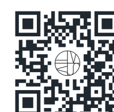
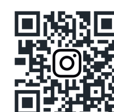
DOING BUSINESS IN THE NETHERLANDS

Main features Dutch tax regime

2023

HVK STEVENS





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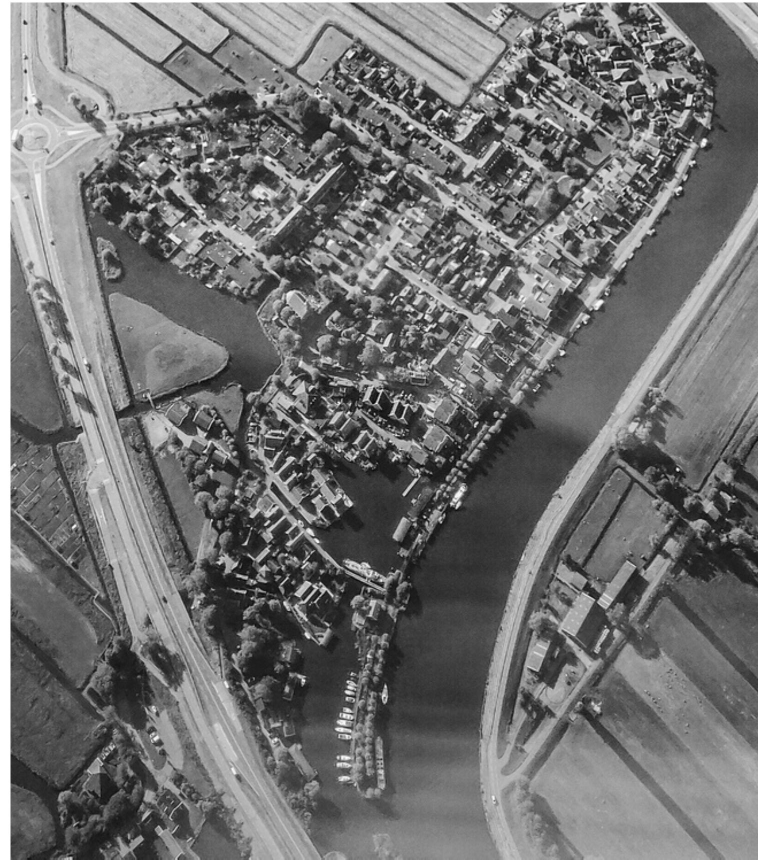
THE ADVANTAGES OF DOING BUSINESS IN THE NETHERLANDS

The Netherlands is one of the most competitive economies in the world and has a leading role in digitalisation (3th place in the 2022 EU Digital Economy & Society Index (DESI)), innovation and sustainability. Moreover, the Netherlands has an excellent infrastructure with a world-class airport, top-ranked seaports, public transport services, high-speed roads, and broadband networks, making the Netherlands top ranked in the World Economic Forum's Global Competitiveness Index. Apart from the excellent infrastructure, the fact that around 90% of the Dutch speak English and many people are multilingual, makes that the Netherlands is seen as the "Gateway to Europe". The Netherlands offers a very good business climate for an optimal European supply chain.

"The Netherlands is one of the most competitive economies in the world"

Besides these unique selling points, the Dutch government has created a competitive tax regime that stimulates entrepreneurship and foreign investment in the Netherlands. A combination of rather low corporate income tax rates compared to most other (EU) countries, various attractive financial incentives, a far-reaching network of nearly 100 bilateral tax treaties, the absence of withholding tax on interest and royalties (except for abuse situations), the participation exemption and the possibility to conclude so-called advance tax rulings, makes the country a reliable choice as a base for international operations. In addition, expatriates who are temporarily assigned to the Netherlands may benefit from a special tax regime, known as the "30% ruling". That is the reason that the Netherlands is a preferred location to establish European headquarters or sales and distribution activities.



The main advantages of the Dutch tax system can be summarised as follows

- A far reaching tax treaty network to avoid double taxation and providing a substantial reduction of withholding taxes on dividends, interests and royalties, often even to zero.
- In absence of a tax treaty, double taxation relief through the Unilateral Decree on Avoidance of Double Taxation.
- Only withholding tax on outgoing interest and royalty payments to affiliated companies in designated low-tax jurisdictions.
- EU membership: access to EU Parent-Subsidiary Directive (introducing a 0% withholding tax rate for qualifying EU corporate dividends), the Interest and Royalty Directive (introducing a 0% withholding tax rate for qualifying EU royalties and interest), the European Merger Directive and the Directive on cross-border conversions, mergers and divisions;
- No capital tax levy on capital contributions to a company, either in cash or in kind.
- Competitive corporate income tax rates: 19% on taxable profits up to € 200,000 and 25.8% for taxable profits exceeding € 200,000 (2023).

- Participation exemption regime: all benefits related to a qualifying shareholding ((cash) dividends, capital gains and liquidation proceeds) are exempt from Dutch corporate income tax.
- Object exemption regime: profits derived from active permanent establishments (branches) are exempt from Dutch corporate income tax.
- Fiscal unity regime: Tax consolidation of group companies whereby the parent company files a tax return on a consolidated basis. The fiscal unity regime allows the offset of losses of one company against profits of another company in a particular year. Moreover, the tax-free transfer of assets and liabilities between the fiscal companies facilitates reorganisations.
- Loss compensation facilities: Losses can be carried forward indefinitely and carried back for one year. Losses in excess of € 1,000,000 can only be set-off for 50% of the taxable profit, where losses up to € 1,000,000 remain deductible. The remaining loss may be offset in later years.
- Average interest deduction denial rules.
- Dutch ruling practice: clarity and certainty in advance can be obtained on proposed transactions and investments in the Netherlands.
- Transfer pricing guidelines: based on the arm's length principle for intra-company pricing, as laid down in the OECD model tax treaty and the OECD transfer pricing guidelines.
- Innovation Box regime: the possibility to be effectively taxed at a reduced rate of 9% with respect to income from (patented) self-developed intangible assets/intellectual property (IP) for which an R&D-declaration (in Dutch: WBSO-verklaring) has been obtained.
- R&D incentive (WBSO): offers innovative companies a tax credit for qualifying R&D wage costs and other R&D expenses and investments.
- Investment allowances: The EIA and MIA offer a deduction of the investments costs of energy saving equipment (up to 45.5%) respectively environmentally friendly investments (up to 45%). Vamil allows a substantial amortisation (75%) of the costs related to qualifying environmental friendly investments.
- The 30%-ruling: allowing a conditional tax-free reimbursement of 30% of the expat's salary to compensate for extra costs expats may face when moving to the Netherlands.
- Shipping companies: beneficial tonnage tax regime for shipping companies or alternatively accelerated deprecation can be applied.
- Functional currency: allowing companies to calculate their taxable profits in another currency than the EURO, avoiding taxation on effectively unrealised profits.
- No foreign currency exchange limitations.
- Dutch customs: most trade facilitating in the world.
- VAT deferment: no advanced payment of import VAT when assigned an "article 23"-permit.

Most of the above mentioned features are discussed in more detail below.

CORPORATE INCOME TAX (CIT)

A Dutch resident company is subject to CIT on its worldwide income (resident taxpayers). For certain types of income, exemptions may apply or the income can even be excluded from the taxable base. Non-resident entities are subject to Dutch corporate income tax, insofar they derive certain specified Dutch sources of income in the Netherlands (non-resident taxpayers).
Corporate income tax is imposed on taxable profits. The annual taxable profit for corporate income tax purposes is determined consistently in accordance with sound business practice (Goed Koopmansgebruik"). The concept of sound business practice is not defined in law but is predominantly developed in case law. Sound business practice is in fact based on general accepted accounting principles with certain adjustments for tax purposes.

Corporate Income Tax (CIT) rate
Corporate income tax is levied at the following rates (2023):

- *19 % on taxable profits up to € 200,000*
- *25.8% on taxable profits in excess of € 200,000*

A special optional tax rate may be elected for (patented) intangible assets (Innovation Box) resulting in an effective tax rate of 9%.

PARTICIPATION EXEMPTION REGIME

Under Dutch tax law, holding companies do not have a special status. Like any other Dutch company holding shares in Dutch or foreign subsidiaries, a holding company can apply the Dutch participation exemption regime. The participation exemption is one of the most important provisions of Dutch corporate income tax legislation and is based on the principle that dividends paid out of profits that have already been subject to corporate income tax at the level of a subsidiary should not be taxed again in the hands of the recipient company. As such, double taxation is avoided.

The Dutch participation exemption provides for a full exemption of all benefits (e.g., (cash) dividends, capital gains and liquidation proceeds) at the level of a Dutch corporate entity arising from a qualifying shareholding. A capital loss resulting from disposal of a shareholding is similarly non-deductible. Note that due to a newly introduced anti-abuse provision (anti-hybrid rule), the participation exemption can no longer be applied to payments received under hybrid instruments in case these payments are deductible for tax purposes in the source country.

"The Dutch participation exemption provides for a full exemption of all benefits"

In order to be eligible for the exemption, the parent company needs to have a shareholding which represents at least 5 percent in the share capital of the subsidiary. Furthermore, the shareholding may not (deemed to) be held as a portfolio investment. In that case, the motive of the taxpayer becomes a relevant, although arbitrary, factor. However, a shareholding in a subsidiary may still qualify for the participation exemption if the subsidiary is, according to Dutch standards, taxed at a realistic corporate income tax rate by Dutch standards (the "Subject to tax test") or if the assets of the subsidiary consist of less than 50% of free portfolio investments (the "Asset test").

The participation exemption rules allow a Dutch (intermediate) holding company to deduct all costs and expenses (not only general and administrative expenses but also interest expenses – apart from certain limitations – related to acquisition financing) incurred in connection with its subsidiaries. However, expenses incurred which relate to the acquisition or alienation of a subsidiary are not deductible but instead are added to the cost price of the subsidiary.

OBJECT EXEMPTION REGIME FOR BRANCH PROFITS

For Dutch companies with an active foreign permanent establishment (branch) the object exemption has been introduced. The idea behind the object exemption is that a permanent establishment and a shareholding in a foreign subsidiary should be treated equally. Under application of the object exemption, foreign profits will not be subject to tax in the Netherlands whilst foreign losses are not deductible. The object exemption will not apply in case the losses incurred through a permanent establishment are final. This is the case if the foreign activities have been ceased indefinitely or if the foreign activities have been sold to an unrelated party.

For so called “passive foreign portfolio investment enterprises”, a special regime applies, meaning that the profits of the foreign permanent establishment will be included in the Dutch taxable base, while – under certain conditions – a credit will be granted for the underlying tax. Active financing activities and activities regarding immovable property are not regarded as passive, unless these activities are performed by a company which qualifies as an (exempt) investment company.

FISCAL UNITY REGIME

The fiscal unity regime provides for a tax consolidation of group companies whereby the parent company files a tax return on a consolidated basis. If a Dutch resident company (i.e. a N.V., B.V., Dutch Cooperative) holds (in)directly at least 95% of the share capital of one or more other Dutch resident companies, these companies may upon joint request apply to be treated as a fiscal unity for corporate tax purposes. Due to EU Court of Justice Case law, it is also possible to form a fiscal unity between Dutch subsidiaries that are held by a parent company of another EU/EEA member state. Furthermore, it is also possible to form a fiscal unity between a Dutch permanent establishment and a Dutch subsidiary of an EU/EEA entity.

The fiscal unity regime not only allows the offset of losses of one member company against profits of another member company in a particular year (horizontal loss compensation), but also the tax-free transfer of assets and liabilities between the fiscal unity members. Note that losses incurred by a member company prior to joining the fiscal unity may only be set off against profits of that company. After dissolution of the fiscal unity, fiscal unity losses in principle remain with the parent company, unless the tax authorities permit the leaving company to retain its not yet utilised fiscal unity losses.

The fact that capital gains are ignored on the transfer of assets and liabilities facilitates group reorganisations increases the flexibility of the group as a whole.

LOSS COMPENSATION FACILITIES

Companies have the possibility to carry-back and carry-forward losses incurred in a year. Both resident and non-resident companies can carry-back losses for one year and carry-forward losses indefinitely. Losses in excess of € 1,000,000 can only be set-off for 50% of the taxable profit, where losses up to € 1,000,000 remain deductible. Losses must be utilized in the order in which they are incurred, so earlier losses must always be utilized before the losses of later years. The amount of losses available for compensation purposes needs to be confirmed by the Dutch Tax Authorities after the annual CIT return is filed.

INTEREST DEDUCTION

In principle, for corporate income tax purposes, interest expenses are deductible. However, the Dutch tax system has several interest deduction restrictions, such as the earnings stripping rule. Under the earnings stripping rule, the deduction of the on balance interest cost are limited to 20 per cent of the taxpayer's EBITDA (with a threshold of EUR 1 million). A possibility to carry-forward any non-deducted interest of 1 year applies.

Furthermore, specific interest deduction restrictions apply, to prevent tax base erosion by the deduction of interest.

WITHOLDING TAX

The Netherlands does not levy withholding tax on outgoing interest and royalty payments, apart from payments made to affiliated companies in designated low-tax jurisdictions and in certain tax abusive situations (merely artificial structures that are put into place with the main purpose or one of the main purposes to avoid Dutch withholding tax). A company is affiliated in case a shareholder, directly or jointly with third parties or a cooperating group, has at least 50% of the voting rights. A jurisdiction qualifies as a low-tax jurisdiction when it has a statutory CIT rate of less than 9 per cent or is on the EU list for non-cooperative jurisdictions.

The Dutch domestic dividend withholding tax rate is 15%. A lower rate or even exemption may be provided for in an applicable Double Tax Treaty. Based on Dutch law however, a dividend withholding tax exemption is available for qualifying interests in Dutch entities if the parent company qualifies as the beneficial owner to the dividends and is tax resident in the EU, EEA (application EU Parent-Subsidiary Directive) or a third country that has concluded a tax treaty with the Netherlands that contains "qualifying provisions" relating to dividend withholding tax.

Anti-abuse provisions have been introduced, based whereupon the Dutch dividend withholding tax exemption is disregarded when a foreign shareholder holds the interest in the Dutch entity with the main purpose (or one of the main purposes) to avoid Dutch dividend withholding tax ("subjective test"). If so, it should be assessed whether the structure or transaction is considered artificial ("objective test"). A structure or transaction is not (deemed) artificial if it has been set-up based on valid business reasons that reflect economic reality. According to Dutch Parliamentary history, an artificial arrangement or transaction does not exist if the direct shareholder carries out a business enterprise and the interest in the Dutch company can be allocated to that business enterprise.

TRANSFER PRICING

Dutch corporate income tax law contains the provision that intercompany pricing for goods and services must be determined according to the "arm's length principle". This in fact means that intercompany transactions should take place on terms that unrelated parties had also entered into. The Dutch transfer pricing regulations are based on the OECD transfer pricing guidelines. Special rules and guidelines are given for intra-group financial services companies (financing and licensing activities).

Dutch taxpayers are obliged to maintain transfer pricing documentation describing intercompany transactions and the way the intercompany pricing has been established. Additional transfer pricing documentation requirements apply for Dutch tax payers that are part of Multi National Enterprises ("MNEs") or are the head of an MNE. Tax payers that are part of an MNE with consolidated revenues exceeding € 50 million but less than € 750 million, must also prepare transfer pricing documentation that consists of a Master file and Local file. Taxpayers being the head of an MNE with consolidated revenues exceeding € 750 million have the additional obligation to file a country-by-country report with the Dutch Tax Authorities. The Master file and the Local file must be kept in the taxpayer's administration and should be available before the due date for filing the corporate income tax return.

By requesting a tax ruling (APA), taxpayers can obtain certainty in advance from the Dutch tax authorities on the transfer pricing method applied.

Furthermore, for financial years started after January 1, 2022, a measure is implemented for Dutch corporate taxpayers, resulting in a denial of downward transfer pricing adjustments, unless the taxpayer can demonstrate that a corresponding upward adjustment is taken into account in the transaction counterparty's jurisdiction. This means that in case of the transfer of an asset to a Dutch taxpayer at a price below fair market value, there can be no step-up to fair market value realised, unless a corresponding capital gain is taken into account at the level of the transferor.

DUTCH RULING PRACTICE - CERTAINTY IN ADVANCE

The Dutch ruling practice is one of the attractive features the Dutch tax system offers and is, since decades, one of the cornerstones of the Dutch investment climate. The Dutch tax authorities offer the opportunity to obtain certainty in advance on the tax treatment of certain operations or cross-border transactions. Certainty in advance is given in the form of Advance Pricing Agreements (APA) and Advance Tax Rulings (ATR).

An APA offers a taxpayer certainty in advance on the determination of an arm's length remuneration or a method for the determination of an arm's length remuneration for cross-border transactions (goods and services) between affiliated enterprises. The arm's length remuneration is to be determined on the basis of the OECD transfer pricing guidelines. An APA can be unilateral, bilateral, or multilateral.

An ATR offers a taxpayer certainty in advance on the tax implications of a planned transaction or combination of transactions in an international context. More specifically, an ATR provides clarity, consistency and certainty about the interpretation and application of the applicable Dutch tax law and tax regulations in that respect. For example, on the application of the participation exemption or the (non) existence of a permanent establishment.

Rulings can only be obtained by companies that have sufficient 'economic nexus' with the Netherlands, meaning that operational activities need to be performed in the Netherlands. Besides that, there should be sufficient employees relevant to those operational activities in the Netherlands. No rulings will be granted with respect to non-business-like transactions (i.e. in situations whereby the main purpose of the business structuring is obtaining a tax advantage).

INNOVATION BOX

In the Netherlands, there are several tax incentives for innovative companies. An important incentive is the so-called Innovation Box in the Dutch Corporate Income Tax Act. The Dutch **Innovation Box** regime provides companies with the possibility to be effectively taxed at a reduced rate of 9% (instead of the regular statutory corporate income tax rate of 19%-25,8%) with respect to income from self-developed intangible assets/intellectual property (IP). A condition is that an R&D declaration (in Dutch: WBSO-verklaring) has been obtained. For larger companies however, only income from patents, utility models, software, plant breeders' rights and pharmaceutical certifications qualifies for the innovation box regime. Operational losses are – under certain circumstances – deductible at the standard corporate income tax rate.

R&D INCENTIVE (WBSO)

Dutch innovative companies carrying out R&D work may be eligible for compensation of wage costs and additional costs and expenses directly related to R&D activities. The benefit will amount up to 32% of the R&D costs (both salary and other costs and expenses) up to € 350,000 and 16% for R&D costs exceeding € 350,000. Start-ups are even eligible to a benefit of 40% on the first € 350,000 of R&D costs incurred. When applying for the WBSO one can opt between a lump sum or the actual amount of costs and expenditures incurred. It is noted that the WBSO does not have limitations, be it that the maximum benefit may not be exceed the wage sum.

INVESTMENT ALLOWANCES

Dutch based companies which invest in environmentally friendly business assets, may be eligible to apply the Environmental Investment Allowance (MIA) or the Random depreciation of environmental investments scheme (Vamil). The combined MIA and Vamil list determines which types of assets qualify for the two programs.

Under the MIA, up to 45% of the annual investment costs (purchase costs and production costs) are deductible from the profit over the calendar year in which the qualifying business assets were procured. The investment amount must exceed € 2,500 per investment.

Under Vamil, a company may write off a random percentage of the costs of business resources for a random year. Assets listed on the combined MIA/Vamil list can be depreciated more quickly (for 75% of the investment costs accelerated depreciation can be applied, the remaining 25% follows the regular depreciation regime). This obviously results in the reduction of operating profit and tax payments and thus a liquidity or interest advantage can be achieved in this way.

Companies that invest in energy-efficient installations, or make use of sustainable energy, may apply the Energy Investment Allowance (EIA). The Energy List states which types of assets qualify for the facility. Under the EIA scheme, 45.5% of the relevant expenditures are deductible from the taxable earnings in the year in which the equipment is purchased. The investment amount must exceed € 2,500 per investment.

It is not allowed to simultaneously apply for the EIA and MIA.

SPECIAL INCOME TAX REGIME FOR EXPATS: 30% RULING

Highly skilled migrants recruited from abroad may be eligible to apply for the 30% ruling. The 30% ruling provides for a tax free allowance up to 30% of the employee's taxable gross salary. This substantial income tax exemption which is intended as a compensation for the extra expenses expatriates incur when living abroad, regardless of the actual amount of extra-territorial expenses incurred. In addition, the employer may reimburse certain costs tax free such as international school fees, certain relocation expenses and a moving allowance up to a certain limit.

To qualify for the 30% ruling, the following conditions must be met:

- The employee must be recruited from abroad by a Dutch employer (should be living at a distance of more than 150 kilometers from the Dutch borders in at least 2/3rd of the 24 months prior to the start of the Dutch employment);
- The employer must be registered as a Dutch wage tax-withholding agent;
- The employee should have skills or specific expertise necessary to fulfil the function, which is not available or scarce on the Dutch labor market;
- These skills or specific expertise is deemed to be present if the employee meets a salary threshold (2023: minimum taxable salary of € 41,954; for employees under 30 with a master's degree, the minimum taxable salary is set at € 31,891);
- The 30% ruling should be agreed upon in writing between employer and employee.
- As of 2024 the 30% ruling will be capped under the Standards for Remuneration Act (WNT-norm). Currently, the maximum wage under this Act is set at EUR 223,00 (2023).

Under the current rules, the 30% ruling is available for a period of 60 months. The duration of any previous stay or previous period of employment in the Netherlands, reduces the maximum grant period.

TAX INCENTIVES FOR SHIPPING COMPANIES

Dutch shipping companies may either opt to get taxed on the basis of the net tonnage of the vessels (tonnage tax regime) rather than on the profits actually made, or alternatively make use of accelerated tax depreciation for tax purposes.

In order to be eligible for application of the tonnage tax regime or accelerated tax depreciation, the shipping company must derive its profits from the operation of seagoing vessels that are active in international sea traffic. A shipping company is considered to "operate a vessel" when, to a significant extent, management and control of the vessels which it owns or co-owns, is conducted out of the Netherlands. This includes commercial, strategic, technical-nautical and crew management. Furthermore, the vessel should in principle have an EU member state or an EEA registration.

If a shipping company elects to be taxed under the tonnage tax regime, the annual taxable profit generated by each individual vessel is calculated according to the following sliding scale:

Net tonnage of ship	**Fixed profit per 1000 net ton per day (€)**
0-1,000 net tons	9.08
For the excess up to 10,000 net tons	6.81
For the excess up to 25,000 net tons	4.54
For the excess up to 50,000 net tons	2.27
50,000 net tons or more	0.5

The tonnage tax regime applies for a period of ten years, whereafter the shipping company can decide to continue or to terminate the regime.

If a shipping company chooses not to opt for the tonnage tax regime, it may be allowed to use a special depreciation scheme: accelerated or random. For application of the accelerated depreciation facility - in case of a new vessel -, the residual value is 15% of the vessel initial cost and the expected lifetime is set at 15 years. Under the random depreciation facility, seagoing vessels may be depreciated straight-line over five years. The depreciation charges (in case of random depreciation) have to be covered by profits derived from operating the vessel. It is possible to carry forward any remaining depreciation to the following year. Lastly, the shipping company has to comply with the requirements for ten years after the purchase of the vessel.

FUNCTIONAL CURRENCY

The Netherlands, like most other EU Member States, adopted the EURO as functional currency. Typically, a Dutch tax payer being part of an international group may be exposed to currency exchange risks when it is for example funded with loans denominated in currencies other than the EURO, or is trading in goods for which the (global) pricing is set in a currency other than the EURO. Dutch tax payers are, upon prior approval of the tax authorities, allowed to compute their taxable profit in the functional currency (other than the EURO) of the multinational group it is a part of. One of the main conditions is that their annual reports are drawn up in the same foreign currency. This facility allows Dutch taxpayers to eliminate currency exchange risks for tax purposes.

VAT DEFERMENT AT IMPORT

Upon the importation of goods into the Netherlands, customs duties and import-VAT (generally 21%) becomes due. The basis for calculating the amount of import-VAT due is the customs value.

The import-VAT should be paid upon importation and may, under certain conditions, subsequently be recovered via the filing of the periodical VAT-return (for companies which are VAT-registered in the Netherlands). A company with no actual presence in the Netherlands can engage a logistics-services provider to comply with the VAT-obligations on its behalf, including filing a VAT-refund request. Generally, the VAT-refund procedure takes some time and a cash-flow disadvantage may arise.

To avoid this cash-flow disadvantage, the Dutch tax authorities have introduced a VAT-deferment system – also referred to as the Article 23 deferment license – as a result whereof import-VAT normally due and payable upon import can be reported through the periodical VAT-return and deducted in the same return. This mechanism, only available to Dutch or foreign entrepreneurs with a permanent establishment in the Netherlands, obviously creates a cash-flow advantage. Foreign entrepreneurs with no presence in the Netherlands however, can still benefit from this VAT-deferment system if they appoint a fiscal representative for VAT-purposes. To apply the VAT-deferment system, a request should be send to the Dutch tax authorities.

If you have any questions, feel free to contact one of our key contacts on international tax matters:

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