MEMORANDUM

TO To whom it may concern

HANDLED BY Eric Vermeulen
Belastingadviseur, Partner
PHONE +31 88 253 5163
FAX +31 88 253 52 58
EMAIL evermeulen@akd.nl

DATE February 2016
OUR REFERENCE
COPY TO

SUBJECT Dutch tax aspects (Israel vs the Netherlands)

1. INTRODUCTION

In this memorandum we outline a number of features of the Dutch tax system that may be of interest for Israeli corporations that want to invest in, or through, the Netherlands. Please note that this memorandum is not meant as an exhaustive advice but merely serves as a general guideline.

2. CORPORATION INCOME TAX AND WITHHOLDING TAXES IN THE NETHERLANDS

A Dutch resident company is taxable on its worldwide income. However, relief from international double taxation on foreign source income is often provided by tax treaties or domestic tax law.

Corporate income tax is levied at the following rates (2016):

Annual taxable profit (in €)	Rate
€ 0 - € 200,000	20%
€ 200,000 or more	25%

In principle, tax losses are available for compensation with taxable profits of other years (with a maximum of nine years).

The Netherlands does not levy withholding tax on payments of interest, royalties, fees or similar payments by a Dutch company. A withholding tax on dividends is levied against a statutory rate of 15%. This rate however is often substantially reduced - even till nil – under an applicable tax treaty or under Dutch law.

AKD N.V. with registered office in Rotterdam (registered in the Trade Register of the Chamber of Commerce, number 24366820). All services and (other) activities are performed on the basis of a contract for professional services concluded with AKD N.V. The general conditions of AKD N.V. are applicable and contain a limitation of liability clause. The applicability of any other general terms and conditions is hereby expressly excluded. The general conditions have been deposited at the Rotterdam District Court under number 30/2012. Every liability is restricted to the sum paid in the case concerned under the (professional) liability insurance including the amount of the policy excess. On request the general conditions will be sent without charges. They are also available on www.akd.nl

3. PARTICIPATION EXEMPTION

3.1. GENERAL

The participation exemption is an exemption from corporate income tax in respect of profits derived from qualifying shareholdings. Profits for these purposes include cash dividends, stock dividends, bonus shares, dividend distributions in kind, hidden profit distributions and capital gains regarding the disposal of a shareholding. If the profit received from a subsidiary is tax-deductible in the country of residence of the subsidiary the profit can, however, not be exempt from corporate income tax as of 1 January 2016. Capital losses on qualifying shareholdings are in general not tax deductible, with the exception for liquidation losses.

In order to qualify for the participation exemption the following requirements need to be met:

1. the participation of the Dutch entity in the subsidiary company represents at least 5% of the nominal paid-up share capital in this entity, and
2. the participation is not held as portfolio investment ("motive test").

3.2. MOTIVE TEST

A subsidiary is considered to be held as a portfolio investment if the shareholders' only objective is to obtain a financial return that may be expected from normal asset management. If the taxpayer has a mixed motive, the predominant motive is decisive. According to the explanatory notes to the law, a subsidiary is not held as a passive portfolio investment if the subsidiary is engaged in the same line of business as the shareholder. Subsidiaries of top holding companies with an active management function and subsidiaries (engaged in a business) of intermediate holding companies are not considered to be held as passive portfolio investments.

The motive test is deemed not to be met if more than half of the subsidiary's consolidated assets consist of shareholding(s) of less than 5% or if the predominant function of the subsidiary – together with the function of lower tier subsidiaries – is to act as a passive group finance company.

3.3. PASSIVE PORTFOLIO INVESTMENT

In case a participation is considered to be held as a passive portfolio investment (a subsidiary that does not qualify under the motive test) the participation exemption may nevertheless still be applicable provided that the participation is a so-called qualifying portfolio participation.

A "qualifying portfolio participation" is a participation:

1. that is subject to a tax on profits at an effective rate of at least 10% of the taxable profit, calculated in accordance with Dutch tax rules and regulations ("subject to tax test"); or
2. whose assets, directly or indirectly, consist for less than 50% of portfolio investments ("free asset test").

The subject-to-tax test
This test is met if the subsidiary is subject to a "realistic levy" according to Dutch tax standards. This requirement is met if the subsidiary is subject to a profits-based tax with a regular statutory rate of at least 10%.

Although the realistic levy should be based on Dutch tax standards, it is not necessary to calculate the effective tax rate of the subsidiary according to Dutch tax standards. Tax base deviations, such as deviations resulting from different depreciation rules, special investment deductions, loss compensation or tax consolidation rules will not cause a tax to disqualify as a realistic levy. These are so-called "acceptable tax base deviations".

However, tax base differences caused by, for example, tax holidays or deductible dividends may cause a levy to disqualify as a realistic levy. These are so-called "non-acceptable tax base deviations". This also applies to cases where taxation is deferred until profits are distributed and in situations in which a local participation exemption system applies which has a significant broader scope than the Dutch participation exemption system.

The free asset test
In general terms will the asset test be met if the taxpayer demonstrates that less than 50% of the subsidiary´s directly and indirectly held assets consist of free passive portfolio assets. "Free passive portfolio assets" are defined as assets which are not used within the business enterprise of the participation and have a portfolio investment character, such as excess cash (excluding funds held for acquisitions), loans receivable, securities and real estate. A number of categories of assets that qualified under former rules as passive assets no longer qualify as such, e.g. real estate. As a result, assets which are held and used within the business enterprise of the participation are not considered "free passive portfolio assets".

4. TAX TREATY NETHERLANDS- ISRAEL (1973)

4.1. DIVIDENDS

Dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) with respect to dividends paid by a company which is a resident of one of the States to a company the capital of which is wholly or partly divided into shares and which is a resident of the other State and holds directly at least 25 per cent of the capital of the company paying the dividends:
   a. 10 per cent of the gross amount of the dividends where the dividends are paid out of profits which, by virtue of provisions in Israeli law for the encouragement of investment in Israel, are exempted from tax or subject to tax at a rate that is lower than the standard rate levied on the profits of a company resident in Israel;
   b. 5 per cent of the gross amount of dividends in other cases;

(b) 15 per cent of the gross amount of the dividends in all other cases.

4.2. INTEREST

Interest may be taxed in the state in which it arises, and according to the law of that state, but the tax so charged may not exceed:

(a) 10 per cent of the amount of the interest, if the interest is paid to a bank or financial institution
(b) 15 per cent of the amount of the interest in all other cases.

Please note that the Netherlands do not levy withholding tax on interest.

4.3. ROYALTIES

Royalties may be taxed in the contracting state in which they arise, and according to the law of that state, but the tax so charged may not:

(a) 10 per cent of the amount of the royalties for cinematograph films and films or video-tapes for radio or television broadcasting;
(b) 5 per cent of the amount of all other royalties.

Please note that the Netherlands do not levy withholding tax on royalties.

4.4. CAPITAL GAINS

(Capital) gains derived by a resident of one of the States from the alienation of any property not mentioned in article 15 of the Israel – Netherlands tax treaty may only be taxed in the State of which the alienator is a resident.

5. INNOVATION BOX

As of January 1st 2007 the patent box has been added to the Dutch corporate income tax Act 1969. As of January 1st 2010, the patent box has been renamed into "innovation box". Under this innovation box regime income from intangibles developed by the taxpayer is currently taxed at a (corporate) income tax rate of 5%.

The innovation box applies to income derived from intangible fixed assets which have been produced by the company and are patented or for which a so-called "R&D statement" (in Dutch: "S&O-verklaring") has been issued.

The so-called R&D statement is granted if a company conducts qualifying research and development activities. The R&D statement provides for a reduction of wage withholding tax to be paid to the Dutch tax authority. The reduction of the wage withholding tax (including the national social security contributions) to be paid, is granted as a tax incentive to employers. It does not influence the employee's individual tax position. The benefit derived by the employer is taxable for corporate income tax purposes (more profits due to lower labor costs, thus a cash flow advantage).

Not only patented intangible fixed assets are qualifying for the innovation box but also intangible fixed assets for which a so-called "R&D statement" has been issued; the so-called "R&D intangible asset". In the Act on the Promotion of Research and Development (hereafter: "**ARPD**") it is stated which activities are qualifying for such R&D statement. These activities are:

- The development of technically new physical products, physical production processes, software or components thereof;
- Technical-scientific research seeking to explain phenomena in fields such as physics, chemistry, biotechnology, production technology and information and communication technology;
- Analysis of the technical feasibility of an R&D project;
- Technical research aimed at enhancing the physical production process or software.

As a consequence, if the innovation box applies, 5/25 part of the positive results from the R&D activities will be subject to corporate income tax. Effectively this will result in a 5% corporate income tax rate.

Positive results are not immediately taxed at 5%. The research/construction costs can be deducted against the regular rate of 25%.[1] Consequently, there is a rule that the amount of

[1] *For the sake of completeness, we note that on the basis of article 3.30, paragraph 3, Dutch Personal Income Tax Act 2001 (also applicable for companies subject to the Dutch Corporate Income Tax Act 1969), the total amount of research/construction costs of the intangible fixed asset can be taken into account as costs in the year of development/construction.*

these (deducted) costs have to be compensated first with profits of the intangible assets which are taxed at 25%, before the lower rate of 5% is applicable. Not only yearly profits are taxed to the special tax rate, also the profit which arises as a result of the (partly) sale of the intangible fixed asset is taxed to the special tax rate of the innovation box.

Losses which are related to the exploitation of the intangible fixed assets are not falling within the scope of the innovation box. Losses can be offset to the normal tax rate of 25% at maximum.

6. DUTCH TAXATION AND OTHER CHARGES OF THE EMPLOYEES

6.1. GENERAL

If employees of a Dutch entity are Dutch resident employees, these employees are always subject to Dutch taxation for their entire Dutch employment income.

The 2016 wage tax rates are as follows:

Annual taxable wage (in €)	Rate (excluding national insurance premiums, see paragraph 6.3. below)
€ 0 – € 19,922	8,40%
€ 19,923 – € 33,715	12,25%
€ 33,716 – € 66,421	40,40%
€ 66,422 or more	52,00%

Please note that wage tax is a pre levy for personal income tax. The same rates consequently apply for income tax purposes. The withheld wage tax can consequently be deducted from the personal income tax due as a pre levy. An employer needs to withhold wage tax, pay these to the Dutch tax authorities and is also obliged to include an employee in a Dutch payroll administration.

If the employer attracts non-resident employees, e.g. from Israel, these employees are subject to Dutch taxation if the tax treaty between the Netherlands and the state of residence of the employee attributes the right of taxation over employment income to the Netherlands. This will in general be the case if:

- the employee fully performs his employment in the Netherlands;
- the employee performs part of his employment in the Netherlands, but:
  - physically spends more than 183 days in the Netherlands in either the tax year, the calendar year or any 12 month period beginning or ending in the tax year or the calendar year (Israel – Netherlands tax treaty: 183 days in the Netherlands in the tax year concerned); or

- the employee is being paid by, or on behalf of a Dutch employer (this means that his salary costs are charged as such to a Dutch (economic) employer); or
- the employee's salary costs are being charged as such to a permanent establishment of the employer in the Netherlands.

In other words, if a foreign employee would be travelling to the Netherlands to support (the set-up of) the Dutch entity, this person would not automatically become subject to Dutch personal income tax.

6.2. SPECIAL TAX FACILITY EXPATRIATES

The Netherlands has a special tax facility for expatriates, the so-called "30%-facility". This facility enables an employer to pay an employee a tax free allowance of up to 30% of present employment income. The maximum term for the 30%-facility is eight years and the tax free allowance could also be less than 30%.

The tax free allowance is intended to cover "extraterritorial costs". To qualify for the 30%-facility, the following conditions must be met:

1. the employee is recruited or assigned from abroad to work in the Netherlands. The term "abroad" is, however, defined as from outside a 150 km radius from the Dutch border during at least 16 out of 24 months preceding the employment in the Netherlands. Please note that special provisions apply for originally foreign students, who have obtained a PhD in the Netherlands less than a year ago;
2. the employee must be included in a Dutch payroll; and
3. the employee has a specific expert knowledge that is scarce in the Dutch labor market.

This last requirement will be linked to a salary criterion of € 52,699 (2016) (before 30% allowance application). After application of the 30% ruling the taxable salary must be at least € 36,889. This salary criterion will be annually indexed. (Additionally it may in exceptional cases still have to be proven that the employee's expertise is scarce on the Dutch labour market). Please note that for researchers no salary criterion is applicable. For employees under the age of 30 who have obtained a master degree abroad and who earn a salary of at least € 40,058 (€ 28,041 taxable after application of the ruling) it is also possible to obtain the ruling.

Tax exemption for income from most savings and investments
Under the 30%-ruling, an employee who is a resident taxpayer of the Netherlands can elect to be treated as a "partial non-resident". As a consequence, the employee is subject to Dutch income tax on specific sources of income only. The Dutch taxable income then only includes worldwide employment income, income from substantial interest (more than 5% of the shares) in a Dutch company and Dutch real estate. Passive income such as interest from

saving accounts or dividends is exempt from Dutch income tax.

Tax-free reimbursement of international school fees
Under the 30%-ruling, in addition to the 30% allowance, it is possible to provide a tax-free allowance for the costs of children attending an international school. It is not possible to claim a deduction of school fees paid by the employee in the individual income tax return.

Special agreement AKD – Dutch tax authorities
AKD has a special agreement with the Dutch tax authorities, based on which AKD determine, on behalf of the tax authorities, whether or not our clients are eligible for the 30% ruling. After our positive assessment the Dutch tax authorities will (generally) issue the official 30% ruling notification within one week.

6.3. DUTCH SOCIAL SECURITY
Non-resident employees of a Dutch employer may also be subject to Dutch social security. The Netherlands distinguish between national insurance ("volksverzekeringen") and employee's insurance ("werknemersverzekeringen").

National insurance
An employee is subject to national insurance in case he is either a resident of the Netherlands or in case he is subject to Dutch wage tax for current employment performed in the Netherlands.

The rates for the three different national insurances are as follows:

- AOW: 17.90% over a capped income of € 33,715
- ANW: 0,60% over a capped income of € 33,715
- WLZ: 9,65% over a capped income of € 33,715.

In addition, all employees subject to national insurance and more specifically to the AWBZ are also subject to the ZVW, the "Zorgverzekeringswet" (Care Insurance Act). This is a mandatory health insurance under which people are legally obliged to take out a so called basic insurance. In addition, on a voluntary basis, it is also possible to take out additional insurance. Part of the premiums for the Care Insurance Act is paid directly by the employer.

Employee's insurance
According to Dutch national legislation an employee is subject to Dutch employee's insurance in case he is under employment with a Dutch employer. In case an employee performs his employment outside the Netherlands, he is still subject to Dutch employee's insurance in case he has a Dutch employer and is a resident of the Netherlands.

The employee's insurance is fully paid by the employer over a capped income of € 52,763.

The calculation is quite complicated as the rates consist of a fixed and a variable part. The variable part depends on the kind of activity which is carried out by the employer.

6.4. WORK PERMIT

For completeness' sake we note that if the Dutch employer attracts employees with, for example, an Israeli nationality, the Dutch employer should obtain a work permit for these employees.

Additionally the employees must obtain a residence permit for the Netherlands and prior to arrival they should need to obtain a special entrance visa, a so-called authorisation for provisional sojourn. Alternatively, employees may qualify for an authorisation for provisional sojourn and subsequent residence permit under the knowledge migrant scheme. In that case no separate work permit is required. In order to qualify for the knowledge migrant scheme, the employer must be registered with the IND and the employee must meet a salary criterion of € 52,699 when over de age of 30 and € € 40,058 when under the age of 30.

7. VALUE ADDED TAX

7.1. GENERAL

VAT is a consumption tax. The standard rate is 21%. It is levied on the remuneration for the supply of a product or a service. In contrary to sales tax, VAT is in principle neutral for the supplier, independent of the number of transactions between the supplier and the final customer. VAT is an indirect tax, meaning that the tax is collected from entrepreneurs who normally do not bear the tax. The VAT system is harmonised within the EU.

An important aspect of the VAT system is that the tax authorities refund VAT to entrepreneurs who incurred a higher amount of input VAT on costs than VAT is due on supplies in a taxable period.

In general, a taxpayer must show the VAT due as a separate amount on invoices. A taxpayer must compute the VAT due or reclaimable and file VAT returns at a specified interval: monthly, quarterly or yearly, depending on the amount of VAT due. VAT due should be paid to the tax authorities when the tax return is filed. A supply of goods or services in the Netherlands where the supplier is located outside the Netherlands may result in the customer instead of the supplier being liable for the tax ('reverse charge').

7.2. ARTICLE 23 LICENSE

VAT on import is due at the moment the goods are imported into free circulation of the European Union (EU). In principle VAT on import has to be paid at the moment of filing the import declaration. However, the Netherlands have implemented – as one of only a few EU-countries - a deferred payment scheme for VAT on import. Under the Dutch VAT system the actual payment of VAT due on import can be avoided completely. The import-VAT has to be accounted for in the VAT return as VAT due. This VAT-amount can be deducted as input-VAT in the same return. Since the same amount is first accounted for as due and deducted at the same time as input-VAT, there is no actual payment of VAT. This results in a cash flow and interest benefit.

Only Dutch companies or foreign companies with a permanent establishment for VAT in the Netherlands can apply this beneficial Dutch deferment system. However, by appointing a fiscal representative for VAT-purposes, also foreign companies without a permanent establishment in the Netherlands may opt to use the deferred payment scheme with respect to the VAT on imports. In most cases, the fiscal representative will fulfil all VAT formalities.

In the Netherlands two types of representatives of VAT are known: the representative with a general license and a limited license. A fiscal representative with a general license acts on behalf of its principal regarding all supplies of all goods and services in the Netherlands, the intra community transactions and imports.

The limited representative can in principle only act on behalf of a foreign customer for the VAT formalities and payments with respect to the import and subsequent supply of goods after the importation and the intra-community acquisition of certain designated goods (e.g. excise goods). The foreign company itself does not have to register for VAT in the Netherlands. It depends on the facts and circumstances to whether a company should appoint a fiscal representative with a general or limited license.

8. CONTACT FOR FURTHER QUESTIONS

Should you have any further questions, please do not hesitate to contact Eric Vermeulen (evermeulen@akd.nl) at +31 88 253 5163.

-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-