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ONE-PAGER / MEMORANDUM

From	: Hendrik van Duijn, International Tax Partner DTS
Regarding	: Dutch participation exemption
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Companies which are tax resident in The Netherlands are generally subject to Dutch corporate income tax at the regular corporate income tax rate of 19-25%. A Dutch company is taxed for its world-wide profits. The world-wide profits include business income, trading income, dividend income, royalty income and interest income.

Under the application of the Dutch participation exemption (PE) regime certain income items received in connection with a qualifying shareholding are exempt from Dutch corporate income tax. This income includes dividends, other profit distributions, capital gains and foreign exchange rate results realized by a Dutch resident company. Losses are non-deductible, with the exception of liquidation losses/ loss on a dissolution and currency exchange losses in case the tax-payer chooses (conditions apply).

To determine if a subsidiary qualifies for the PE regime 5 test must be performed:
1. The subsidiary needs to be a company for Dutch tax purposes ("Company Test");
2. The shareholder needs to be the legal owner of 5% in the nominal paid-up share capital in the subsidiary ("Shareholding Threshold Test") (exception include a.o., 5% voting-power, member of Cooperative);
3. The shareholder does not intend to hold the subsidiary as portfolio investment ("Intention Test");
4. The subsidiary is not regarded to be a deemed portfolio investment ("Deemed Portfolio Investment Test");
5. If 4 applies then the subsidiary may be a qualifying portfolio investment ("qualifying portfolio investment exception test").

Based on tests 1, 2 and 3 it can typically be determined that the PE-regime applies to a specific participation. In case the subsidiary is deemed to be a portfolio investment (4. Deemed Portfolio Investment Test), then it needs to be determined if the subsidiary is a qualifying portfolio investment (5).

Ad 5) Qualifying Portfolio Investment Exception Test
If the subsidiary is regarded to be a deemed portfolio investment, the PE-regime is still available if the qualifying portfolio investment exception test (5) is met. This is the case if either of two tests is met:

a) Less than 50% of the assets of the participation directly and indirectly consist of "low-taxed free portfolio investments" ("Asset Test "); or,

b) The participation is subject to a profit tax that results in a genuine levy according to Dutch tax standards ("ETR Test").

If the participation exemption is not applicable based on the above conditions, subject to certain requirements, a credit for underlying tax may be available. Other exceptions apply to real estate companies (real estate and rights thereto not owned by - tax exempt- investment vehicles).

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