Main features of the 2020 Tax Plan

1. Corporate income tax

- The basic corporate income tax rate (through to EUR 200,000) reduced to 16.5% in 2020 and to 15% in 2021.
- More gradual reduction of regular corporate income tax rate (> EUR 200,000); remains 25% in 2020, to be reduced to 21.7% in 2021.
- Introduction of interest deduction limitation (thin cap rule) for banks and insurers as of January 1, 2020.
- Extension of exemptions for public enterprises.
- Introduction of possibility to revise earnings stripping decision.
- *Intentions* for 2021:
  - Effective Innovation Box rate from 7% to 9%.
  - Limitation of liquidation and cessation loss scheme (e.g. no deductible loss on participations and permanent establishments outside the EU/EEA).
  - Abolition of payment discount (now granted for prompt payment in full).

2. Personal, payroll and corporate income tax

- In future, definition of permanent establishment in relevant tax treaties to be in line with MLI.

3. Personal income tax

- As of 2020, the self-employed persons deduction will be reduced in eight steps of EUR 250 and one step of EUR 280 to EUR 5,000 in 2028.
- No settlement at year-end 2020 of annuities whose premiums were partly non-deductible (*hybride saldolijfrenten*) and certain foreign pensions; however, end of transitional rules for annuities whose premiums were wholly non-deductible (*zuivere saldolijfrenten*).
- Deduction of education expenses to be replaced by grant scheme after 2020.
- Implementation of two-bracket regime brought forward, with top rate of 49.5% already applying in 2020.

4. Payroll taxes

- Work-related costs rules:
  - Fixed exemption of 1.7% for payroll up to EUR 400,000.
  - To be settled in second period of new year
  - Purchase of company's own products on basis of fair market value.
  - New specific exemption for statement of good conduct.
- Addition to income percentage for zero-emission company cars increased from 4% to 8% for maximum list price of EUR 45,000.
- R&D declaration, number of application filing dates per calendar year from three to four.
- Last date for filing application: one day before commencement of R&D activities. Please note: for activities commencing in January, the last filing date is December 20.

5. Withholding taxes

- As of 2021 withholding tax of 21.7% charged on interest and royalties to group entities established in low-taxed countries.
- Substance requirements for purposes of dividend withholding tax exemption, foreign substantial interest rules and Controlled Foreign Companies (CFC) rules no longer safe harbor.

6. VAT

- 4 VAT quick fixes for international trade.
- 9% VAT on e-books and news websites.
- VAT scheme for small businesses modernized.

Main features of the 2020 Tax Plan (continued)

7. Procedural law amendments

- Possibility of publishing irrevocable negligence penalties imposed on culpable (tax) advisors.
- Penalty-free voluntary disclosure of substantial interest income and domestic Box 3 income abolished.
- Option scheme for electronic messaging with the Dutch Tax and Customs Administration: either digitally or on paper.
- Dutch Tax and Customs Administration given power to impose adjustments and penalties in the case of spontaneously filed tax returns.
- Interest on tax due rules for corporate income tax and inheritance tax in line with tax return period.
- Banks to provide information to Dutch Tax and Customs Administration to identify payments.
- Costs of administrative penalties no longer deductible

8. Climate Agreement tax measures

- Major changes to energy tax: tax on gas increased, tax on electricity decreased and tax burden to shift from households to business sector.
- Tax benefits under the Motor Vehicle Tax Act (MRB) for zero-emission vehicles and plug-in hybrid electric cars extended.
- Private motor vehicle and motorcycle tax (BPM): zero rate for zero-emission cars not abolished until January 1, 2025.
- Motor vehicle tax (MRB) for business delivery vans to increase.
- Real estate transfer tax rate for non-residential properties increased to 7%, probably as of January 1, 2021.

9. Tax Plan miscellaneous

- Tightening of tonnage regime for time and voyage charters, flag requirements and non-transport activities.
- As of July 1, 2020, BPM rates based on new CO2 test method.
- Diesel surcharge in the BPM will not apply to petrol cars with a compression ignition.
- Introduction of new tax credit for new build homes in areas where housing is scarce and exemption for temporary rental accommodation in the landlord levy.
- Changes to emission registration of fine particles and fine particle standard for certain diesel cars (MRB).
- Introduction of insurance premium tax exemptions for absence and WGA self-insurance and for broad cover weather insurance.
- Excise tax on cigarettes and tobacco to be increased as of April 1, 2020.

Tax rates

	Corporate income tax rates		Innovation box rate
	Profit < €200.000	Profit > €200.000	
2019	19%	25%	7%
2020	16,5%	25% (2019: 22,55%)	7%
2021	15%	21,7% (2019: 20,5%)	9%

	Personal income tax rates					
	Box 1				Box 2	Box 3
	Income <€68.507			Income >€68.507		
2019	36,65%	38,10%	38,10%	51,75%	25%	
2020	37,35%			49,5%	26,25%	
2021	37,10%			49,5%	26,9%	
2022						New system

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Liquidation and cessation loss scheme

Liquidation and cessation loss scheme

- The government intends to amend the liquidation and cessation loss scheme for corporate income tax purposes as of 2021. Based on the draft bill presented by Snels, Leijten en Nijboer (proposal Snels)

- Based on proposal Snels a liquidation loss on a participation will only be deductible if:

A. The Dutch taxpayer holds a qualifying interest in the subsidiary (25%) (material limitation);
B. The participation is established in the Netherlands or in another EU/EEA state (territorial limitation); and
C. Settlement of the assets of the liquidated entity ultimately settled in the third calendar year following the calendar year in which the subsidiary's business ceased operations or the calendar year in which a decision thereto was taken (unless business-motivated) (temporal limitation);
D. Efficiency threshold € 1 million
E. Transitional regime to allow the liquidation loss incurred on participations whose business ceased operations or virtually ceased operations before January 1, 2021, old regime applies until December 31, 2023.

Observations

- Discriminates investments with equity outside EU/EER
- Leaves investments with debt financing untouched
- Temporal limitation liquidation losses causes profit planning
- If the loss is non-deductible in NL → reallocation; of potential loss, but also of ..PROFITABLE ACTIVITIES
- Accelerated termination or settling liquidation non EU/EER participations
- Tax accounting: possible consequences for deferred tax asset as of December 3, 2020

Substance requirements

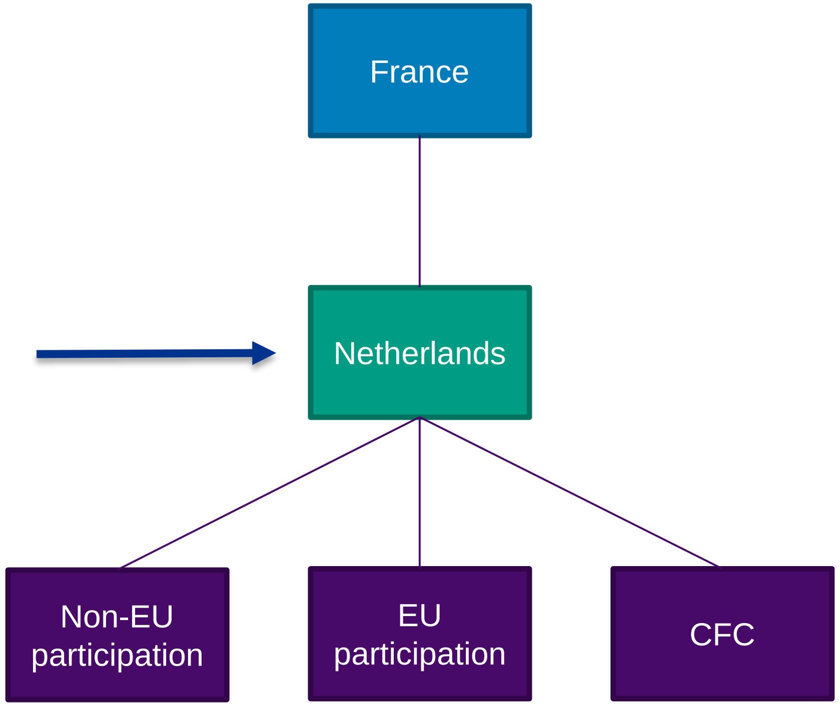
The Withholding Tax Act 2021: substance-requirements

- After last year's attempt (introduction of the Withholding Tax 2020 for dividend flows in combination with the abolition of the 1965 Dividend Tax Act), now again bill for interest and royalties as of 2021.
- Legislative proposal also contains adjustments in the context of stricter substance requirements, in view of the Danish EU judgments.
- Effect on corporate income tax, dividend tax and withholding tax.
- Proposal:
  - Substance requirements are no longer a 'safe harbour' ("unless the inspector makes the contrary plausible").
  - If the "usual" substance requirements are not met, the taxpayer has to prove the absence of an abusive situation.
  - Both EU and non-EU situations
  - Also affects the Ruling practice.

The Withholding Tax Act 2021 : substance-requirements

Dutch ruling practice / exchange of information

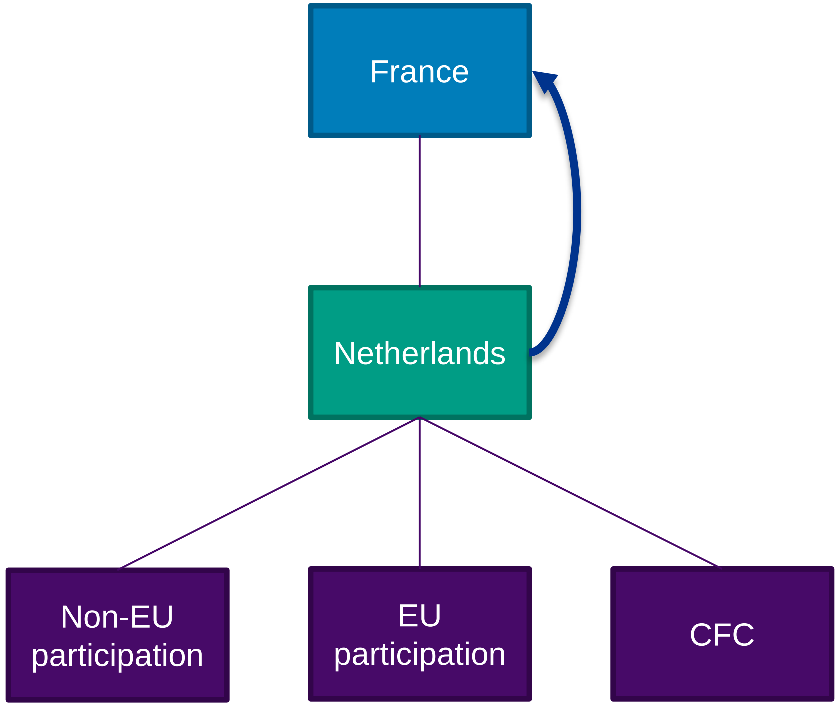
- In case of a service entity, substance is needed in the Netherlands. The bill proposes to tighten these substance requirements for service entities.
- In order to obtain rulings, as of July 1, 2019 the list of substance requirements has been replaced by a requirement of an economic nexus with the Netherlands.



The Withholding Tax Act 2021 : substance-requirements

Dutch dividend withholding tax exemption

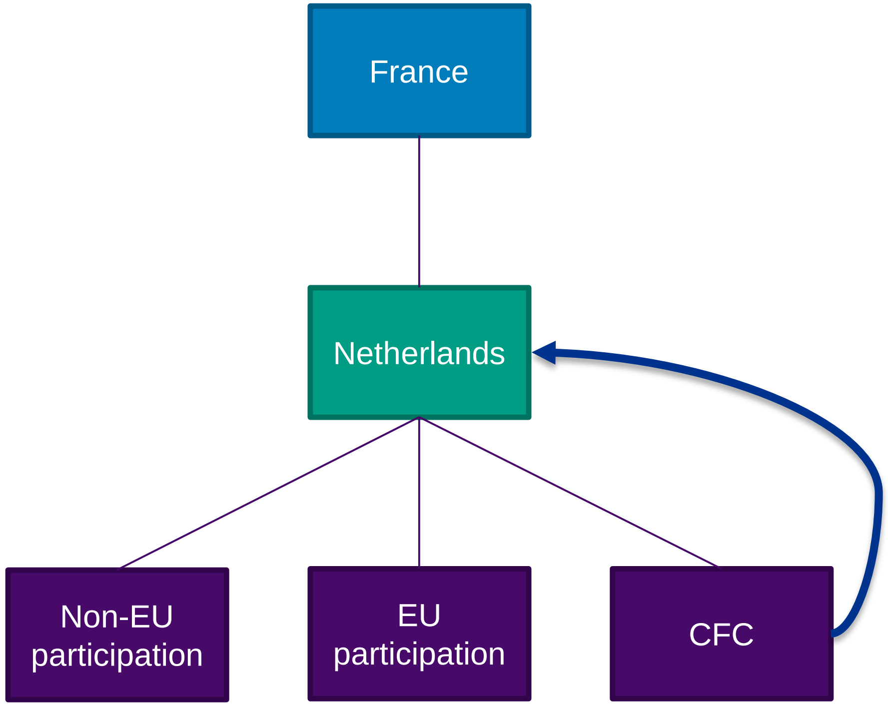
- Under current dividend withholding tax rules, anti-abuse provisions apply if:
  -a foreign shareholder holds a Dutch company with the main purpose of avoiding Dutch dividend withholding tax ("subjective test");
  -and the structure is not based on valid business reasons that reflect economic reality ("objective test").
- As a result of the bill, the role of the current substance requirements will change. They will play a role in the division of the burden of proof and will not provide for a safe harbor anymore.



The Withholding Tax Act 2021 : substance-requirements

CFC /MLI/PPT /dividend WHT source country

- CFC legislation became effective from 1 January 2019
- To fall under the scope of the CFC legislation, the activities must take place in a ‘blacklist-country’. Exceptions may apply if general Dutch substances rules are met, applied to the foreign activities. Recently, these rules have been extended by introducing a payroll cost criterium (at least EUR 100,000) and an office space requirement.
- However, for treaty benefits the PPT from the MLI also needs to be satisfied.
- Application of WHT exemption should be assessed based on the substance in the Dutch holding company.



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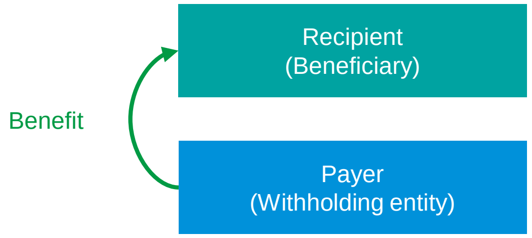
Withholding tax on interest and royalties

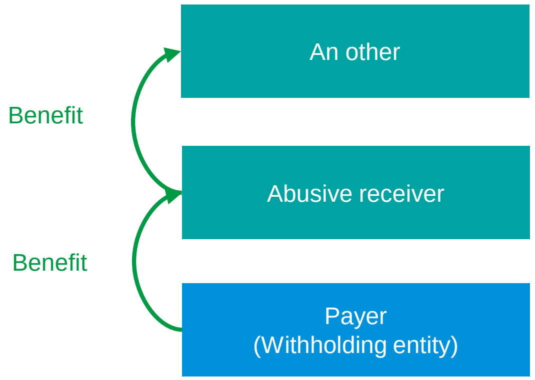
The Withholding Tax Act 2021 (1)

- Interest and royalty payments to Dutch entities (or PE's) to:

  - Affiliated recipients established (or PE's) in EU-List countries or low-taxed countries (statutory rate <9%):



  - Affiliated receivers in abuse situations (intermediary receivers):



The Withholding Tax Act 2021 (2)

- *Correction to business conditions*: application of transfer pricing rules (fair value accounting)

- *Realisation moment:* Claimable and collectable benefits taxed! Fiction-enjoyed no later than end of the year.

- *Taxable base*:
  - Interest: “loan agreement or an agreement similar thereto”
  - Royalty: definition fits the OESO Model Convention grosso modo

- *Tax rate*: Withholding tax rate equals the CIT rate (21.7%), grossing-up is possible.

- *Declaration and payment*: one month after the end of the calender year by the withholding agent
- Directors of the withholding agent and the taxpayer *jointly and severally liable* to withholding tax
- “*Transitional law*”: If recipient from treaty country: withholding only required after 3 years after being placed on the List (based on applicable treaty rate).

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The Withholding Tax Act 2021 (3)

- Affiliated entities ("definite influence over the decision making", 50% test?)
- Collaborating group
- Regime for hybrid legal forms.

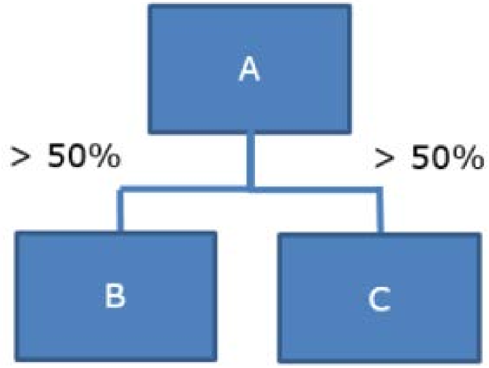

Figure 1: example qualifying interest

A has a qualifying interest in B. Furthermore A has a qualifying interest in C. B and C are related, since A has a qualifying interest in both B and C. Because A, B and C are related, the interest and royalty payments fall in princple under the scope of the withholding tax.

Observations

- The Netherlands says goodbye to the era without withholding tax on interest and royalties. The impact on the capital market seems limited for the time being (only affiliated relations).

- Real companies in 'List countries' are hit hard.

- What qualifies as royalty? "Embedded royalties", royalty versus services.
- What qualifies as interest? Lease transactions. "Economic explanation" (zerobonds).

- Application of multiple provisions is not addressed:
  - Non-deductibility interest
  - Dividend tax
  - Non-resident payer
  - ATAD 2?

- Substance of the payer is not relevant; substance of the receiver is not relevant, except for the Abusive Beneficiary.

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ATAD 2

Anti-Hybrid Mismatch regulations – Overview

No later than 1/1/2020 and 1/1/2022

Scope

- Hybrid mismatches between ‘affiliated companies’ and ‘stuctured agreements’
- Taxpayers subjected to income tax in one of more EU member states, including EU PE’s of entities situated in third states.

Which mismatches

1) Hybrid entity mismatches
2) Financial instrument mismatches (including hybrid transfers)
3) Imported Mismatches
4) PE mismatches
5) Reverse hybrid mismatches
6) Residence mismatches

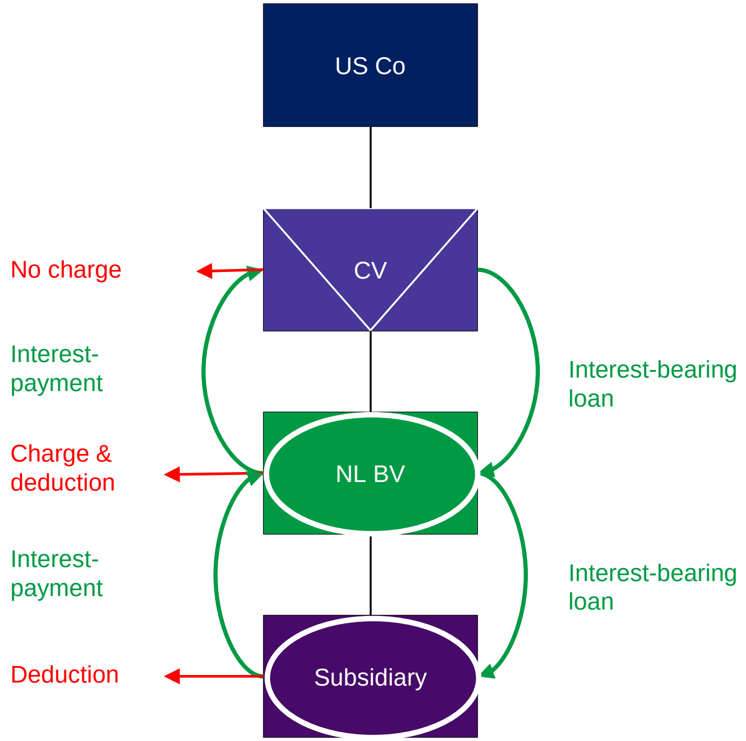
Mismatch outcomes

- Double deduction outcome (‘DD’): deduction of one payment in more than one jursidiction
- Deduction without inclusion outcome (‘D/NI’): deduction in the state of payment without a corresponding taxation on that payment in the receiving state

Not covered

1) Receiving company not liable to corporate income tax
2) Receiving company is exempted from profit tax
3) Country of the receiving country has no corporate income tax
4) Non inclusion a.g.v. other applications at arm’s-lengthprinciple

Case example 1 - CV/BV-structure



<u>During 2019</u>

- Deduction / non-inclusion outcome not eliminated yet.
- Note: unilateral measures of certain jurisdictions could lead to limitations or non-deduction of payments to NL BV (fe. imported mismatch rules -> UK / Germany).

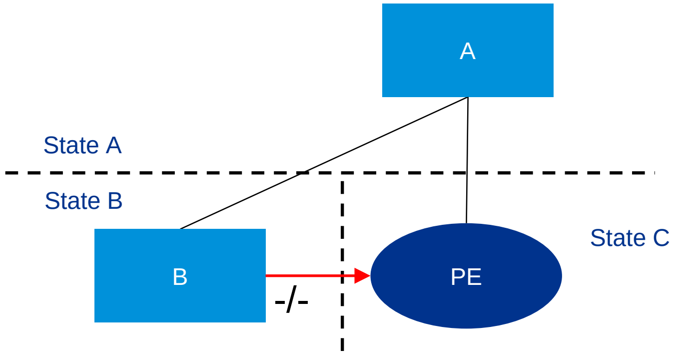
<u>2020 and 2021</u>

- No deduction of the payment at NL BV level or EU level.

<u>From 2022</u>

- CV becomes resident taxpayer
- CV is fully taxed with deduction of profit that is taken into account by the participants
- Interest is deductible again

Case example 2 – Disregarded PE

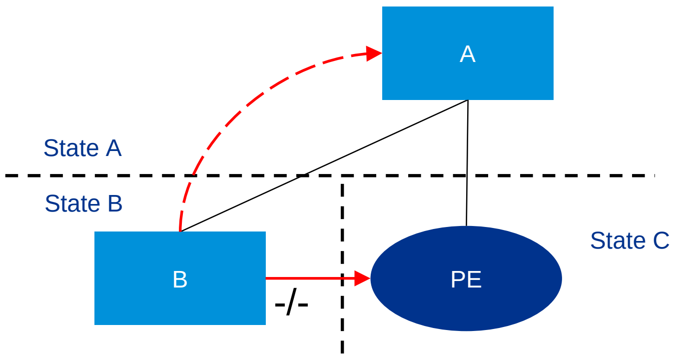


Background

- State A sees a PE
- State C sees no PE

- Head office should tax income
- Alternatively deduction denied
- Or taxed in State C

Case example 3 – Payment to a company with a PE

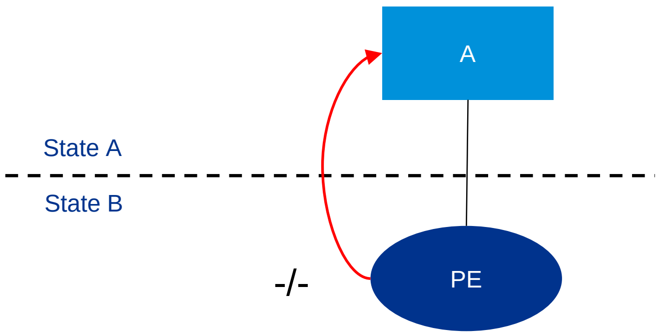


Background

- State A allocates to PE
- State C allocates to head office

- Deduction denied
- Alternatively income taxed at recipient
- Or taxed in State C

Case example 4 - Deemed payment

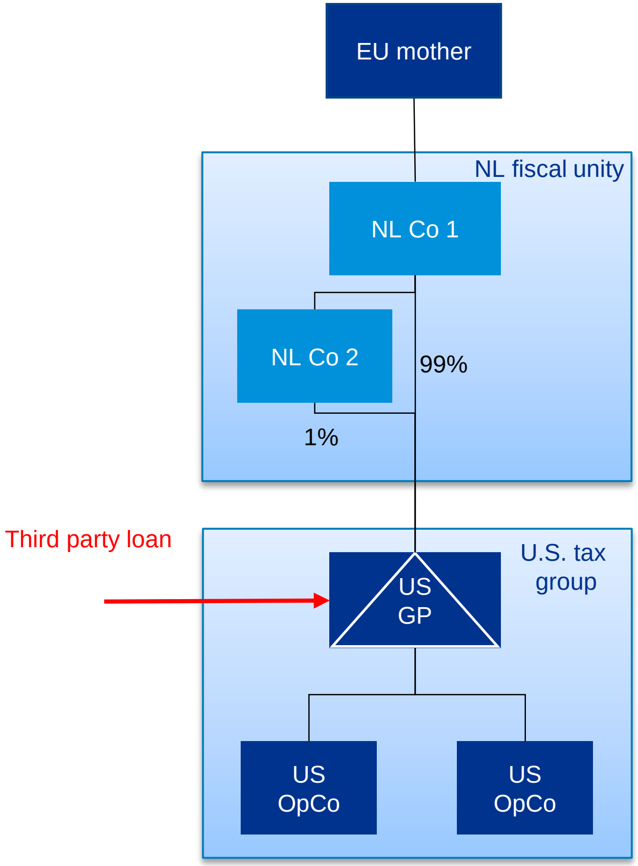


Background

- State A does not take into account deemed payment income
- State B takes into account deemed payment expense

- Deduction denied in State B
- Alternatively income taxed in State A

Case example 5 - GP structure



Background

- US GP is transparant for NL tax purposes and as non-transparant 'checked' for US tax purposes (hyrid entity)
- US GP obtains the operational entities (US OpCos) and finances the acquisition with the third party loan. The US entities form a fiscal unity for US tax purposes.
- Interest on the third loan 2x deductible (double dip)

ATAD 2

- NL refuses interest deduction (neutralisation mismatch)

Documentation requirements

- Disclosure in tax return
- Supporting documentation
- Failure to comply: reversal of burden of proof to demonstrate mismatch rules do not apply

Other tax developments

Other tax developments

- MLI
- Mandatory Disclosure Directive (DAC6)
- UBO-Register
- Revised ruling practice
- Tax Dispute Resolution Mechanisms Act
- BEPS 2.0
- New group scheme for corporate income tax purposes
- Payment discount abolished as of 2021

Timeline

1st half
- **Digital economy taxation**: OECD paper (**March 16**) + EC proposal (**March 21**)
- **MDR – entered into force June 25**
- **MLI – 15** countries ratified – entered into force on **July 1, 2018**

2018

Changes **dividend withholding tax**

Stand-alone approach **fiscal unity** in force except for measure 13a

Tax plan 2019 in force

ATAD 1
general, including exit tax and interest limitation (NL)

Stand-alone approach **fiscal unity** in force for13a

2019

G20 digital economy

Tax plan 2020 incl. proposal conditional WHT interest and royalty's

ATAD 2
Proposal expected

July 1, **MLI** in force for NL

DRM effective

Renewal ruling practice

2020

- **Substance requirements DWHT/CITA** no safe harbour
- Thin cap rule **banks and insurers**

UBO register
legal entities

MDR: application

Outline of OECD
long-term solution (digital)

ATAD 2
excluding reverse hybrid rules

Application **MLI** for NL

2021

Digital economy:
Consensus on new international tax rules

Conditional WHT on royalty's and interest

Innovation box
end of grandfathering

by = cy

Brexit: end of transitional period

Changes to Dutch **liquidation and cessation** rules?

2022

ATAD 2
reverse hybrid rules

2023

ATAD 1
interest limitation for other MS?

2024

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Conclusion

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