

# Structuring international mergers and acquisitions through the Netherlands

This M&A toolkit memorandum provides a high-level overview of the advantages of structuring international M&A transactions through the Netherlands. The Netherlands is considered one of the best holding jurisdictions in view of its tax system, including a full exemption on income and capital gains derived from subsidiaries, its extensive tax treaty network, its flexible corporate laws and high quality of corporate service providers.

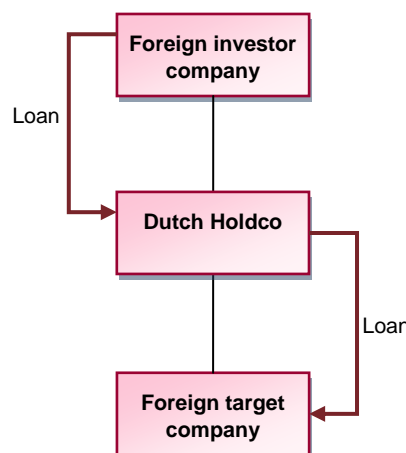
**In the first part of this memorandum, we describe the tax advantages of the use of a Dutch private limited liability company ("BV") or a Dutch public limited liability company ("NV") as a holding company (the "Holdco") for a foreign investor considering investing in a foreign target company. The second part of this memorandum describes the advantages of the use of a Dutch cooperative ("Coop") as a Dutch holding company in the event that an investor is established in a non-EU jurisdiction that has not concluded a tax treaty with the Netherlands.**

## Advantages

As an internationally oriented jurisdiction, the Netherlands has created a favourable environment for establishing holding and financing companies. Both the Dutch tax regime and its solid legal framework offer opportunities in structuring international M&A transactions, including as a result of the following:

- The comprehensive Dutch double tax treaty network which often results in both (i) no withholding taxes levied from dividends paid to the Holdco and (ii) the elimination of capital gains taxation in the relevant subsidiary's home jurisdiction upon the sale or other transfer of the subsidiary's shares by the Holdco.
- The Netherlands is a member of the European Union, which may result in the elimination of local withholding taxes on dividends

paid to the Holdco as a result of the EU parent-subsiary directive and the elimination of local withholding taxes on interest and royalties paid to the Holdco as a result of the EU interest and royalty directive.



- The Dutch corporate tax exemption for dividends and capital gains derived by the Holdco from shares of qualifying

subsidiaries (the participation exemption).

- The absence of Dutch withholding tax on interest payments made by the Holdco.
- The possibility of negotiating private letter rulings (tax rulings) from the Dutch tax authorities, confirming the Holdco's Dutch tax position in advance.
- The robust and flexible Dutch legal and regulatory system and sophisticated court system.

The Holdco will be subject to corporate tax in the Netherlands on its net profits (ie income minus allowable costs and expenses) at the statutory rates of 25%. However, dividends and capital gains derived from the shares of its subsidiaries are fully exempt to the extent the Holdco benefits from the participation exemption. There is no minimum holding period for the participation exemption to apply.

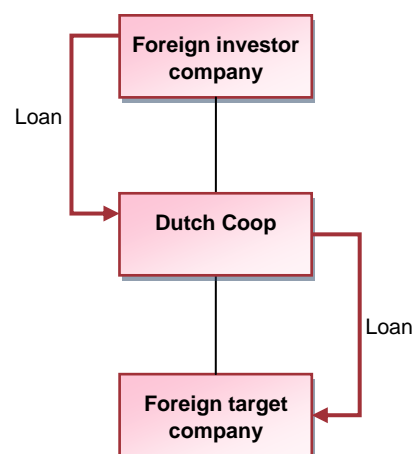
## Key points

- The Netherlands is an excellent jurisdiction for structuring international investments.
- Dutch holding companies can benefit from one of the largest tax treaty and bilateral investment treaty networks in the world, typically resulting in tax savings and investment protection in the relevant source jurisdictions.
- This kind of structure can be set up in such way that any (significant) Dutch tax leakage can be avoided.

In case there might be discussion as to whether or not the participation exemption is applicable in respect of a specific subsidiary, it is possible to discuss the position in advance with the Dutch tax authorities and, if they agree, to obtain a private letter ruling from the Dutch tax authorities confirming the applicability of the participation exemption.

## Use of a Coop

In certain situations, the use of a Dutch BV or NV can result in (some) Dutch dividend withholding tax leakage on profit distributions to its shareholder(s), eg when structuring investments by a private equity fund located in an offshore jurisdiction. In these situations one may consider using a Coop. This is because (provided it is properly structured) profit distributions by a Coop are, subject to specific anti-abuse provisions, not subject to Dutch dividend withholding tax.



A Coop is established by the execution of a Dutch notarial deed by at least two members. Therefore, it is an ideal company to use in the case of joint venture situations as well as in group structures. A Coop has legal personality, can distribute profits to its members and its members can have limited liability.

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