

The Netherlands: A Tax Haven?

November 2006

Michiel van Dijk, Francis Weyzig & Richard Murphy



All the empirical evidence indicates that the Netherlands is a tax haven. This is because it deliberately offers companies who would not otherwise seek to be resident within its territory the means to reduce their tax charges on interest, royalties, dividend and capital gains income from foreign subsidiaries. This SOMO report investigates the extent to which the Netherlands can be regarded as a tax haven, and analyses the factors behind this, such as the unique network of bilateral treaties for the avoidance of double taxation and the special fiscal regimes for group financing operations. It estimates the number of 'mailbox companies', mostly established to route financial flows through the Netherlands purely for fiscal reasons, at almost 20,000, and this number has been increasing rapidly in recent years.

The Netherlands benefits primarily from attracting financial flows to its territory by increasing the tax yield it enjoys from corporate income and from employment generated in the trust and tax consultancy sector. These benefits do not, however, outweigh the negative consequences for other countries. Hence, Dutch tax policy is inconsistent with its policy on Official Development Assistance (ODA) and its associated high contribution to financing the achievement of the Millennium Development Goals (MDGs). The tax haven features of the Netherlands also facilitate money laundering and attract companies with a dubious reputation.

In order to promote a fair and just global economic system in which tax avoidance by multinational corporations is minimised, the report gives recommendations for the Dutch government and all other relevant actors.

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Executive summary

The Netherlands is a tax haven

This report investigates the extent to which the Netherlands can be regarded as a tax haven. All the empirical evidence indicates that the Netherlands is a tax haven. This is because it deliberately offers companies who would not otherwise seek to be resident within its territory the means to reduce their tax charges on interest, royalties, dividends and capital gains income from subsidiary companies.

The attractiveness of the Netherlands results from several factors. One of these is the so-called 'participation exemption' that exempts dividends and capital gains from subsidiary companies abroad from corporate income tax in the Netherlands. A second reason is the unusually large Double Taxation Treaty (DTT) network that substantially reduces withholding taxes on dividend, interest and royalty payments between treaty countries and the Netherlands. A third reason is the advance tax ruling system that gives certainty to multinationals about how the income of their Dutch subsidiaries will be taxed. Other reasons include the special regime for group finance companies (CFA), that is currently being phased out, and general factors such as legal security and political and economic stability.

As a consequence, the Netherlands hosts nearly 20,000 so-called 'mailbox companies' which do not have a substantial commercial presence. The data indicate every year more new mailbox companies are established, in particular during the period 2003-2006. Official statistics of the Dutch Central Bank (DNB) exclude some of these and count 12,500 Special Financial Institutions (SFIs) in 2002, which are defined as foreign companies that route financial flows through the Netherlands at least partly for tax reasons. In 2002, the last year for which figures are available, gross SFI flows through the Netherlands amounted to €3,600 billion or over 8 times Dutch GNP. Most SFIs are managed by one of the 132 specialised trust offices. However, the majority of SFI transactions can be attributed to a small group of multinationals that control about 100 to 125 SFIs, and have offices of their own.

The SFIs mainly function as conduits for dividend, royalty and interest payments. It has been found that out of the 42,072 financial holding companies registered in the Netherlands for which information on the (ultimate) parent was available, 5,830 are managed by trust companies. Of these mailbox companies, 43% have a parent in a tax haven jurisdiction such as the Netherlands Antilles, Switzerland, Cyprus, the British Virgin Islands or the Cayman Islands. Hence there is a clear link to tax havens for conduit structures.

Although not all tax planning structures are harmful in nature, some certainly are. The Dutch group financing (CFA) regime, which will be abolished by 2011, is often regarded as one of the most harmful tax policies. Corporate structures that use the rather unique

Double Taxation Treaty (DTT) network of the Netherlands to facilitate financial flows to and from other tax havens, such as the Netherlands Antilles and Cayman Islands, seem to be particularly harmful as well.

Many of the arrangements created by the Netherlands to facilitate these objectives have been found to be unacceptable by either the OECD or the European Union, and as a result they have been or are being revised. The tax ruling system, for example, has been revised in 2001 and stripped of its harmful characteristics. It is clear that the revisions which are being made are those necessary to ensure that the new arrangements will comply with the basic requirements of those organisations, but certainly not all of them will comply with the spirit of international tax co-operation that they are seeking to promote. Indeed, from 2007 it is possible that the Netherlands will be offering tax rates as low as 5% on interest income under the 'group interest box' in the current "*Werken aan Winst*" proposal for modifying tax legislation, to replace the CFA regime. This might mean that the Netherlands will be offering the lowest tax rates on financial flows in the developed world.

The main conclusion of this report is very simple: the Netherlands is a tax haven.

Positive and negative impacts

The Netherlands mainly benefits from attracting financial flows to its territory by increasing the tax yield it enjoys from corporate income and from employment generated in the trust and tax consultancy sector. It has been estimated that the activities of the 12,500 SFIs present in the Netherlands, which facilitate these flows and largely consist of 'mailbox companies' and 'paper headquarters', generate some 2,500 direct jobs and a total direct revenue for the Dutch state of €1.7 billion. Experts expect that measures such as the new 'group interest box' will mainly attract new SFIs and, apart from a small number of high-skilled jobs, will not generate substantial new employment in the Netherlands.

However, these benefits do not outweigh the negative consequences for other countries. It affects both the capacity of developing country governments to supply essential services to their populations and the capacity of developed country governments to provide finance for development in the form of debt relief and official development aid. Hence, the Dutch tax policy is clearly inconsistent with the policy on Official Development Assistance (ODA) and the associated high contribution towards financing the achievement of the Millennium Development Goals (MDGs). Furthermore, it has a substantial negative impact through the resulting shift of the tax burden to other sources of income such as labour, and the reduced possibilities for smaller companies to compete with multinational corporations. The tax haven features of the Netherlands also facilitate money laundering and attract companies with a dubious reputation.

Recommendations

In order to promote a fair and just global economic system in which tax avoidance by multinational corporations is minimised, SOMO presents the following recommendations.

- ❑ The Netherlands must put an end to harmful tax policies and stop being a bridge between tax havens and other countries as soon as possible. The Netherlands needs to review its taxation policies in the interests of the world community at large. They should be revised to ensure that a level playing field is created where each country receives the fair taxation due to it as a result of the commercial activities undertaken within its borders.
- ❑ However, tax havens are a global problem which requires a global solution, and the Netherlands putting an end to its harmful tax policies is a necessary but not sufficient step. Hence it is important that the Netherlands also actively puts pressure on other OECD countries to follow suit.
- ❑ The Dutch government should commission an official research on the Netherlands as a tax haven. This SOMO report is the first comprehensive report on this issue and a more detailed study, including a more quantitative analysis, would be desirable.
- ❑ The Dutch Central Bank (DNB) should regularly publish statistical information on SFIs.
- ❑ To support transparency, a new mandatory International Accounting Standard should be adopted that requires multinationals to provide detailed financial information on subsidiaries.
- ❑ All relevant actors, including corporations, government, civil society organisations, consultants, and analysts, should recognise refraining from tax avoidance as a core element of Corporate Social Responsibility (CSR). Issues such as a multinational's presence in tax havens and the use of mailbox companies do not require fiscal expertise and can easily be assessed by any organisation. In the end, such measures are perceived to be in the interests of multinational corporations themselves as well.

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Chapter 1

Introduction

1.1. Motivation for this study

Quotations on Dutch tax planning opportunities

For centuries, the Netherlands has encouraged entrepreneurial spirit, an international perspective and open market policies. These historical factors, along with the country's secure political and economic climate, make it a near perfect environment for international tax planning. This environment is further enhanced by the Netherlands' network of tax agreements with virtually every significant financial territory in the world, as well as the benefits that can be gained from basing intermediate holding companies within the Netherlands Antilles.¹

Although it is a small country the Netherlands has one of the largest tax treaty networks in the world and, therefore, can be used to great effect by companies as part of their tax planning.²

The Netherlands historically plays a key role in international tax planning. The country offers a wide range of facilities that allow both non-resident corporate and individual clients a broad range of tax advantages.³

For decades The Netherlands have been the pilot country in facilitating tax driven structures as a result whereof many foreign enterprises hold their investments abroad through Dutch 'tax planning' companies. Not only there are several supporting technical arguments to do so, like the beneficial and flexible tax and legal regime, but it also has to do with emotions. Simply stated, the Netherlands are stable and reliable and therefore a safe place to do business and apart from that, it is a country worth visiting.⁴

In a globalised economy, tax havens are an international problem. The Tax Justice Network (TJN), committed to a socially just, democratic and progressive system of taxation, estimates that as much as US \$255 billion is lost every year to governments around the world because of the low or zero taxation of funds in offshore centres.⁵ This is the additional tax revenue that would be generated if the income from the total wealth of the about 70 tax havens in the world was taxed at the standard rates of the countries from

¹ <http://www.dboffshore.com/offshore/html/location/netherlands.shtml> (31 August 2006).

² <http://www.anglo-legal.com/index.php?id=86> (31 August 2006)

³ Amicorp website, "The Netherlands" (Sep 2006).

⁴ http://www.taxci.nl/read/using_netherlands_tax_planning (29-08-06).

⁵ TJN, "Tax us if you can: A true story of global failure," TJN Briefing paper, Sep 2005 (Sep 2006).

which it originated. As a consequence, governments are forced to reduce public spending or increase taxation on smaller, less mobile companies and poorer individuals.

As a result of tax avoidance and tax evasion, countries both poor and rich fail to collect important tax revenues that could have been used to combat poverty and stimulate development. This affects national and international development efforts, including the achievement of the Millennium Development Goals (MDGs), such as halving extreme poverty and hunger, universal primary education, and halting the spread of infectious diseases worldwide by 2015. Even Kofi Annan, the United Nations Secretary-General, recently expressed his concern that money which potentially could have been used to achieve the MDGs is disappearing into tax havens.⁶ The tax revenues lost worldwide due to the use of tax havens are larger than the estimated cost to halve world poverty by 2015.

Tax havens undermine the interests of poor countries in four major ways.⁷

1. Secret bank accounts and offshore trusts in tax havens provide wealthy elites and companies with the means to escape their tax obligations. It is estimated that 50% of the total holdings of cash and listed securities of rich people in Latin America is held in tax havens. This figure rises to 70% in the case of Middle Eastern countries.
2. Multinationals' ability to substantially lower their tax burden by routing capital flows through mailbox companies in tax havens provides them with unfair competitive advantages vis-à-vis their – often smaller – competitors in developing countries.
3. Banking secrecy and offshore trusts offered by financial institutions in tax havens make it possible to launder the proceeds of political corruption, illicit arms deals, embezzlement, and global drug trade. The lack of transparency in international financial markets contributes to the spread of global crime, terrorism, bribery and the looting of natural resources by the elite.
4. Tax havens have contributed to the rising incidence of financial crisis that can destroy livelihoods in poor countries.

The aim of the project is to investigate the extent to which the Netherlands can be regarded as a tax haven for multinational corporations. The report does not focus on Dutch companies, but on the international tax planning structures of foreign multinationals in which the Netherlands has a prominent role. In this regard, constructions linking the Netherlands with other tax havens are most important, as it will turn out that the Netherlands facilitates huge flows to and from tax havens such as the Netherlands Antilles, the Cayman Islands and Luxembourg. The corporate tax rate in the Netherlands, on the other hand, is only of marginal relevance to this study. Furthermore, the report does not address the taxation of private wealth.

⁶ UN, "Secretary-General's remarks at Ministerial Conference on innovative sources of financing for development," Paris, France, 28 Feb 2006, <<http://www.un.org/apps/sg/sgstats.asp?nid=1937>> (Sep 2006).

⁷ Murphy R, Christensen J, Kimmis K, 'Tax Us If You Can', The Tax Justice Network, London, 2005, available as a download from www.taxjustice.net

In deciding to undertake this research, the following has been noted.

- ❑ As the quotations in the box above illustrate, tax planning websites and international trust offices advertise the Netherlands as a historically important offshore and tax planning centre. The Offshore Business Magazine, a financial magazine for the offshore world and its clients, even presents a map depicting all offshore centres in world, based on data from the TJN. It features the Netherlands alongside well known tax havens like the Cayman Islands, Bermuda, Jersey and the British Virgin Islands (see Annex 5).
- ❑ The OECD ranked the Netherlands as one of the top five industrialised countries that supported harmful tax competition. Also the EU Code of Conduct Group on Business Taxation under the chairmanship of Dawn Primarolo from the UK reported fifteen practices in Dutch Law which were considered in contravention of the Code.⁸
- ❑ Many corporations based in the EU or elsewhere have mailbox companies in the Netherlands primarily for fiscal reasons. A recent example of such practice in the news has been Trafigura Beheer BV, which on paper is a ‘Dutch’ corporation but in reality is managed by a trust office while the actual management is located in Switzerland. Other companies have their ultimate or intermediate headquarters in the Netherlands primarily for fiscal reasons too, including for example IKEA, Mittal Steel, EADS (the parent company of Airbus), and Fujitsu-Siemens.

Hence, there are many and convincing indications that the Netherlands might be considered a tax haven. Taking into account that the Netherlands has functioned as a tax haven for probably more than two decades, it is striking that – apart from a handful of newspaper articles – to the best of our knowledge no research reports have been published which specifically address this issue. Even after the infamous scandals of ENRON and Parmalat in 2004, which involved a high number of Dutch mailbox companies, and the public appeal to investigate the possible harmful effect of these structures that followed, no specific research has been conducted on these issues.⁹

This study is a first attempt to fill this gap. To answer our main research question, the following issues will be examined. Firstly, what is a tax haven? In order to conclude whether the Netherlands is a tax haven or not, it is important that the concept of a tax haven is defined clearly. It seems that not everybody uses the same definitions. Secondly, what evidence exists that the Netherlands is a tax haven? To answer this question, the available data on the number of mailbox companies per year is summarised, as well as the level of funds that is annually channelled through these entities. Finally, and continuing on from the second question, what structures are used by multinationals to exploit the Netherlands tax regime in order to minimise taxation? Parent, holding and subsidiary

⁸ Primarolo Group, “Code of Conduct (Business Taxation),” 29 Nov 2000, <<http://www.uv.es/cde/TEXTOS/primaloro.html>> (Sep 2006); OECD, “Towards Global Tax Cooperation: Progress in Identifying and Eliminating Harmful Tax Practices,” 2000, <<http://www.oecd.org/dataoecd/9/61/2090192.pdf#search=%22towards%20global%20tax-cooperation%22>> (Sep 2006)

⁹ “De stelling van Henk Langendijk: verbied financiële constructies via ‘paradijzen’”, NRC handelsblad, 17 January 2004, sec Opinie & Debat.

companies of multinationals are continuously involved in intra-group financial arrangements, with dividend, interest and royalty payments being most relevant to this study. The evidence indicates that for each type of financial flow, a specific conduit structure can be set up to minimise taxation.

The report is intended to inform civil society and the general public about the effects of the Dutch tax system, initiate dialogue with politicians, government staff and tax advisors, provide policy recommendations, and eventually change the Dutch tax system. It should be stressed that many groups have a role to stop aggressive tax avoidance by multinational corporations. The Dutch government should revise tax legislation to end the existing opportunities for abuse. Multinationals themselves should pay their fair share of taxes and not use tax havens to avoid taxes in the countries where they are operating. They should also be more transparent and demonstrate this. Civil society groups dealing with multinationals, which up to now perhaps have paid relatively little attention to taxation issues, need to recognise that taxation is an integral and fundamental part of corporate responsibility. They should question and expose corporate tax avoidance strategies and press other actors to take their responsibilities. Tax advisors, accountants, providers of trust services, and other financial professionals must draw a clear line between legitimate and harmful corporate behaviour, and not support or endorse harmful tax avoidance practices.

This report may appear to be of a rather technical nature, particularly for readers with a limited background in taxation and corporate finance. For the same reason, the report could also easily lead to arguments about technicalities. However, the main message of this report is very simple: the Netherlands is a tax haven.

1.2. Methodology

Whenever investigating a subject, the desire is to get first hand evidence of what is happening. This, of course, is also the desire when looking at the use of tax havens. But it is usually not possible, either for investigators from civil society or, indeed, on many occasions for those pursuing these issues from within tax authorities, for a combination of reasons.

Firstly, the companies undertaking such activities do not wish to broadcast the fact that they are doing so. This reflects their perception that tax avoidance is unpopular and likely to attract adverse criticism, even if they consider it to be something they must do on behalf of their shareholders.

Secondly, the law allows corporations undertaking these activities to hide them. Corporations are not required to disclose their holding and financing structures, so that the mechanisms and structures used for tax avoidance remain opaque. Neither are they required to publish the accounts of many subsidiary companies, if they are included in the consolidated accounts and the parent company assumes responsibility for the subsidiary. Furthermore, there are no obligations to file accounts with public registers in many tax

havens and developing countries. Finally, there is also no obligation to disclose the transactions that take place between group companies, and the profits earned, tax paid and profit retained in each country in which the group operates. Without this data, it is very difficult to identify the precise tax avoidance structures of corporations and how these affect a particular country

A different methodology therefore has to be adopted when looking at tax haven and related tax planning activity. The method developed has been to use the literature available in tax journals and in the material published by professional advisers to assess the schemes that they promote, and which are likely to be used by those companies seeking to avoid tax. This is supplemented by an analysis of Dutch mailbox companies, links between Dutch holdings and tax havens, and brief case-studies on specific multinationals. This is considered a reliable methodology.

Furthermore, companies wishing to avoid tax by using tax havens, whether onshore or offshore, do not achieve that aim by themselves. They are sold the structures that they use. As such, the materials produced by those likely to sell those structures have been used as the basis for much of this report, and are part of the evidence that many of the suggested structures are likely to be in common usage.

Chapter 2

The definition of tax havens

In its publication 'Tax Us If you Can', the Tax Justice Network (TJN) defines a tax haven as:

"Any country or territory whose laws may be used to avoid or evade taxes which may be due in another country under that other country's laws." 10

This report will suggest that this criterion is met for the Netherlands. The OECD has defined 'harmful preferential tax regimes' (which might otherwise be considered to be those undertaken by a tax haven) as having the following key features:¹¹

- i) No or low effective tax rates*
- ii) "Ring-fencing" of regimes*
- iii) Lack of transparency*
- iv) Lack of effective exchange of information*

In addition, the presence of companies with limited economic substance to their activities is seen as an indication of tax haven activity by the OECD. Other factors the OECD thinks indicate such practices include:

- v) An artificial definition of the tax base*
- vi) Failure to adhere to international transfer pricing principles*
- vii) Foreign source income exempt from residence country tax*
- viii) Negotiable tax rate or tax base*
- ix) Existence of secrecy provisions*
- x) Access to a wide network of tax treaties*
- xi) Regimes which are promoted as tax minimisation vehicles*
- xii) The regime encourages purely tax-driven operations or arrangements*

This report will suggest that the Netherlands has undertaken harmful tax competition, and continues to seek to do so. In particular, it has sought or does seek to exploit categories vi, vii, viii, x, xi and xii, although it does not overtly fall foul of the initial criteria. With regard to items vi and viii, however, steps have now been taken to remedy the defects.

¹⁰ Murphy R, Christensen J, Kimmis K, "Tax Us If You Can", (London: The Tax Justice Network, 2005), p. 67, <http://www.taxjustice.net/cms/upload/pdf/tuiyc_-_eng_-_web_file.pdf> .

¹¹ OECD, "Harmful Tax Competition – an Emerging Global Issue" (Paris: OECD, 1998).

The EU Code of Conduct on Business Taxation has slightly different criteria.¹² It is focussed on business taxation measures which *'affect, or may affect, in a significant way the location of business activity in the Community'*. More specifically, the Code states that *'tax measures which provide for a significantly lower effective rate of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code'*. The Netherlands offers low rates of tax on certain forms of income to influence the location of business and appears to have the intention of continuing to do so. As such it is engaged in harmful tax competition.

It is important to note that there is no such thing as a standard tax haven. Most have been created to service particular markets and needs. In this context it is important to make the distinction between 'pure' tax havens and countries which exhibit harmful preferential tax regimes.

'Pure' tax havens correspond with the standard image of the offshore island with palm lined beaches and numerous 'brass plate' companies whose whole existence is of little greater substance than the contents of a filing cabinet drawer. The main source of income of such places is in the assistance of tax avoidance or evasion by operating under a veil of secrecy. Consequently, any standard form of income or corporate taxation is absent. Such havens exist. Examples are the Bahamas, Cayman Islands and Bermuda.

The second group of tax havens consists of countries with a diversified economy and industrial base which have a normal tax system but with certain, often very lucrative, exceptions for certain activities or types of corporation. In addition, such countries are commonly characterised by the presence of specialised lawyers and accountants who assist companies with their tax planning and a large number of tax treaties which make it possible to minimise taxation.

One mechanism to avoid taxation in particular provided by the Netherlands is the conduit arrangement.¹³ This means that transactions are designed to flow through the country that offers such a regime, in order to reduce tax charges elsewhere. Government officials often argue that such arrangements benefit the economy because they create employment and income for professional people in the country providing financial services, and they generate tax revenue through moderate taxation for the service of channelling capital. However, the sum of these benefits is bound to be smaller than that which would have been paid to the countries through which the transactions would otherwise have been routed. Whereas some types of conduit structures may be legitimate, some appear to be quite harmful for other countries.

¹² Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on 1 December 1997 on a code of conduct for business taxation published in the Official Journal of the European Communities 6.1.98.

¹³ Unknown author, "Nederland onttrekt 40 mld aan heffingen; opbrengst rijk 500 miljoen", NRC Handelsblad, 11 Dec 1998, Sec. Economy, p. 13; F. de Kam, "Fiscaal gidsland", NRC Handelsblad, 11 Dec 1998, Sec. Economy, p. 15; and F. de Kam, "Judasloon voor de schatkist: Belastingparadijs Nederland", NRC Handelsblad, 6 Mar 2004, Sec. Economy, p. 24.

The Netherlands is clearly not a 'pure' tax haven. It could not be. It has a significant commercial base of its own which it has to tax in order to sustain its government expenditure. This is incompatible with the secretive, tax evasion assisting haven. However as this report will show, the Netherlands clearly is a country which is characterised by a preferential harmful tax regime.

Chapter 3

The Netherlands is a tax haven

3.1. Historical causes

This report is concerned with the current taxation provisions of the Netherlands, but it is impossible to appraise these or their significance without some consideration of how they developed. Most of the regulations mentioned below are explained in more detail in the next chapter.

Historically, the Netherlands has had an outward-oriented economy, in which international trade and foreign investment play an important role. It was one of the countries where the first multinational companies, such as Royal Dutch Shell and Philips, emerged. To ensure that the companies were not taxed twice – first in the countries where their subsidiaries were located and again in the Netherlands where the head office was established – the Dutch government has actively worked to conclude double tax treaties with the countries in which Dutch multinationals have been active.

Another feature of the Dutch tax regime, in many ways complementary to the network of tax treaties, is the participation exemption, which has been effective since 1893. Its original purpose was to prevent double taxation within domestic chains of companies, but following the internationalisation of Dutch business, it was also applied to foreign subsidiaries of multinationals.

After the Second World War, the Netherlands sought to establish a niche for itself in the world market by creating a taxation environment attractive to international business, in particular holding companies. Around the end of the 1970s and beginning of the 1980s, the Netherlands started to gain a reputation as a 'conduit' country for capital flows of multinationals wishing to avoid taxation.¹⁴

An important first step in this process was the decision to liberalise the exchange controls of group financing companies of multinationals in the mid 1970s.¹⁵ At first, companies which were exclusively involved in taking up and on-lending money abroad could obtain a general permit, as such creating the first official mailbox companies in the Netherlands. In 1983, the ongoing liberalisation of capital movements made an end to the permit system and the Dutch Central Bank (DNB) started to register special financial institutions (i.e. mailbox companies and other legal forms for avoiding taxation) within the balance of payments system.

¹⁴ A cursory literature review by one of the authors, undertaken at the library of the Institute of Chartered Accountants in England and Wales in London, suggests that some components of this had been in place before the early 1980s.

¹⁵ DNB Statistical Bulletin, March 2000, p. 19.

The attractiveness of the Netherlands to a large extent stems from its historical relationship with the Netherlands Antilles. The Netherlands Antilles benefit from the *Belastingregeling voor het Koninkrijk* (BRK) with the Netherlands, which has the same effect as a tax treaty. Under the BRK, companies established in the Netherlands Antilles used to be able to obtain a reduction of Netherlands withholding tax to almost zero.

The structure involving a connected Netherlands and Netherlands Antilles company is known as the 'Dutch Sandwich' or the 'Antilles route', which have become familiar concepts in the business of tax planning.¹⁶ In the early 80s, the Dutch Sandwich used to be a popular construction for Canadian firms seeking to invest in the USA. By channelling the funds from Canada to the Netherlands via the Netherlands Antilles into the USA, dividend withholding tax could be reduced from 15% to 5% and interest withholding tax from 30% to 0%.¹⁷ Later, these arrangements came under scrutiny of Canadian and US tax officials and were abolished. Tax treaties with 'pure' tax havens, such as the Netherlands Antilles, are unusual. For a long time the Antilles route was therefore known as the most lucrative and '*widely used exit route from Europe*'.¹⁸

Another feature that has contributed to the reputation of the Netherlands as a conduit country is the ruling practice. Rulings make it possible to obtain certainty in advance on how certain tax structures are dealt with by the tax authorities. Such arrangements originate from 1975, when an entrepreneur started a lawsuit against the Dutch treasury about the corporate taxation of its two German subsidiaries. Although the entrepreneur lost, the treasury was forced to write a recommendation on how certain structures would be taxed in the future, in effect publishing the first ruling.¹⁹

3.2. Headquarters and Special Financial Institutions

The Dutch government deliberately designed the tax legislation to make it attractive for multinationals in search of a location to establish their European or global headquarters or other holding activities. The thinking behind this is that foreign investment generates employment, stimulates technology diffusion and leads to greater demand for products and services of domestic companies. In addition to factors such as infrastructure and distance to markets, the fiscal regime is one of the decisive factors for headquarter location.²⁰ To some extent this policy has been successful, and over the years a number of large companies have established their European or global headquarters in the Netherlands.

¹⁶ Both terms are listed in B. Larking, "IBFD tax Glossary 5th edition", IBFD, 2005.

¹⁷ See the summary of the 1982 annual meeting of the International Tax Planning Association, <http://www.itpa.org/open/summaries/florence82s.html> (26-09-06).

¹⁸ Amicorp Group, "The Netherlands", Amsterdam, March 2005, p. 10, [http://www.amicorp.com/web/amicorp.com/amicorpv2.nsf/files/Documents_English_Netherlands.pdf/\\$file/Netherlands.pdf](http://www.amicorp.com/web/amicorp.com/amicorpv2.nsf/files/Documents_English_Netherlands.pdf/$file/Netherlands.pdf) (26-09-06)

¹⁹ R. Vermeulen, "Belastingparadijs grachtengordel," *Algemeen Dagblad*, 21 October 2000, Magazine, p. 24.

²⁰ D. van Den Berghe, "European Headquarters: Location decisions and establishing sequential company activities", Ernst & Young International Location and Advisory Services, 2005.

Unfortunately, the Dutch tax legislation has also attracted a high number of ‘vultures’, which use the favourable tax conditions to channel their payments through the Netherlands without generating any economic activity of significance. Unlike some other countries, in the Netherlands there is no special legal form to distinguish tax planning vehicles from standard types of business entities. This report therefore uses the popular and probably more appropriate terms of ‘mailbox’ company and ‘shell’ corporation when referring to tax planning structures.²¹ A shell corporation is defined as:

*"a company that is incorporated but has no significant assets or operations. Shell corporations are not in themselves illegal, and they may have legitimate business purposes. However, they are a main component of underground economy, especially those based in tax havens."*²²

The Dutch Central Bank (DNB) registers mailbox companies and other business structures that exist for tax planning purposes as Special Financial Institutions (SFIs) or, in Dutch, *Bijzondere Financiële Instellingen* (BFIs). SFIs are defined as:

“Netherlands-based companies or institutions whose shares are held directly or indirectly by non-residents, which specialise in raising funds outside the Netherlands and on-lending or investing them outside the Netherlands. The funds raised by these institutions are on-lent or invested almost entirely within the group of which they form part. These institutions are based in the Netherlands partly for fiscal reasons, enjoying tax advantages either in the Netherlands, or in the country where the parent company is established.”²³

Several large multinationals have established official headquarters in the Netherlands purely for tax reasons. Some of these are intermediary holding companies or European headquarters only, with an ultimate parent in another country, but some are also global ultimate parent companies. Given their importance to the corporation, such offices are not usually managed by trust offices (but some are) as is the case with most mailbox companies. On the other hand, they are also far from the large multilayered financial, economic and administrative centres, which the Dutch government intends to attract with its multinational friendly tax-regime. Examples of companies with tax-induced headquarters in the Netherlands are Volkswagen, IKEA (see box), Gucci, Pirelli, Prada, Fujitsu-Siemens, Mittal Steel, and Trafigura.²⁴

²¹ Most tax havens offer so-called International Business Corporations (IBCs) or Personal Investment Companies (PICs), which are defined as a “tax-free company which is not permitted to engage in business within the jurisdiction it is incorporated in.” ([http://en.wikipedia.org/wiki/International_business_company_\(25-09-06\)](http://en.wikipedia.org/wiki/International_business_company_(25-09-06))). As such, this legal form does not exist in the Netherlands. In the accounting literature, the terms Special Purpose Entity (SPE) or Special Purpose Vehicle (SPV) are also used to refer to shell corporations, which are usually established to fulfill one narrow or temporary objective, primarily risk sharing, securitisations or for competitive reasons. However, not all SPEs and SPVs are shell corporations. See J. Tavakoli, “Special Purpose Entities: Uses and Abuses”, Presentation to the International Monetary Fund, 19 April 2005, <http://www.tavakolistructuredfinance.com> (17-09-06).

²² Wikipedia, <http://en.wikipedia.org/wiki/Shell_company> (17 Sep 2006).

²³ “Recent developments at special financial institutions”, DNB Statistical Bulletin, 2003, p. 21.

²⁴ See R. Vermeulen, “belastingparadijs grachtengordel”, *Algemeen Dagblad*, 21 Oct 2000, Magazine, p. 24; “Enron gebruikte Nederland als belastingparadijs”, *Algemeen Dagblad*, 8 Feb 2002, Sec. Economy,

IKEA: The world's largest charity

IKEA, the Swedish home-furnishing retailer, has a complex holding structure in the Netherlands involving several dozens of BVs and foundations. The final parent of the corporation is not located in Sweden or elsewhere abroad, but a tax-exempt Dutch foundation called Stichting Ingka Foundation, administrated by Equity Trust N.V. The Economist conservatively estimated the net worth of this foundation at €28 billion, which exceeds the Bill & Melinda Gates Foundation, the second largest foundation in the world, by a considerable amount. Yet Stichting Ingka Foundation's charitable donations are rather limited. It provides funding to the Lund Institute of Technology in Sweden for interior design in the order of €1-2 million per year.

Through its subsidiary Ingka Holding BV, Stichting Ingka Foundation owns most companies of the Ikea group worldwide. For the year ending 31 August 2004, the most recent year for which accounts have been filed, Ingka Holding BV reported consolidated revenues of €13.1 billion and profits before tax of €1,997 million, which implies a gross profit margin of 15%. The holding paid €555 million of taxes on these profits, so its effective tax rate was 27.8%.²⁵

However, this is only part of the story. The intellectual property of the IKEA logo and concept is owned by Inter IKEA Systems BV, which is controlled by Inter IKEA Systems Holding BV. These two Dutch companies fall outside the holding structure owned by Ingka Holding BV. Through franchise agreements with all IKEA stores, Inter IKEA Systems receives 3% of sales. For Ingka Holding BV, the largest franchisee, this would amount to some €400 million, or 20% of pre-tax profits. The parent company of Inter IKEA Systems is Inter IKEA Holding SA, located in Luxembourg. This company in turn belongs to a company with the same name registered in the Netherlands Antilles. In 2004, Inter IKEA Holding SA reported €631 million in franchise fees, €590 million of 'other operating expenses', and €225 million of profits before tax. Apparently, some of the operating expenses involve payments to I.I. Holding SA, another IKEA company in Luxembourg, which reported €328 million of profits before tax in 2004. Together, these two holdings in Luxembourg paid only €19 million of tax over their combined €553 million of pre-tax profits.²⁶ If the franchise income is added to the profits reported in the Netherlands, the sum of these total profits in 2004 is €2.55 billion. The combined tax paid over these profits was €574 million, resulting in a considerably lower effective tax rate of 22.5%.

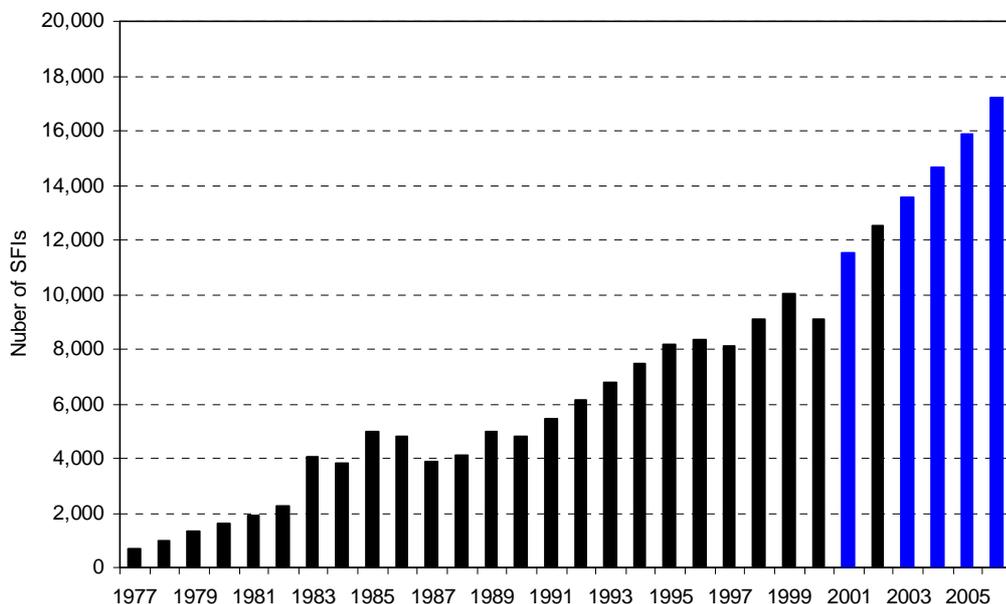
p. 23; and H. Stil, "Belastingparadijs met een luchtje: Nederland haalt met voordeeltjes problemen in huis," Het Parool, 20 Sep 2004, Sec. Economy, p. 21

²⁵ KVK data, Sep 2006.

²⁶ J. van Kerkhof, "De wonderlijke wandel en handel van IKEA," 19 Aug 2006, <<http://www.bndestem.nl/economie/article584100.ece>> (September 2006); "Flat-pack accounting," The Economist, 11 May 2006, <http://www.economist.com/business/displaystory.cfm?story_id=E1_GJTJTPJ> (Sep 2006); "Kritiek op fiscale trucs Ikea," Accountingweb, 22 Aug 2006 (Sep 2006).

The Netherlands clearly facilitates the tax avoidance scheme of IKEA. The Stichting Ingka Foundation might have been founded for securing total control over the corporation by the founder of IKEA and his family or to avoid taxes on their private income and wealth. This construction does not in itself lower corporate taxes, though, as Ingka Holding BV does pay an apparently normal amount of tax. The foundation is therefore only of marginal interest in this study. However, the 0% withholding tax on outgoing royalty payments and the royalty conduit opportunities of the large Dutch double tax treaty network, combined with the advantages of Dutch holding structures, allow a considerable amount of profits to be leaked to other tax havens where it is taxed at a very low rate.

Figure 1: Number of SFIs, 1977-2006



Source: DNB statistical Bulletin, March 2000 and June 2003.

Note: The graph is partially based on Chart 1 of DNB statistical Bulletin, March 2000, p. 20 and the numbers presented are therefore not exact. Data for the years 2001 and 2003-2006 (blue) are estimated using the compound growth rate for the period 1990-2002.

There is no data available on the amount of SFIs after 2002. However, if it is assumed that the growth trend of the 1990s is maintained, the number of SFIs in 2006 will be about 17,000. However, this figure should be regarded as an upper limit only, as the estimate does not take into account the possible negative effects of the Primarolo report and subsequent changes to Dutch tax law, and the increasing attractiveness of other EU countries, mainly Ireland and Cyprus, as locations for holding companies.

Most SFIs (80% in 2002) are represented by trust offices. Nonetheless, these companies only account for about a quarter of total SFI transactions. The majority of transactions are made by a small group of multinationals, which control about 100 to 125 SFIs – presumably the handful of tax-induced or ‘paper’ headquarters mentioned above.

Table 1 presents the geographical breakdown of SFIs’ foreign assets and liabilities at the end of 2001. The figures corroborate the SFIs’ main function – to route funds from one country to another via the Netherlands – as foreign assets are almost equal to foreign liabilities. The small difference between the two is accounted for by net domestic assets. SFIs hold most assets in Germany (16%), the United Kingdom (13%) and the United States (6%). Parent companies in the same countries also have the largest participations in SFIs. Furthermore, the fact that well-known tax havens like Luxembourg, the Netherlands Antilles, Switzerland and the Cayman Islands figure prominently on the liabilities side, confirms that the Netherlands operates as a conduit country for multinationals aiming to avoid taxation.

Table 1: SFIs’ foreign assets and liabilities, 2001

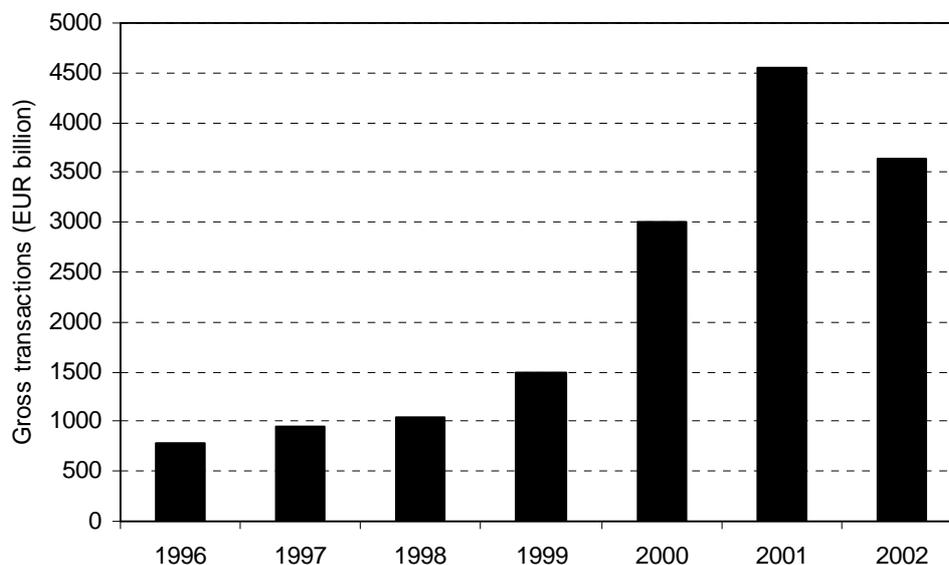
SFIs’ foreign assets			SFIs’ foreign liabilities		
	Value (€ billion)	Share (%)		Value (€ billion)	Share (%)
Germany	184	16	United Kingdom	367	32
United Kingdom	147	13	Germany	132	11
United States	68	6	United States	128	11
France	64	6	France	58	5
Hong Kong	59	5	Luxembourg	44	4
Italy	55	5	Netherlands Antilles	37	3
Spain	54	5	Belgium	30	3
Ireland	45	4	Switzerland	22	2
Belgium	43	4	Japan	18	2
Switzerland	36	3	Cayman Islands	13	1
Other Countries	365	33	Other countries	300	26
Total	1,120	100	Total	1,149	100

Source: DNB statistical Bulletin, June 2003, p. 24.

Note: End-of-year figures.

Figure 2 shows the gross transactions of SFIs for the period 1996-2002. Gross transactions are defined as the sum of total in and outflows and mainly constitute payments for royalties, dividends, interest and capital endowments (also see chapter 4). It is suggested that in particular the latter two make up a large part of all transactions. As a consequence of the design of the tax regime it is very lucrative to use the Netherlands for group financing activities. Group financing activities mainly consist of channelling loans from the parent company, possibly supplemented with funds obtained through the issue of stocks and bonds, to subsidiaries in third countries, via the Netherlands.

Figure 2: Gross transactions of SFIs



Source: DNB statistical Bulletin, June 2003, p. 21.

Note: The graph is partially based Chart 1 of DNB statistical Bulletin, June 2003, p. 21. The figures presented are therefore not exact.

The figure indicates that the value of gross transactions effected by SFIs has increased substantially from €782 billion in 1996 to €4,500 billion in 2001. Gross transactions only declined in 2002, reaching €3,600 billion. This decrease was mainly caused by exceptionally large transactions with Belgium one year before and does not reflect a general decline in capital flows as gross transactions with the United Kingdom and Germany – the countries with the highest share of gross transactions – continued to expand. Due to their magnitude SFI transactions are not recorded in the balance of payments, in order to prevent distortion.²⁷

In conclusion, the dramatic increase in gross transactions – up to more than eight times the GDP of the Netherlands in 2002 – and the fact that to a large extent these transactions originate from well-known tax havens, such as the Netherlands Antilles and Cayman Islands, clearly indicate that the Netherlands has gained popularity as a conduit country for avoiding taxation, and can therefore be considered as a tax haven itself.

²⁷ Instead the net effect of SFI in- and outflows is included under the item Errors and omissions. As of December 2005, the DNB has also published balance of payments statistics including SFI transactions.

3.3. In the Netherlands we trust

As pointed out above, about 80% of the SFIs are represented by trust offices, representing a quarter of total SFI transactions. Although relatively small, in absolute terms these SFIs still channel around €900 billion through the Netherlands. This amount is controlled by trust offices, which are therefore important players in the game of tax avoidance. This paragraph will be taking a closer look at this particular group of companies and their clients.

Trust offices provide various services to their clients.²⁸ According to a tax expert, the primary function of trust offices is to provide 'substance'.²⁹ Trust offices incorporate legal entities on behalf of clients, mostly multinationals, and provide them with an address, management and administration. These are essential under substance over form requirements which require that a company has a real presence in the country, and in turn are essential in order to benefit from local tax advantages. Consequently, most mailbox companies are located at the same address as the trust office. Clearly personnel is not a requirement for substance, as most trust clients report zero when asked for the number of employees.³⁰ In addition, the trust office may provide administrative and support services such as the organisation of shareholder meetings, and give advice on legal and fiscal matters, although the latter is mostly undertaken by specialised consultancy firms. As mailbox companies only serve a purely administrative function (i.e. to avoid tax) multinationals can save a lot by using the services and expertise of trust offices to establish such a company vis-à-vis doing it themselves.

As a consequence of the increasing pressure to monitor money transactions related to terrorism or money laundering and possibly also because of the negative publicity on the trust sector, following the scandals with ENRON and Parmalat (see box), the Dutch government adopted the Act on the Supervision of Trust Offices (*Wet Toezicht Trustkantoren*, WTT) on 1 March 2004. As of this date, the trust sector has been supervised by the Dutch Central Bank. Only companies with a licence are allowed to offer trust services. Furthermore, trust offices must be managed by a natural person (instead of a company) and are required to show on which grounds clients are accepted or refused.

²⁸ The term 'trust' offices when referring to the Dutch trust sector, should not be confused with the Anglo-Saxon concept of a 'trust', which is a way of controlling assets without legally owning them. This specific legal form does not exist in Dutch legislation. It has been argued that 'management services company' or 'company service provider' would be better terms for the types of services provided by Dutch trust offices. See W.M.E. van Gorkum and J.R. de Carpentier, "Toezicht op trustkantoren", NIBESVV, Bankjuridische reeks, 50, 2004, Amsterdam, for a brief overview of the Dutch trust sector and the recently adopted law on the supervision of trust offices.

²⁹ Based on a statement cited in E. van der Walle and J. Wester, 'De gevaarlijke charme van een trust', NRC Handelsblad, 5 January 2004, Sec. Economy.

³⁰ Based on information from the Chamber of Commerce, see paragraph 3.3.

Big Trust Scandals in the Media

Parmalat

Using mailbox companies in the Netherlands Antilles, the Cayman Islands and the Netherlands, Parmalat collected billions of euros of funds on the international capital market. In the Netherlands alone, the company managed to obtain about € 6 billion of bond loans via its subsidiary Parmalat Finance Corporation B.V.. The main reason for Parmalat to use a Dutch mailbox company to finance the parent company is the Netherlands-Italy tax treaty. Under this treaty, the Italian interest withholding tax is reduced from 27% to 10% when interest is paid to creditors in the Netherlands. Assuming an interest rate of 7% and € 6 billion of loans, Parmalat saved more than € 70 million (17% less withholding tax on €420 million of interest) in tax payments annually. As the Netherlands does not impose interest withholding tax, Parmalat Finance, in turn, was able to channel interest repayment to its foreign creditors without being taxed. Moreover, as the interest received from Parmalat in Italy cancels out the interest paid to the foreign creditors, the profit made by Parmalat Finance was very small. It therefore only has to pay a very limited amount of corporate tax, leaving the Dutch treasury almost empty handed (also see paragraph 4.6)³¹ Parmalat Finance was partially managed by Forum Administrations, the trust office of Nautah Dutilh, the largest law firm in the Netherlands. Only a few months after the Parmalat affair, Nautah Dutilh sold its trust office to Amaco, one of the largest providers of trust services in the world.

There is no information on the number of trust offices in the Netherlands before the introduction of the WTT. Probably there were more than 300 as DNB reports that it received 318 initial responses from possible trust offices at the time of implementing the WTT.³² Of these 183 applied for a WTT licence. Presently there are 132 trust offices with a WTT licence from DNB.³³ About half of these trust offices offer their services from different entities, which are mostly, but not always, located outside the head office. The DNB also distinguishes between independently operating trust offices and trust offices which are part of a group. The size of the trust offices differs considerably. The ten largest offices generate a turnover of € 5-25 million with trust activities, and have in between 40 to 150 employees.³⁴ The smallest, single-person trust offices have a turnover of up to €200,000 per year. Around 20 trust offices are affiliated with (business) banks, including Fortis, ING, Rabobank, Van Lanschot Bankiers, Deutsche Bank and Insinger de

³¹ H. Stil, "Belastingparadijs met een luchtje", Het parool, 10 September 2004, sec. Economie, "De stelling van Henk Langendijk; verbied financiële constructies via 'paradijzen'", NRC Handelsblad, 17 January 2004, sec. Opinie & Debat, E. van der Walle and J. Wester, "De gevaarlijke charme van een trust", NRC Handelsblad, 5 January 2004, and F. de Kam, "Judasloon voor de schatkist: Belastingparadijs Nederland", NRC Handelsblad, 6 March 2004, Sec. Economie.

³² DNB, "Quarterly Bulletin", March 2006, p. 74.

³³ See annex 3 for a list of trust offices with a licence. The list is based on the register of trust offices published by DNB (<http://www.dnb.nl/dnb/pagina.jsp?pid=tcn:12-45167-64>). The DNB also presents information on all entities affiliated with a trust office. For this research the trust office register of 30 June 2006 has been used.

³⁴ W.M.E. van Gorkum and J.R. Carpentier, *ibid.*, p. 17.

Beaufort.³⁵ However, after the Enron and Parmalat scandals, it seems that several banks and large law firms are afraid that dealing with mailbox companies could damage their reputation, and have sold off their trust offices.³⁶

Big Trust Scandals in the Media

The Suharto Family

The Netherlands has contributed to the estimated US\$ 15 billion accumulated by the former Indonesian dictator Suharto and his family.³⁷ In the mid 1990s, several of Suharto's children attracted hundreds of millions of investment capital for their companies by using mailbox companies in the Netherlands. Citra Marga Finance BV, owned by Siti Hardiyanti Rukmana, also known as 'Tutut', the oldest daughter of Suharto, managed to attract US\$ 197 million for her company PT Citra Marga Nusaphala Persada, which owned the monopoly of toll road operation in Indonesia. Bambang Trihatmodko, the middle son of Suharto, was involved in at least four mailbox companies to collect funds for several of his companies. Finally, the youngest daughter of Suharto, Siti Hastuti Teriyaki, borrowed approximately US\$ 150 million on the international capital market through Cabining International Finance Company BV. The funds were meant for her company PT Cemen Cibinong. All of the companies of Suharto's offspring were managed by trust offices. But what is striking is that three of the above-mentioned mailbox companies are still operational: Citra Marga Finance BV and Cibinong International Finance B.V, both managed by Equity Trust N.V., and Tri Polyta Indonesia, managed by Amicorp Netherlands B.V.³⁸

In order to map out the number and identity of mailbox companies serviced by the trust sector, address information of all 132 regulated trust offices was matched with the addresses of Dutch companies registered with the Dutch Chamber of Commerce.³⁹ As one of the main functions of a trust office is to domicile legal entities used for tax planning purposes, companies with exactly the same address as a trust office must be a client. In total no less than 19,647 companies and other legal entities could be identified as potential trust office clients. Of these companies 77% are limited companies by shares (*Besloten Vennootschap*, BV) – the most common legal form for mailbox companies – 2% are foreign business entities, 3% are limited partnerships (*Commanditaire Vennootschap*,

³⁵ W.M.E. van Gorkum and J.R. de Carpentier, *ibid.*, Note 9.

³⁶ In the period 2004-2005, ABN Amro sold its trust activities to Equity trust (also see below), Business Bank Van der Hoop sold its subsidiary First Alliance Trust to the N.M.T. Group, the law firm Nauta Dutilh sold Forum Administrations to Amaco and SNS Reaal sold Trust Management Finance (TMF) to British PPV Ventures. See various articles at: http://www.ing-trust.com/onderwerpen/news/press_releases.asp?navid=press (25 September 2006)

³⁷ <http://www.time.com/time/asia/asia/magazine/1999/990524/cover1.html>.

³⁸ "Wij hebben een naam hoog te houden; Het Nederlandse Belastingparadijs en Soeharto's kinderen", Geer van Asbeck, NRC Handelsblad, 22 July 1999, Sec. Economie, p. 10. and Vermeend in problemen door familie Soeharto", Het Parool, 27 July 1999, Sec. Economy, p. 7.

³⁹ Dutch company information is taken from the database: REview and Analysis of Companies in the Netherlands (REACH), published by Bureau van Dijk. All data in this report refers to the July-September 2006 version of REACH.

C.V.), 1% are cooperations, 3% are public limited companies (*Naamloze Vennootschap*, N.V.), and 14% are foundations (*stichting*). Paragraph 4.8 presents some more information on how some of these legal entities are used for tax planning.

The number of matched addresses should be regarded as an upper boundary for the number of trust office clients. In a few cases the exact addresses of potential clients were not available and therefore companies located in the same building as the trust office, but on a different floor, might have been counted.⁴⁰ Furthermore, some trust offices domicile legal entities which are not necessarily related to tax planning such as charitable foundations, foundations established for estate planning purposes, or for certification of shares (*stichting administratiekantoor*). Also sometimes, for administrative reasons, trust offices offer a postal address to Netherlands-based companies. Nevertheless, the data shows that these types of legal entities make up a relatively small part of trust office clients.

There are various reasons to believe that the estimate is close to the actual number of legal entities serviced by trust offices to avoid taxation. Firstly, 59% of the matched companies are classified as 'financial holding companies', 2% as 'holdings' and 3% as 'exploitation of patents and licenses'. Also many other classifications hinted at similar practices such as 'fixed assets interest groups' and 'commercial finance companies'. As will be described in the next chapter, these classifications correspond with the three most common structures for tax planning in the Netherlands.

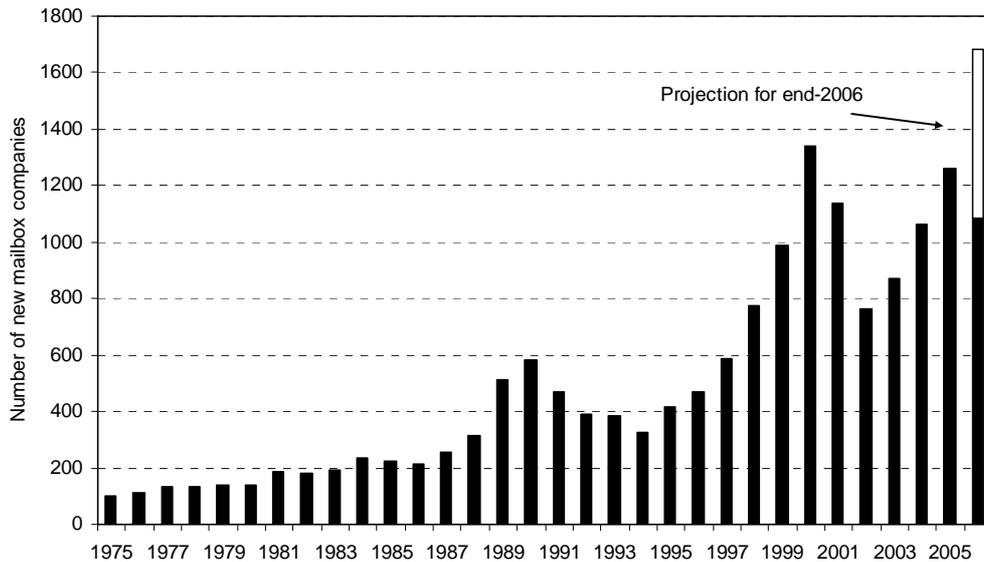
Secondly, unlike trust offices, a company address usually only domiciles a single entity. The number of erroneously included companies as a consequence of problems with the address is therefore likely to be small. Moreover, a number of suspect companies were excluded after detailed examination of sector classification codes and other available data.

Finally, the estimate is comparable to, although still significantly higher than the estimated figure of 17,000 SFIs mentioned above. This is not unexpected as it seems that DNB only includes active legal entities in its number of SFIs.⁴¹ It is likely that trust offices administer a relative high number of dormant entities which are not reflected in the DNB statistics. Furthermore, chapter 4 makes clear that tax planning structures often involve a chain of (Netherlands-based) mailbox companies or other legal entities such as the foundation. It is not clear how the DNB measures the number of SFIs and if all these entities are included in the statistics.

⁴⁰ Some trust offices are located at an address with an extension (e.g. 'a', 'second floor', etc.), which is not always presented in REACH.

⁴¹ DNB Statistical Bulletin, March 2000, p. 20.

Figure 3: Number of new mailbox companies per year, 1975-2006



Source: Own computations using REACH.

Note: The figure does not include the establishment of new foundations as this information is missing in REACH.

Figure 3 depicts the number of *new* mailbox companies per year for the period 1975-2006. The figure is constructed by using information on the year of start-up of the approximately 20,000 mailbox companies administered by the 132 licensed trust offices in 2006. New mailbox companies are defined as the total number of mailbox companies established (i.e. that entered the market) in a certain year. Hence, the figure does *not* show the total number of *registered* mailbox companies per year, which would be much higher.

It should be stressed that for several reasons, Figure 3 underestimates the 'real' number of new mailbox companies per year. Firstly, the figure does not include the establishment of new foundations, as this information was not available. Secondly, the figure does not include the start-up of new mailbox companies domiciled by trust offices, which failed to obtain a licence after the introduction of the WTT in 2004. As a consequence of the WTT, the exact number of trust offices – the only entities which are allowed to domicile mailbox companies – is known as of March, 2004. There is no problem after 2004, therefore, because the figure includes the data of all new mailbox companies of licensed trust offices. However, before the adoption of the WTT there were probably more than 300 trust offices, each with their own clients. For this period, the figure only depicts the new mailbox companies of the 132 trust offices, mentioned above, but excludes the mailbox companies of trust offices which ceased to offer trust services after the implementation of the WTT. Finally, the figure does not measure the number of new mailbox companies which were domiciled by one of 132 trust offices but went out of business before the 10th of August, 2006 – the day on which the sample of mailbox companies was created.

The following patterns can be discerned in Figure 3. Between 1975 and the mid 1990s there is a gradual rise in the number of new mailbox companies between 1975 and the mid-1990s with a small 'hump' around 1990.

In the following period more new mailbox companies are established each year, reaching a peak in 2000 during which 1,339 new companies registered at the addresses of trust offices. The rapid growth in the number of new mailbox companies follows the same trend as

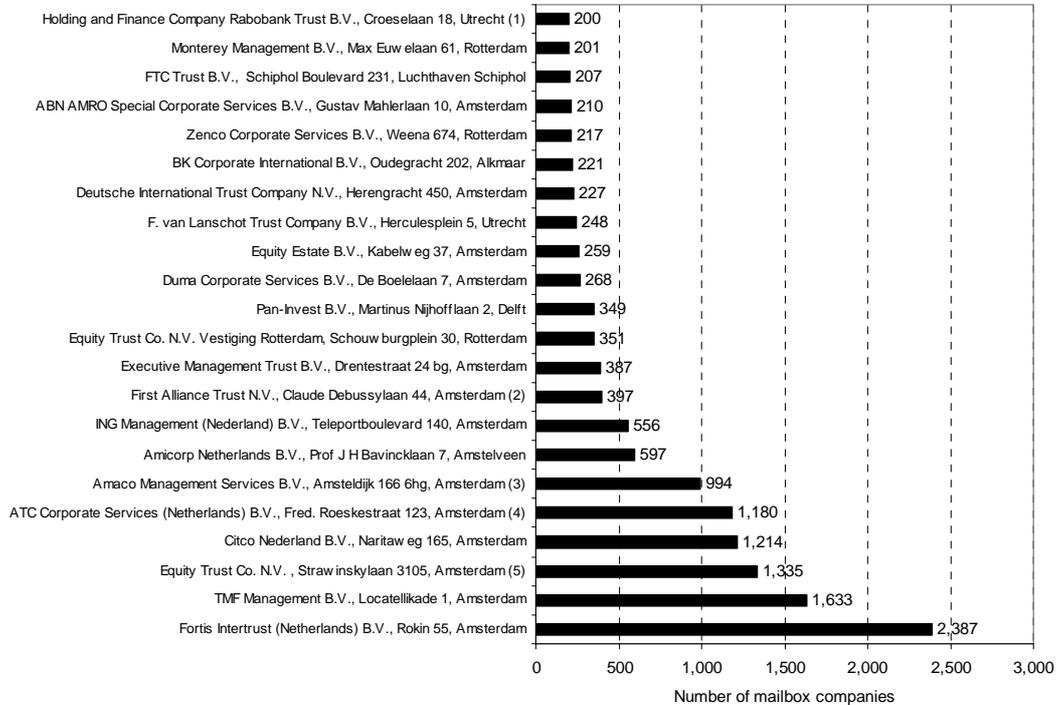
Figure 1, demonstrating a similar rise in the number of SFIs over the same period, and reflecting a combination of factors, including the liberalisation of capital movements, the globalisation of business activities and an increasing focus on tax planning activities by multinational companies. However, one should refrain from making direct comparisons between the two figures, as this would also require information on the closure of mailbox companies. Another factor, which probably contributed to the boom in mailbox companies around 2000 was the on-going research at the time on harmful tax regimes by the OECD and EU. It seems likely that many multinationals and trust offices anticipated the closure of some very beneficial Dutch tax rules, causing a rush on mailbox constructions. This view is confirmed by the fact that far fewer mailbox companies were established in 2001 and 2002, during which the Dutch government put an end to old ruling practice and the special regime for group finance activities – the two most harmful tax arrangements (see chapter 4).

In 2003, the number of new mailbox companies was much higher again. One reason for this might be a reallocation effect of mailbox entities from trust offices which failed to obtain a licence, to those trust offices which did. However, it seems likely that such an effect would only have occurred in 2003 and 2004, around the time the WTT was adopted. It is very striking that the number of new mailbox companies was also much higher than before in the two subsequent years. In 2005 and 2006, trust offices domiciled 1,261 and 1,083 new clients, respectively. However, the figure for 2006 only includes the number of new mailbox companies up to the beginning of August, the last month for which data is available. If we assume that the number of new mailbox companies for the missing period August-December is identical to the establishment rate for the same period in 2005, a total of no less than 1,681 new mailbox companies will have been established in 2006. This is by far the largest increase in the number of new mailbox entities for any given year over the period studied.

The recent rise in the number of new mailbox companies strongly implies that the Netherlands still offers very lucrative tax planning arrangements to multinationals and is therefore maintaining its reputation as a conduit country and tax haven. To reach definitive conclusions in the matter, however, would require detailed information on financial flows and beneficial ownership of the mailbox companies, complemented by more recent data on SFIs. Such information is, unfortunately, not available.

Figure 4 shows the number of mailbox companies per trust office address. It only depicts the addresses which domicile at least 200 entities.

Figure 4: Number of mailbox companies per trust office address*



Note: * The figure only depicts trust addresses with at least 200 clients. Data for other locations is available on request.

- (1) RCS Management B.V. Vestiging Utrecht is also located at the same address.
- (2) Trust Company Amsterdam B.V. is also located at the same address.
- (3) IMFC Management B.V. and Intrud Management B.V. are also located at the same address.
- (4) NCS Benelux B.V. and RCS Management B.V. are also located at the same address.
- (5) EQ Management Services B.V. and BTM Trust B.V. are also located at the same address.

Table 2 lists the three largest trust offices in the Netherlands according to the number of clients. With a total of 2,583 clients, Fortis Intertrust is the largest provider of trust services in the Netherlands. This figure is calculated by adding up the number of mailbox companies in all the offices or affiliates of Fortis Intertrust. Although Fortis Intertrust is composed of one main office, seven offices and five sub-offices, the company operates from only four locations in Amsterdam, Haarlem, The Hague and Rotterdam. Clearly, most clients are domiciled at Rokin 55, Fortis Intertrust's main office. It is not exactly clear which is the second largest trust office in the Netherlands. Three trust offices have their main office at Strawinskylaan 3105 in Amsterdam: EQ Management Services B.V., Equity Trust Co. NV and the Bank of Tokyo-Mitsubishi (BTM) Trust B.V. Apparently EQ Management Services (previously ABN AMRO Trust Company BV) has been part of Equity Trust since

its takeover on the first of July 2005, and can therefore be considered as one company.⁴² There is no information available concerning whether BTM Trust is also affiliated to Equity trust. Nonetheless, all available evidence indicates that the company is only a small player and is likely to have far fewer clients than Equity Trust and associated offices. In total, the three trust offices serve 1,729 mailbox companies. The third largest provider of trust services is TMF Management B.V. which operates from offices in Amsterdam and Rotterdam with a total of 1,703 clients.

Table 2: Total number of mailbox companies per address of three largest trust offices

Trust Office*	Address	Number of companies
Total Fortis Intertrust (Netherlands) B.V.		2,583
Fortis Intertrust (Netherlands) B.V. (head office)	Rokin 55, Amsterdam	2,387
Fortis Intertrust (Netherlands) B.V. Vestiging Haarlem	Fonteinlaan 11, Haarlem	0
Fortis Intertrust (Netherlands) B.V. Vestiging 's-Gravenhage	Kneuterdijk 15, the Hague	37
B.V. Maatschappij voor Executele en Trustzaken	Herengracht 548, Amsterdam	111
Dracso B.V. vestiging Rotterdam	Coolsingel 93, Rotterdam	48
Total EQ Management Services B.V., Equity Trust Co. NV. And BTM Trust B.V.		1,729
EQ Management Services B.V. (head office) Equity Trust Co. N.V. (head office) BTM Trust (Holland) B.V. (head office)	Strawinskylaan 3105, Amsterdam	1,335
Manacor (Nederland) B.V.*	Strawinskylaan 3111, Amsterdam	33
EQ Management Services B.V. Vestiging Haarlem	Zijlstraat 70 - 74, Haarlem	0
EQ Management Services B.V. Vestiging Rotterdam	Van Oldenbarneveltplaats 22, Rotterdam	9
Nationale Trust Maatschappij N.V. Vestiging Haarlem**	Houtplein 47, Haarlem	1
Equity Trust Co. N.V. Vestiging Rotterdam	Schouwburgplein 30, Rotterdam	351
Total TMF Management B.V.		1,703
TMF Management B.V. (head officer)	Locatellikade 1, Amsterdam	1,633
TMF Management B.V. Vestiging Rotterdam	Westblaak 89, Rotterdam	68
Nationwide Management Services B.V. Vestiging Rotterdam	Westblaak 91, Rotterdam	2

Note: *The trust companies are composed of a main office, offices and sub-offices. The table only shows offices with different addresses. For a full list of trust companies and their respective offices see the Dutch Central Bank register of trust offices. The numbers of clients per trust main office are presented in annex 3.

** Part of EQ management Services B.V.

⁴² Bouwfonds Asset Management, *Prospectus Bouwfonds Office Value Fund NV 2de Emissie*, 2006, p. 27 <http://www.bouwfonds.nl/site/nl-nl/Particulier/Beleggen/Office+Channel/Uitleg+fonds.htm> (13-09-06)

3.4. What's in it for the Netherlands?

Of course, it must be asked what the Netherlands gains from serving as a conduit country and domiciling almost 20,000 mailbox companies. According to the DNB the Dutch economy benefits in several ways from these activities.⁴³

- ❑ Mailbox companies generate high-grade jobs for financial experts, accountants and fiscal and legal advisors. According to Vereniging International Management Services (VIMS), the branch organisation of the larger trust offices in the Netherlands, the trust sector provides direct employment to about 2,500 people.⁴⁴ If indirect employment by tax consultants, law firms and accountants is also taken into account, employment generated is higher.
- ❑ Domiciling mailbox companies also secures tax. If, for example, a loan is arranged through the Netherlands then a small margin on the interest charged could be retained in the Netherlands, and indeed has to be in order to justify the commercial nature of the transaction. In 2001, the most recent information available, the total direct revenue for the Dutch state as a consequence of SFIs activity was €1.7 billion, approximately 70% of which (€1.2 billion) from taxation.⁴⁵ As has been pointed out by the DNB, *"this amount is, however, totally disproportionate to the total in- and outflows channelled through these institutions in the same year"*.⁴⁶ Around €0.5 billion, 30% of total revenue of mailbox companies, is spent on office and management costs. These costs include payments to trust offices, payments for banking services, contributions to the Chamber of Commerce and personnel and accommodation costs incurred in undertaking activities for own account.
- ❑ As most mailbox companies are established in Amsterdam, they contribute to Amsterdam's position as a financial centre.
- ❑ Mailbox companies stimulate the establishment of primary group activities in the Netherlands, such as production, research and development, and trade.

However, alongside these benefits, fostering mailbox companies and maintaining a conduit-friendly tax regime also has various negative effects, which should be mentioned as well. Besides the general, global, problems associated with tax havens, pointed out in the introduction, they include:

- ❑ Serving as a conduit country and allowing, or even stimulating, the establishment of between 17 to 20 thousand mailbox companies is deemed to attract a number of 'dirty' and therefore unwanted businesses. A good example of this is the financial activities of the children of former president Suharto in the 1990s, as pointed out above. Another example is James Hardie, formerly a world leader in

⁴³ DNB Statistical Bulletin, March 2000, p. 26-27.

⁴⁴ <http://www.vims.nl/?pageID=59&languageID=1> (25-09-06).

⁴⁵ On its website, VIMS states that the total tax revenue amounts to a total of EUR 3 billion per year. It is not clear on what this estimate is based and seems rather large compared to the figure of the DNB, even taking into account the growth in the number of SFIs.

⁴⁶ DNB Statistical Bulletin, June 2003, p. 21.

the production of construction materials with asbestos. In 1998, James Hardie, moved its headquarters from Australia to the US, while at the same time incorporating its holding company in the Netherlands using a mailbox structure. Although the company indicated that tax reasons were the main reason for its relocation, it seems more likely that it was intended to avoid a multibillion dollar claim by asbestos victims in Australia.⁴⁷

- A related problem is that lawsuits of such business with respect to pollution, bankruptcy or fraud take place in the Netherlands although the head office is nothing more than a mailbox company and the actual management, administration and legal department are located in a third country. An example of this is the probable future lawsuit involving Trafigura.⁴⁸ Such lawsuits damage the reputation of the Netherlands as a nation.
- As has been pointed out above, tax havens provide a secure cover for laundering the proceeds of all kinds of illegal activities. That this also applies to the Netherlands is corroborated by a recent study which analyses the extent of money laundering in the Netherlands. It points out that *“some of the experts expressed that they would not be surprised if 1% of SFI transactions are used for money laundering”* and concluded that *“the Netherlands is a tax haven and this makes it vulnerable to money laundering”*.⁴⁹
- The Dutch policy of willingly serving as a conduit country for multinational companies is not consistent with its aid policy. As has been pointed out above, because of tax havens like the Netherlands, a total of US\$ 255 billion in tax money is lost every year by poor and rich countries, which could have been used to contribute to the Millennium Development Goals (MDGs). The Netherlands is partly responsible for this problem. On the other hand, as one of the few countries in the world, the Netherlands spends 0.8% of GDP on Official Development Assistance (ODA). Hence there is a clear inconsistency between the Dutch tax and aid policy.

⁴⁷ “Wij hebben een naam hoog te houden; Het Nederlandse Belastingparadijs en Soeharto’s kinderen”, Geer van Asbeck, NRC Handelsblad, 22 July 1999, Sec. Economie, p. 10., “Vermeend in problemen door familie Soeharto,” Het Parool, 27 Jul 1999, Sec. Economy, p. 7., Herman Stil, “Belastingparadijs met een luchtje ; Nederland haalt met voordeeltjes problemen in huis”, Het Parool, 20 September 2004, Sec Economie and “James Hardie ontduikt asbestclaims”, 14 september 2004, <http://www.arbobondgenoten.nl/aktueel/september2004/hardie.htm>.

⁴⁸ Another example – although these are not specifically ‘dirty’ cases – is the lawsuits of Yukos. See “Yukos wint kort geding van dochter bij Nederlandsche rechtbank” NRC Handelsblad, 25 nov 2005, sec. Economie and O. Pleshanova *et al.*, “Dutch Fortune”, Kommersant Daily, 18 Aug 2006 <http://www.kommersant.com/page.asp?idr=1&id=698534> (15-09-06).

⁴⁹ B. Unger *et al.*, “The amounts and the effects of money laundering”, report for the Ministry of Finance, February 16, 2006, p 77, p. 11.

Chapter 4

Plan your tax

4.1. Tax planning, mitigation, avoidance, and evasion

'Tax planning', 'tax mitigation' and 'tax avoidance' are different terms used by tax professionals to describe the desire to pay as little tax as possible. In contrast to 'tax evasion', which refers to illegal non- or under-payment of taxes, tax planning is a legal and often very lucrative business, involving a wide number of highly paid consultants, accountants, and lawyers who try to find the loopholes in the legislation of different countries to minimise the tax burden of companies.

It should be stressed that not all tax planning is harmful or illegitimate. For example, dividend conduits channelling dividends via the Netherlands to a third country may be exclusively used to prevent profits which have already been taxed in the country where they were realised being taxed again when they are distributed to the parent company. However, multinational corporations can also establish subsidiaries in any country and use these to structure intra-group financial flows in such a way as to exploit the differences between the tax legislation in different countries. This can lead to the relocation of profits before they are taxed to low-tax jurisdictions and to situations of double non-taxation, also called 'double-dipping'. Therefore some types of international tax avoidance structures can be very harmful.

This chapter presents an overview of the most common structures prominently featuring the Netherlands as conduit country. Most of this information is drawn directly from the prospectuses published by trust offices and accountancy firms in order to inform their potential clients on the possibilities for tax planning in the Netherlands, and therefore provides a good indication of current practice.⁵⁰ However, the overview is by no means exhaustive or complete. Setting up conduit structures is the core business of the tax planning industry, and they are therefore not inclined to reveal all the details of their activities to possible competitors, who might copy their strategies, or to tax authorities, who might close the loopholes in national tax legislation. Moreover, the game of cat and mouse between tax planners and tax authorities means that both strategies to avoid taxation and tax legislation are constantly changing, making it very difficult to present a complete overview of tax planning and conduit structures. Finally, this chapter does not address transfer pricing, which is an alternative strategy in international tax planning.

⁵⁰ Unless otherwise noted, the information in this chapter is drawn from the prospects and websites of companies specialised in tax planning (See Annex 4); CBS, 2002, "De Nederlandse Economie 2001," "De Nederlandse Economie 2001," (Sep 2006), p. 178-179.

4.2. What makes the Netherlands so popular?

As underlined by the quotations at the beginning of this document, the Netherlands plays a key role in international tax planning. There are several features which make the Netherlands a very attractive location for multinationals wishing to avoid taxation.⁵¹

4.2.1. Participation Exemption

One of the main features which make the Netherlands tax regime attractive as a means of avoiding taxation is the participation exemption. According to this regime, under certain conditions, dividend payments and capital gains from subsidiary companies are exempted from Netherlands corporate income tax in the holding company.

The logic of the exemption is said to be ‘based on a combination of the idea of not taxing profits twice in the corporate tax sphere and the idea of treating a group as one whole.’⁵² The conditions for the application of the participation exemption that have been required to date (but which are expected to change in 2007) are:

- ❑ The Netherlands-resident holding company must hold at least 5% of the issued (and paid) share capital in the Foreign or Netherlands resident company;
- ❑ The shares must be held for long-term investment purposes, and not as part of a short-term investment activity;
- ❑ If the shareholding is in a non-Dutch company, then the foreign company must be subject to a foreign profits tax at national level. Note however, that the rate and amount of corporate tax is not important, as long as it is at a fixed level.
- ❑ In addition, if the subsidiary is not Dutch it must not be engaged in passive group financing activities. This means it cannot be a mere cash conduit.

Due to its nature, the participation exemption has been and still is one of the core elements of tax planning in the Netherlands. Not surprisingly, on one of the tax planning sites it was stated that ‘the Dutch participation exemption has for many years been as much of an export product as tulips and Gouda cheese.’⁵³

4.2.2. Double taxation treaty network

As explained in paragraph 3.1., the Netherlands has, and has had for a long time, an extensive network of double tax treaties to prevent double taxation which substantially cut back withholding tax for dividends, interest and royalties. By preventing double taxation, tax treaties are expected to stimulate trade and investment between the two countries which signed the treaty. The first tax treaty was signed in 1933 with Belgium, and the Netherlands currently has treaties with more than 80 countries.⁵⁴ Figure 5 depicts the

⁵¹ Also see “Special Financial Institutions in the Netherlands”, p. 20.

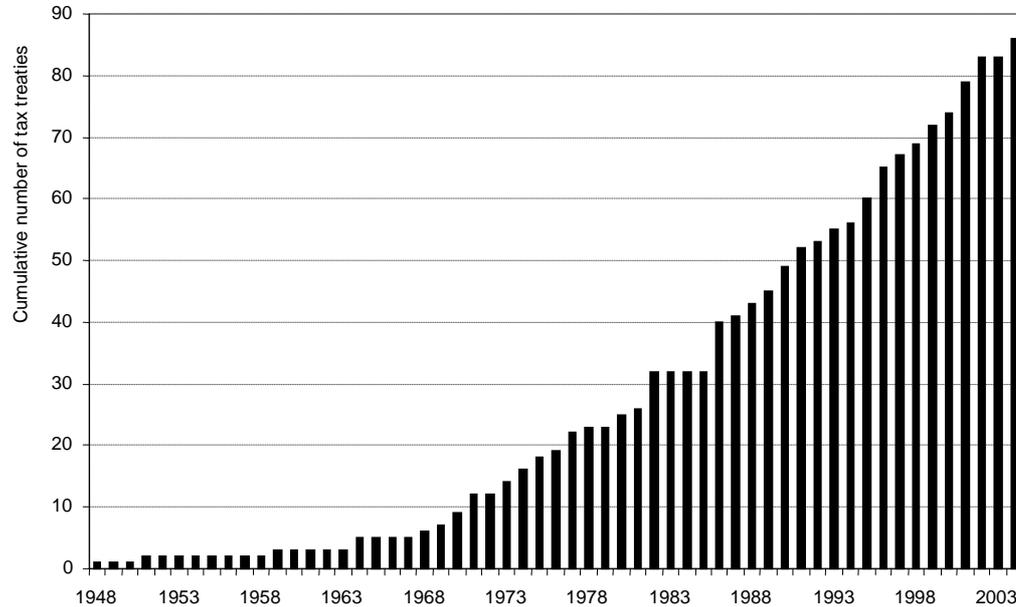
⁵² Quotation from <http://www.dutchtax.net/Dutch/Memos/Participation%20Exemption.htm> accessed 13-7-06

⁵³ <http://www.dutchtax.net/Dutch/Memos/Participation%20Exemption.htm> accessed 13-7-06

⁵⁴ I.J.J Burgers, R. Betten & H.M.M Bierlaagh, *Wegwijs in het Internationaal en Europees Belastingrecht*

cumulative number of tax treaties over time. Unusually, it has been noted that few of these contain significant anti-avoidance provisions.⁵⁵

Figure 5: Cumulative number of tax treaties, 1948-2004



Source: http://www.taxci.nl/read/tax_treaties_Netherlands (Sep 2006).

Annex 2 presents a list of countries with which the Netherlands has a tax treaty and the accompanying withholding tax rates for dividends, interest and royalties both from and to the Netherlands. The tables in the annex show that these treaties often result in dividend withholding tax paid by a subsidiary to the Netherlands holding company being reduced to zero. This is a special feature of Dutch tax treaties. The treaties of most other countries do not go this far, and usually set dividend withholding tax at a rate of between 5% and 15%.⁵⁶

Note that under the terms of the EU Parent-Subsidiary Directive, if a country owns 25% or more of the shares of another EU company and meets other conditions, dividend withholding tax is fully cancelled if the subsidiary company is located in an EU country.⁵⁷ This means that the Dutch tax treaty network is mainly beneficial for dividend payments from non-EU countries to the Netherlands. Apart from low dividend withholding tax rates,

(Amersfoort: SDU 2005, Derde druk)

⁵⁵ Noted at <http://www.lowtax.net/lowtax/html/offon/netherlands/nethom.html> accessed 12-7-06

⁵⁶ P.M. van Schie *et al.*, "Hoofdlijnen van het Nederlands Belastingrecht" (Deventer: Kluwer, 2006), p. 386.

⁵⁷ Besides the 20% rule the following conditions must also be met: (1) the subsidiary has the legal form as described by the Directive; (2) The subsidiary is subject to a normal corporate income tax as described by the Directive; and (3) the subsidiary has no dual residency status with a country outside the EU.

tax treaties usually also eliminate withholding tax on interest and limited withholding tax on royalties to between 0% and 15% in most cases. In comparison, most countries apply a withholding tax rate for royalties of around 30%.

Tax treaties also reduce withholding tax rates for dividends paid by a Dutch holding company to its parent company. For treaty countries, the rate is set between 0% and 15%, while it is 25% for non-treaty countries. Withholding tax from the Netherlands is always zero on interest and royalties, irrespective of the target country. This makes it especially attractive for foreign companies to establish a conduit company in the Netherlands to route royalty, licence or patent payments, tap international capital markets and intermediate in group financing structures. Again, note that most countries apply an interest withholding tax of 30%.

4.2.3. Tax rulings

A major advantage of the Dutch tax regime, often cited in the prospectuses of trust offices and the websites of specialised tax planning advisors, are what are referred to as 'tax rulings'. Rulings are agreements from the tax authorities on how much will be taxed, given the method of profit calculation between the business unit in the Netherlands and the other members of the group. In the Netherlands it is almost always possible to consult with the tax authorities in advance about the fiscal consequences of a proposed conduit structure, providing maximum security and minimum risk in tax planning.

In 2001, the ruling policy changed after the Primarolo report identified the advance tax rulings system in the Netherlands as a harmful tax practice, because certain tax arrangements resulted in artificial or non-standard arrangements.⁵⁸ These included cost-plus rulings, resale-minus rulings, and rulings with fixed margins for intra-group finance activities. Under such rulings, the Netherlands could be used as a conduit country for interest payments and other financial flows, while income reported in the Netherlands (called the 'spread' between incoming and outgoing flows) could be agreed in advance at a low level. Many old rulings were based on model rulings, which were published.

As a result of the Primarolo report, the ruling practice became stricter and demanded greater substance in the Netherlands in order to benefit from the favourable tax treatment. The Dutch ruling practice is now split into two parts, being Advance Tax Rulings (ATRs) and Advance Pricing Agreements (APAs). ATRs are intended for situations involving the application of the participation exemption to intermediate holding companies, international structures with hybrid entities (treated differently by Dutch and foreign tax authorities), and determining the absence of a permanent establishment in the Netherlands.⁵⁹ The APA practice allows for obtaining upfront agreement on the transfer prices to be used by a tax paying company. ATRs are generally granted for four years and the period for APAs will

⁵⁸ Primarolo Group, "Code of Conduct (Business Taxation)," 29 Nov 2000, <<http://www.uv.es/cde/TEXTOS/primaloro.html>> (Sep 2006).

⁵⁹ M. Vrouwenvelder, "Tax planning to reduce foreign taxes for U.S. multinationals – an EU and Netherlands tax update," *Tax Management International Journal*, Vol. 30, Issue 9 (7 Sep 2001), p. 403-14.

generally be four to five years, and in certain exceptional cases even for a longer period of time.⁶⁰ Since 1 January 2006, the rulings from the old ruling practice have been invalid.

Under the new system, it is still possible to obtain certainty in advance how (a combination of) specific intra-group transactions will be taxed. However, in contrast to the old ruling system, model rulings are no longer used or published. Fixed margins are no longer accepted and operational and economic substance requirements are more stringent.⁶¹ The new rulings are determined on a case-to-case basis, and are not publicly available. The contents of these rulings cannot therefore be analysed here.

Companies must meet certain substance requirements in order to obtain a tax ruling, including:⁶²

- ❑ at least 50% of the managing directors of the company must be Dutch residents;
- ❑ important management decisions must be taken in the Netherlands;
- ❑ bookkeeping must be done in the Netherlands;
- ❑ the main bank account and the accounts of the entity must be kept in the Netherlands;
- ❑ the company must run financial risks.

The table below provides an overview of the outcomes of ATR and APA applications, as well as applications for the interim ruling system that ended on 31 December 2005. Taking into account that ATRs are usually valid for 4 years, it can be assumed that approximately 500 to 700 companies in the Netherlands have approved advance tax rulings. These are probably large multinational corporations the Dutch holdings of which are involved in substantial international intra-group transactions.

Table 3: Outcomes of ruling applications in 2003-2005.

Year	ATR				APA				Interim ruling system			
	App	Den	Oth	Total	App	Den	Oth	Total	App	Den	Oth	Total
2005	196	15	30	241	86	10	23	119	11	1	2	14
2004	144	14	40	198	51	17	29	97	14	7	4	25
2003	..	..	..	257	..	..	..	77	..	..	..	83

App=Approved, Den=Denied, Oth=Others

Notes: "Other" includes applications that were withdrawn; in 2003, there were a total of 267 approved applications, 62 denied applications, and 88 other outcomes. Sources: Beheersverslag Belastingdienst 2004 and 2005; Ministerie van Financiën, "Kengetallen APA/TR-praktijk 2003," <<http://www.minfin.nl/DGB04-593.doc>> (Sep 2006).

⁶⁰ Ministerie van Financiën, "APA/TR beleid," <http://www.minfin.nl/nl/onderwerpen,belastingen/belastingen_internationaal/apaxatr_beleid.html> (Sep 2006).

⁶¹ TCI, "International tax planning - The Dutch Finance Company," http://www.taxci.nl/read/dutch_finance_company (Sep 2006).

⁶² Ministerie van Financiën, "Vraag en antwoordbesluit dienstverleningslichamen," <http://www.minfin.nl/nl/actueel/kamerstukken_en_besluiten,2004/08/vraag_en_antwoordbesluit_dienst_verleningslichamen.html> (Sep 2006).

Although the conditions for obtaining an tax ruling became stricter in 2001, this system of advance rulings was noted as a major attraction of the Dutch tax system at a KPMG seminar held in London on 25 May 2006, in the summary of which it was noted: *'Approval was also expressed for the system of 'rulings' in the Netherlands, which made it easier to achieve certainty than in the UK.'*⁶³

4.2.4. General factors

Apart from the fiscal considerations discussed above, some general factors also play an important role in the decisions of multinationals to use the Netherlands as a conduit country. Almost all tax planning brochures also recommend the Netherlands for its legal security and political and economic stability.

Another factor is the Netherlands' long experience with tax planning structures. The country was among the first to introduce a regime to exempt from taxation dividends received from subsidiaries (i.e. the participation exemption) and therefore has the most experience with tax structures aimed at benefiting from these rules. Other countries (e.g. Ireland) have also introduced similar systems, but these are to a large extent incomplete because of a lack of case law which is still under development. In contrast, in the Netherlands basically all aspects of the participation exemption have been tested by the courts, which has led to "effective tax rate reduction roadmaps" for tax planning in the Netherlands.⁶⁴

Apart from the stable political and fiscal climate, the Netherlands has gained global recognition for the quality and expertise of its tax consultants, lawyers and accountants. Probably because of the beneficial tax regime and in contrast with other countries, tax consultancy in the Netherlands has developed as a separate branch, consisting of a relative high number of lawyers, accountants and consultants who work for firms specialising in tax planning. This, in turn, has led to the emergence of specific and separate university studies dealing with tax issues.⁶⁵

A final advantage of the Netherlands is that the Dutch tax system satisfies the requirements of both the EU as well as the OECD, and for that reason, in contrast with more known tax havens, it is also attractive to investors from the point of view of reputation.

⁶³ KPMG, "Compliance to Performance Seminar," London, UK, 25 May 2006, Summary of proceedings, p. 18.

⁶⁴ J. Peters and R. Marlyn, *Conduit entity rules are key to IP planning*, International Tax Review, (London: Oct 2005), p 1.

⁶⁵ A. Grotenhuis, "De Indiers rukken op: Fiscale Zaken", NRC Handelsblad, 19 November, 2004, sec. Economie.

4.3. Dutch holding companies

The most commonly used strategy for large multinational companies for effective foreign tax reduction is the use of a holding company in a low-tax jurisdiction.⁶⁶ A holding company is a corporation that for the most part owns shares in related companies (subsidiaries) and unrelated companies. For a country to be an attractive holding company location, its tax regime should satisfy four criteria.⁶⁷

1. It should be possible to get dividends out of the subsidiaries to the holding company free of withholding tax, or at a lower rate of withholding tax by virtue of a tax treaty or the EU Parent-Subsidiary Directive.
2. The dividend income received by the holding company from the subsidiary must either be exempted from or subject to low rates of corporate income tax in the holding company's jurisdiction.
3. The profits realised by the holding company on the sale of shares in the subsidiary must either be exempt from or subject to a low rate of capital gains tax in the holding company's jurisdiction.
4. The outgoing dividends paid by the holding company to the ultimate parent corporation must either be exempt from or subject to low rates of withholding tax in the holding company's jurisdiction.

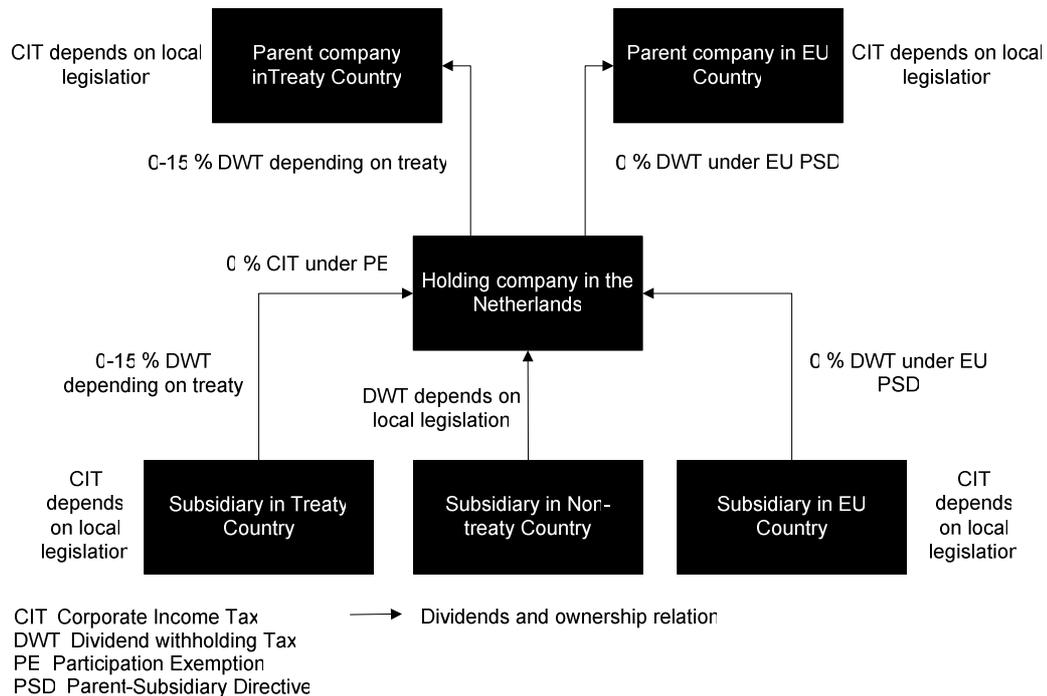
The Netherlands satisfies these four criteria. The combination of a large treaty network and the participation exemption makes that the Netherlands an ideal location for a holding company.

Figure 6 shows a diagram of common holding structures using the Netherlands as conduit country. The 'chain' is composed of (at least) three levels. At the highest level is the parent company, which is located in the EU or a treaty country. At an intermediate level is the holding company located in the Netherlands. This is normally a BV (limited liability company). At the lowest level are the subsidiaries (operating companies), which might be located in the EU, a treaty country or a non-treaty country.

⁶⁶ Michaela Vrouwenvelder, *Tax Planning to reduce foreign taxes for U.S. multinationals – an EU and Netherlands tax update*, Tax Management International Journal, vol. 30 (9) (2001), p. 403-415.

⁶⁷ <http://www.lowtax.net/lowtax/html/offon/netherlands/nethom.html> (12-7-06) and <http://www.deloitte.com/dtt/article/0,1002,sid%253D2883%2526cid%253D47144,00.html> (06-09-06). Also see Michaela Vrouwenvelder, *Tax Planning to reduce foreign taxes for U.S. multinationals – an EU and Netherlands tax update*, Tax Management International Journal, vol. 30 (9) (2001), p. 403-415.

Figure 6: Holding company structure



Provided the requirements for the participation exemption are met, the basic principle to reduce taxation of the Group using a holding company works as follows (from the lowest to the highest level).

Tax payments by the subsidiary

- ❑ Corporate income tax: the subsidiary companies pay corporate income tax in conformity with the local tax legislation. Tax rates differ substantially between countries. Corporate income tax in the Netherlands is currently 29%, but is scheduled to be lowered to 25.5%.
- ❑ Dividend withholding tax:
 - between 0% and 15% if the subsidiary is located in a treaty country;
 - 0% if subsidiary company located in the EU, under the EU Parent-Subsidiary Directive;⁶⁸
 - depending on local tax legislation if the subsidiary company is located in a non-treaty country.

⁶⁸ The dividend withholding tax rate can be overruled by the EU Parent-Subsidiary directive, which provides for a 0% withholding tax rate for dividend payments within the EU.

Tax payments by the Dutch holding company

- Corporate income tax: 0% due to participation exemption, if the income has already been taxed at the level of the subsidiary.
- Dividend withholding tax and capital gains:
 - 25% if the dividend is paid in the Netherlands and not transferred to the parent company;
 - between 0% and 15% if the parent company is located in a treaty country;
 - 0% if the parent company is located in the EU under the EU Parent-Subsidiary Directive.

Tax payments by the parent company

- Corporate income tax: Depending on local legislation.
- Dividend tax: Depending on local legislation

The consequence of this is that, for example, if a profit earned by a subsidiary in Cyprus is taxed at a low rate of 10% (or less, on occasion), then the tax paid in Cyprus settles the tax due in the Netherlands even though the tax rate in the Netherlands is much higher, currently 29.6%.⁶⁹ No dividend withholding tax is charged on the transfer of the profits to the Netherlands as Cyprus is an EU member state.

The treatment of dividends in the Netherlands is unusual, and the consistency with which it has been made available makes the Netherlands unique in this area even though other countries such as Luxemburg, Belgium and Switzerland offer variations on this exemption. Furthermore, few countries offer an equivalent exemption from tax on profits made on the sale of investments in subsidiary companies (capital gains) which for many conglomerate groups are a major source of revenues. No capital gains tax is charged on the disposal of shares which qualify for the participation exemption.

A major advantage of the Dutch holding company is that there are almost no substance requirements. This means that the holding company does not need to have employees. In many cases, a foreign-owned intermediate holding company is serviced by a trust office which provides management, administration and an address, as described in the previous chapter. Some countries demand a certain substance in the Netherlands before tax benefits on the basis of double taxation treaties are allowed. However, such anti-abuse clauses are lacking from most tax treaties negotiated by the Netherlands .

In principle, Dutch holding structures of foreign multinationals need not be harmful. If multinationals properly pay their corporate income taxes in all countries where they operate and use a Dutch holding structure to avoid dividend withholding taxes when transferring the profits of these subsidiaries to the parent company, that could be completely legitimate. Such an arrangement would only avoid double taxation of the same profit. However, such structures may become harmful when combined with financing and

⁶⁹ <http://www.taxsummaries.pwc.com/uk/wwts/wwts.nsf/id/MTHN-6QDGXU?OpenDocument> accessed 13-7-06

Table 4: Location of parent companies of Dutch companies classified as financial holdings

Country	All companies		Companies using trust	
	Number	Share (%)	Number	Share(%)
Non-tax havens				
The Netherlands	32,394	77	1,280	22
USA	1,657	4	691	12
United Kingdom	879	2	331	6
Germany	422	1	51	1
France	350	1	140	2
Sweden	263	1	111	2
Italy	252	1	163	3
Others	1,118	3	585	10
Total	37,335	89	3,352	57
Tax havens:				
Netherlands Antilles	2,128	5	1430	25
Belgium	805	2	210	4
Luxemburg	791	2	409	7
Switzerland	263	1	62	1
Israel	220	1	109	2
Bermuda	116	0	23	0
Cyprus	97	0	54	1
British Virgin Islands	75	0	49	1
Cayman Islands	50	0	38	1
Singapore	26	0	14	0
Malta	24	0	3	0
Aruba	23	0	19	0
South Africa	19	0	5	0
Gibraltar	15	0	4	0
Liechtenstein	14	0	4	0
Panama	13	0	8	0
Bahamas	12	0	7	0
Mauritius	8	0	4	0
Hungary	6	0	5	0
Seychelles	6	0	5	0
Belize	4	0	4	0
Uruguay	6	0	4	0
Barbados	3	0	2	0
Libanon	3	0	1	0
Saint Kitts and Nevis	3	0	-	-
Hong Kong	2	0	1	0
Liberia	2	0	1	0
Bahrein	1	0	1	0
Marshall Islands	1	0	1	0
Vanuatu	1	0	1	0
Total	4,737	11	2,478	43
Total	42,072	100	5,830	100

Source: REACH, Sep 2006.

Note: See annex 5 for the list of tax havens.

licensing arrangements that further reduce tax liabilities or with transactions within the group that do not apply the arm's length principle for transfer pricing and no or too little corporate income tax was paid in the country where the profit was generated.

Combinations of holding and other activities are discussed in paragraph 4.7. Moreover, Dutch holdings may serve as conduits for tax havens such as the Netherlands Antilles or the Cayman Islands, and therefore facilitate the establishment of a corporation's headquarters or other group companies in such low tax jurisdictions. This suggests rather aggressive and harmful forms of tax avoidance. To demonstrate the link with tax havens, Table 4 shows the locations of the parents of all Dutch companies classified as 'financial holdings' and with available data on the location of the ultimate share holder shareholder (or the ultimate known shareholder; the data are not complete in this regard).⁷⁰

The table confirms that companies domiciled by trust offices are established specifically to avoid taxation. In comparison with the data on all holding companies in the Netherlands, the share of corporations with a parent company in a tax haven is much higher. Indeed, no less than 25% (the largest group) of the trust clients has a parent located in the Netherlands Antilles. Other relatively popular tax havens include Switzerland, Cyprus, the British Virgin Islands and the Cayman Islands, which domicile together four per cent of the parent companies. It is also telling that of all financial holding companies with a parent in a tax haven, in most cases the majority is serviced by a trust office, again confirming that such companies are mainly established for tax planning purposes. A good example are financial holdings with a parent on the British Virgin Islands. Out of these 75 companies, 49 are managed by a trust office.

BHP Billiton's Dutch reserves of 'diversified resources'

Disclaimer

The group tax department of BHP Billiton plc has been asked to review this case study, provide additional information to answer the questions that have arisen, and correct any errors in the data. In response, the group tax department provided some contextual information and emphasised that BHP Billiton '(...) *fully complies with its obligations and pays taxes in these countries in accordance with the law*'. We have no reason to doubt this statement.

Furthermore, the corporation expressed its view that '(...) *the BHP Billiton Case Study is a material inaccurate reflection of the facts and application of the underlying principles and should be removed from the report*'.⁷¹ However, when asked to identify specific points that were inaccurate, the company did not do so. Therefore SOMO has not been able to correct any points that are inaccurate in BHP Billiton's view or to decide to remove the box on an informed basis. Any additional information related to the case study received from BHP Billiton after this report has been published will be made available on the SOMO website (<http://www.somo.nl>).

⁷⁰ See Note 39.

⁷¹ BHP Billiton, Group Tax Department, faxes to SOMO received on 27 Oct 2006 and 3 Nov 2006.

BHP Billiton's presence in The Netherlands

BHP Billiton is the world's largest diversified resources company, and its businesses include oil production, coal, iron ore, copper, bauxite, nickel, and diamond mining, and refining and smelting operations. It has substantial operations in developing and transition countries. The present corporation was created in 2001 by a merger between BHP Ltd (now BHP Billiton Ltd), based in Australia, and Billiton plc (now BHP Billiton plc), based in the UK. Although the corporation operates as a single group, the Ltd and plc continue to exist as separate legal entities.

BHP Billiton has historical roots in the Netherlands that date back to 1860. Unlike mailbox companies, it has a real and substantial presence and employs 200-250 people performing group functions. The corporation has a large holding structure in the Netherlands comprising at least 47 BVs and 1 NV, including 24 financial holdings. Most of these companies share the address Verheeskade 25 in Den Haag and form part of a complex hierarchical structure with BHP Billiton Company BV at the top. This company, in turn, is directly owned by BHP Billington Holdings Ltd in the UK and ultimately by BHP Billiton plc. The remaining Dutch BVs are directly held by Billiton Marketing Investments BV, 58% of which is owned by the Australian parent and 42% by the UK parent company. Various Dutch BHP Billiton companies have names that suggest they operate in developing countries, such as Billiton Chile BV, BHP Billiton Ghana BV, and Billington Indonesia holdings BV. However, reliable data suggests that most of these companies do not have any subsidiaries.

The question is, does the corporation's holding structure in the Netherlands contribute to tax avoidance? In the financial year 2004-2005, the entire BHP Billiton group reported US\$ 2,111 million in tax payments (including withholding taxes) on a total of US\$ 8,741 million earnings before tax (after relatively minor exceptional items). This amounts to a corporate tax charge of approximately 24.1%. Subtracting the increase in deferred tax due after more than 1 year, which almost doubled from 2004 to 2005, US\$ 1,603 million of immediate tax payments remains, lowering the effective corporate tax rate to 18.3%. Although the group's financial statements include several pages of notes on taxation, these comments do not offer a satisfactory explanation for the low tax rate.

Links with other tax havens

Although no certainty can be obtained on the basis of the available data, the overall picture suggests that the group might be avoiding taxes in the countries in which it operates, and that its holdings in the Netherlands may play an important role in this. A first indication is the link between Dutch holdings and a subsidiary on Jersey. Together, BHP Billiton Company BV and its two direct subsidiaries BHP Biliton Finance BV and BHP Billiton Holdings BV own a 92% stake in BHP Billiton South Africa (Jersey) Ltd on the Channel Island of Jersey, a well-known tax haven jurisdiction. This company, in turn, holds "5% preference" shares in various group companies, including BHP Billiton SA Investments Ltd (which holds the group's operations in South Africa) and BHP Billiton Group Ltd (which holds all BHP Billiton plc's investments). BHP Billiton Company BV also owns BHP Biliton Jersey Ltd, a holding company in Jersey, which in turn owns a number of other companies, including Sociedade geral de mineração de Mozambique SARL, apparently in Mozambique.

This suggests that some group profits may be routed through Jersey to The Netherlands, but information about the purpose of this structure could not be found.

Thin capitalisation and intra-group borrowings

Intra-group borrowings can form part of a tax avoidance strategy. Hypothetically, it might be possible that operating companies abroad borrow from BHP Billiton Finance BV or another Dutch BV, paying high interest payments on these borrowings, and as a consequence reporting a net loss before taxation. There is evidence of thin capitalisation, as some companies report negative equity, or very high debt to equity ratios (see table below). The last five companies in the table are direct subsidiaries of Billiton Development BV. However, most of these seem just empty shells that do not report any revenues and operating costs of a few hundred thousand US\$ or less, and pay no interest or taxes (but receive no tax credits either). It is therefore highly unlikely that this forms part of a tax avoidance strategy. Billiton Development BV itself reports relatively modest revenues of US\$ 18 million and participations in subsidiary profits of US\$ 9 million. Furthermore, Billiton Development BV's assets, consisting of over 25 subsidiaries, are valued at zero on its balance sheet. The purpose of this strange sub-structure is not clear.

Table 5: Thin capitalisation of some BHP Billiton companies (x 1,000 US\$, as of 30 Jun 2005).

Company	Equity	Long term debt	Short term debt	Balance total	Debt/equity ratio
Billiton Development BV	-98,445	96,901	1,544	0	-1.0
Billiton Argentina BV	-9,586	9,424	194	32	-1.0
Billiton Chile BV	-16,967	16,787	428	248	-1.0
Billiton Exploration and Mining Peru BV	-14,779	14,847	413	481	-1.0
Billiton Indonesia Holdings BV	17	3,361	0	3,378	198
BHP Billiton Ghana BV	9	0	0	9	0

Source: KVK data, Sep 2006.

There are some discrepancies between the borrowings and lendings of some companies and their paid and received interest, however. BHP Billiton Company BV, for example, had US\$ 0.5 billion of debtors and lenders in mid-2004 and US\$ 1.8 billion in mid-2005, while it only received US\$ 1.8 million of interest income in the year 2004-2005. Inversely, BHP Billiton Finance BV had a huge US\$ 5.3 billion of short-term debts in mid-2004 and US\$ 3.3 billion in mid-2005, plus a constant long-term debt of US\$ 741 million, while it paid only US\$ 149 million of interest. This suggests that the Dutch BVs are involved in intra-group borrowings with artificially high or low interest rates, which might in theory be linked to tax avoidance strategies. However, on the basis of the available data, the question whether this is indeed the case cannot be answered.

Accumulation of group profits

The accumulation of group profits in foreign subsidiaries for the purpose of achieving tax deferral, sometimes without limit, is also a potential tax avoidance strategy. Accumulation of group profit will be analysed using some unconsolidated financial figures which are available for BHP Billiton Company BV. During the book year 2004-2005, the company's book value of total assets increased from US\$ 2.7 billion to US\$6 billion. The difference is mainly due to a huge increase in financial assets, which are probably investments in subsidiary companies, and in debtors, which are probably amounts owed by other group companies, as already explained above. The increase in assets is matched by a similar increase in undistributed profits, from US\$328 million in mid-2004 to US\$ 3.7 billion in mid-2005. The company's income from dividends in 2004-2005 also amounted to US\$ 3.7 billion. This is over 40% of the corporation's US\$ 8.7 billion total profit before taxation, or well over half of the group's after-tax profits. It therefore appears that approximately half of the profits made by BHP Billiton subsidiaries all over the world were accumulated in the Netherlands. It is not totally clear whether or how the accumulation of group profits in The Netherlands might be linked to the increase in deferred tax liabilities, however.

BHP Billiton Company BV did not pay taxes on its income from subsidiaries, because such income consisted of tax-exempted dividends. In fact, the company made a pre-tax loss of US\$ 11 million and received US\$ 1.5 million in tax credits from the Dutch government. In 2002-2003 and 2003-2004, tax payments were also negative. Apparently, most of the income of BHP Billiton Company BV in 2004-2005 was derived from its share in undistributed profits from the fully-owned subsidiary BHP Billiton Finance BV. The latter reported US\$ 3.9 billion of untaxed exceptional earnings, the precise nature of which could not be determined. BHP Billiton Finance BV did pay taxes over the past years, in the order of US\$ millions.

The accumulation of profits in the Netherlands is confirmed by the accounts of BHP Billington Holdings Ltd, the direct parent of BHP Billiton Company BV. BHP Billington Holdings Ltd reports income from shares in group undertakings of US\$ 8.2 million, which is only a fraction of the profits reported by BHP Billiton Company BV, and paid no dividends in 2005. In other words, none of the profits reported by the Dutch holding company are transferred upwards to the ultimate parent company as dividends.

Higher up in the holding structure, the income flows can no longer be fully traced, because most shares of BHP Billington Holdings Ltd are held by BHP Billiton UK Holdings Ltd and BHP Billiton UK Investments Ltd in the British Virgin Islands. No accounts of these companies are available. These two companies, in turn, are both 100% owned by BHP Billiton Group Ltd in the UK, which reports US\$ 1.1 billion of income from shares in group undertakings. This income must largely come from its two subsidiaries in the British Virgin Islands, because the only other direct subsidiary of BHP Billiton Group Ltd is BHP Billiton (UK) Ltd, which reported US\$ 26 million of profits and paid out US\$ 39 million of dividends. BHP Billiton Group Ltd also owns a few direct shares in BHP Billington Holdings Ltd, but this company did not pay out any dividends, as was already mentioned above. The question is, of course: how does US\$ 1.1 billion of income end up in two companies in the British Virgin Islands when the known subsidiary of these companies, BHP Billington Holdings Ltd, did not pay any dividends to them?

Conclusion

As usual, the available data is insufficient to determine with certainty whether the corporation is indeed avoiding taxes, perhaps in the order of US\$ hundreds of millions, and if so, how intra-group transactions are scheduled precisely to achieve this effect. The holding and financing structures of the group are very complex and further research would be required to assess the taxation consequences of these structures in more detail. Although no certainty can be obtained on the basis of the available data, the overall picture suggests that the group might be avoiding taxes in the countries in which it operates, and that its holding companies in the Netherlands may play an important role in this.

4.4. The Netherlands Antilles route

It should be borne in mind that the Kingdom of the Netherlands includes three states, the Netherlands, the Netherlands Antilles and Aruba. The last two are also noted tax havens, with the Netherlands Antilles being generally considered a relatively important one.

The Netherlands tax treatment of income and capital gains flowing through its territory are particularly amenable to companies owned in Netherlands Antilles, as Mittal Steel was, for example, until 2004. Although the use of the Antilles route has already become less attractive since the late 1990s,⁷² Table 4 above shows that it is still widely used. This is because under the *Belastingregeling voor het Koninkrijk* (BRK), the tax treaty covering the Netherlands, Netherlands Antilles, and Aruba, the following favourable arrangements are available.⁷³

- ❑ As is usual with the Netherlands there is no withholding of tax on interest or royalties paid to the Netherlands Antilles. This assists these income streams to flow beyond the reach of normal taxation.
- ❑ Since 2002, dividends paid by a Dutch corporation to a Netherlands Antilles corporation are subject to 8.3% dividend withholding tax in the Netherlands. Under the agreement, the tax income is transferred to the government of the Netherlands Antilles. The income of a Netherlands Antilles corporation from dividends and capital gains from a Dutch subsidiary corporation are 100% tax exempt, provided that it owns at least 25% of the Dutch corporation (BV).
- ❑ Of the dividends and capital gains from subsidiaries in other countries, 95% is tax exempt. The normal tax rate of 34.5% is applied to the remaining 5%, resulting in an effective rate of 1.725%. There is no requirement that such income is subject to taxation abroad. However, withholding taxes may apply in the country of origin.
- ❑ It is also possible for a Netherlands Antilles BV to apply for a 0% tax rate. In that case, the company may only be involved in financing and investment in securities

⁷² F. de kam, "Fiscaal gidsland," NRC Handelsblad, 11 Dec 1998, Sec. Economy, p. 15; H. Schutten, "De vluchtwegen van het kapitaal," Het Parool, 20 Mar 1996, sec. Economy, p. 25.

⁷³ Lowtax.net, "Netherlands Antilles double tax treaties," <<http://www.lowtax.net/lowtax/html/jna2tax.html>> (17 Jul 2006); Amicorp Group, "Netherlands Antilles," (4 Sep 2006); PwC, 14 Mar 2005, "Update over fiscale mogelijkheden op de Nederlandse Antillen en Aruba" (4 Sep 2006).

and deposits, and it must be governed by a certified Netherlands Antilles trust company (or resident person).

- In the Netherlands Antilles, no withholding tax is charged on outgoing dividends.

At present, there are over 2,600 BVs and NVs incorporated in the Netherlands Antilles with direct subsidiaries in The Netherlands. Of these subsidiaries, some 2,000 are financial holding companies,⁷⁴ which strongly suggests that these are holding structures set up to benefit from the Netherlands Antilles route. The ultimate parent company in such structures is not always known. In some cases, though, the ultimate parent is not located in the Netherlands Antilles but in a tax haven of a different type. Examples are Bacardi-Martini, and in the recent past DHL, before it was taken over by Deutsche Post. Both corporations had their ultimate parents in Bermuda. The special holding structure of Bacardi-Martini is analysed in more detail below.

Bacardi-Martini: the Netherlands as a conduit for Bermuda, Liechtenstein, Bahamas

Bacardi-Martini is a privately owned corporation, and financial figures such as revenues, profits, and tax payments at the group level are not available. At least 50 direct subsidiaries worldwide are held through a Dutch holding company (see figure below). At the level of the Dutch holding company, some key figures consolidated up to this level are available. These are combined figures for the Dutch holding and its direct and indirect subsidiaries worldwide, with transactions between them eliminated. These accounts do not include revenues generated outside the Dutch holding structure, for example by the group's companies in Liechtenstein and Bahamas and at the level of the parent companies in the Netherlands Antilles and Bermuda.

Over €2 billion of revenues passes through the Dutch subsidiary Bacardi-Martini BV. In the year to 31 March 2005, its earnings before interest and taxes were €123 million. Tax charges were €51 million or 48% of profits before taxes, and provisions for deferred taxes decreased by €1 million, so cash tax expenses appear rather high. For the years 2002 to 2004 the amount of tax paid on profits before taxation was also high at 43%, 80%, and 103% respectively. One factor that might contribute to these high percentages might be goodwill depreciation, which is subtracted from book profits, but usually not subtracted to determine taxable profits. Goodwill held by the Dutch holding company, consisting for example of investments in subsidiaries exceeding their book value equity and the value of trademarks, were substantial at over €0.5 billion or almost a quarter of Bacardi-Martini BV's total assets as of end March 2005.

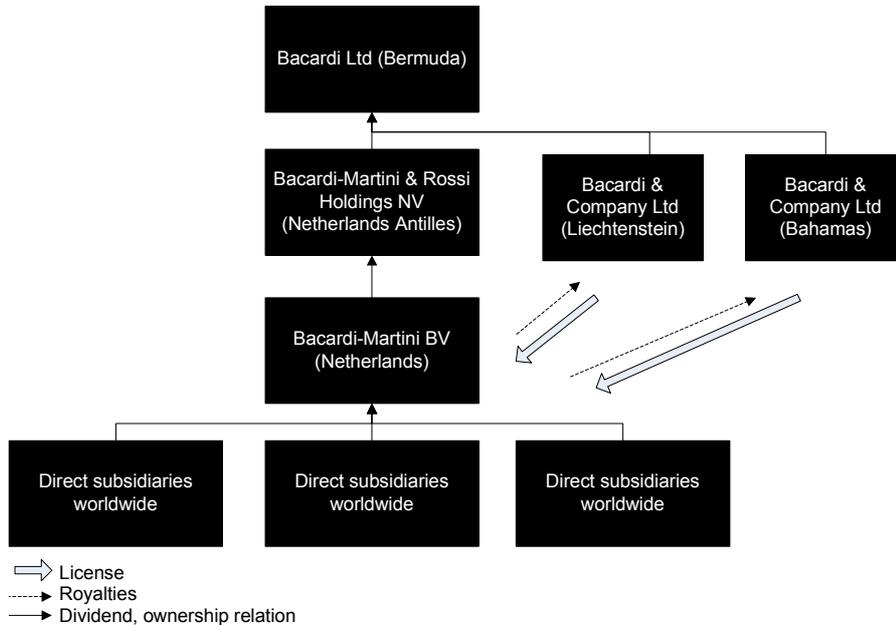
Furthermore, the operating margin at the level of the Dutch holding company seems relatively low, compared for example to the GICS Distiller&Vintner Sub-Industry average net profit margin of 9.3%.⁷⁵ In 2005, the Dutch holding had a gross profit margin of 5.7% and a net profit margin of 2.1%. It is known that some companies artificially lower profits through high interest payments to other group companies.

⁷⁴ Based on data from the KVK (Dutch Chamber of Commerce).

⁷⁵ Standard & Poor's, GICS Sub-Industry Benchmark represents S&P 1500 Composite, Report updated 09/06/2006.

However, this is unlikely in the case of Bacardi-Martini BV, as its interest expenses were only €21 million. It may be possible that the operating margins of the Dutch holding company are lowered due to other high intra-group expenses, though, such as royalty payments for the use of trademarks, included in the cost of sales.

Figure 7: Holding structure of Bacardi-Martini



This cannot be directly assessed on the basis of the financial figures that are publicly available. However, internationally, most of the corporation's trade marks such as the brand names 'Bacardi', 'Tequila Cazadores Reposado', and 'Black Goose' are owned by two companies with the name Bacardi & Company Ltd, one located in Liechtenstein and the other in the Bahamas.⁷⁶ Apparently, these companies are not owned directly or indirectly by the Dutch holding company Bacardi-Martini BV, but held by Bacardi Limited (Bermuda) through a different structure. It is therefore plausible that, in some way or another, Bacardi-Martini BV and its subsidiaries pay for the use of trademarks to the Bacardi subsidiaries in Liechtenstein and the Bahamas, and these royalty payments may form a substantial part of the Dutch holding's consolidated cost of sales.

Theoretically, in the countries in which the corporation operates, this could result in a combined lost tax income in the order of tens of millions of euros due to tax avoidance. If the above assumptions are correct, then in this particular case the Netherlands would be serving as a conduit country for dividends from third countries to the Netherlands Antilles, and possibly for royalties from third countries to the Bahamas and Liechtenstein, and finally on to Bermuda.

⁷⁶ Data from the US Patent and Trademark Office, Sep 2006.

This would be facilitated by the special treatment of dividends paid by a Dutch company to a parent company in the Netherlands Antilles and the absence of withholding taxes on royalties, combined with the Netherlands' large network of double tax treaties that reduce or eliminate withholding taxes on outgoing dividends and royalties from third countries.

Given the lack of detailed information, it is impossible to know the motivation behind Bacardi's corporate structure – tax avoidance being only one of several possibilities. Probably only Bacardi can shed light on these issues, but unfortunately the company refused to comment on this case study.

4.5. Dutch royalty conduit companies

A licensing or royalty conduit company acts as an intermediary between the owner or creator of intellectual property (e.g. in the form of a patent, film rights, copyrights or trademark) who is not resident in the Netherlands and a person who wants to use that patent under licence in another, third, country.

It is common for the company which owns the intellectual property to be located in a tax haven where profits can be 'taken out' at very low or zero tax rates. Furthermore the payment of the royalty income from the Netherlands to the home country of the intellectual property owner will not be subject to any withholding taxes. Finally, because of the Netherlands' extensive system of double tax treaties, royalties paid to the Netherlands by the subsidiary or independent licensee will have no or very low withholding taxes applied to them. This might not be the case if the royalties were paid straight to the home country of the intellectual property owner. This is what makes this structure so beneficial. The licensing activities can be combined with holding, financing or actual operating activities such as trading or manufacturing. Figure 8 illustrates the working of a royalty conduit company.

The Dutch company has to pay the standard Dutch corporate income tax of 29.6% on the difference between the royalties paid to the intellectual property owner and the royalties received from its subsidiaries or independent licensees. Nonetheless, this is likely to be much less than any withholding tax paid in most cases if royalties were paid direct from the third country to the patent owner's home state without use of the Dutch intermediary.

The EU Interest and Royalties Directive came into effect in 2004. Under the directive, a 0% withholding tax applies to qualifying interest and royalty payments between qualifying associated corporations established in the EU. To qualify, certain conditions must be met. The Directive has reduced some of the attractiveness of these arrangements, whereby royalties are paid between related companies, but the Dutch have responded to this by planning to offer new incentives to those wishing to route royalties through the Netherlands, as will be noted later in this report.

In 2006, new Dutch rules for interest and royalty conduit companies came into force with stricter anti-abuse provisions. Under these new rules, the participation exemption no longer applies to dividends from foreign companies that are mainly involved in granting licences and/or providing loans to other companies.⁷⁷ While this might be effective against royalty conduits in tax havens such as the Netherlands Antilles owned by Dutch holdings, it does not affect the royalty and interest conduits in the Netherlands used by foreign multinationals as described in the figure below.

Figure 8: Royalty conduit structure

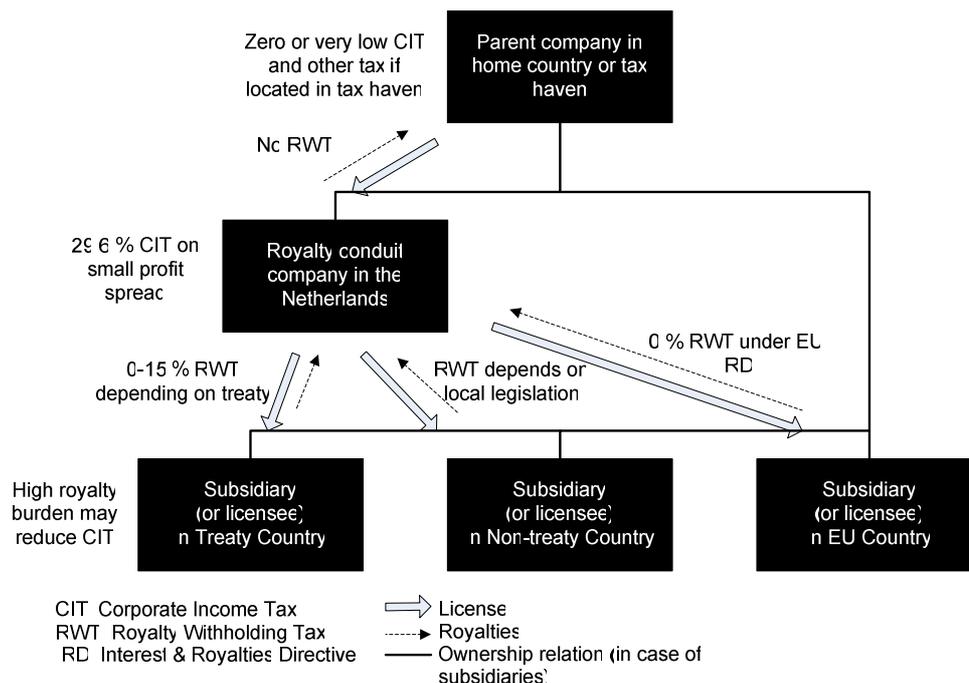


Table 6 presents information on the location of the parent company of royalty conduit companies in the Netherlands (i.e. the location of company in the top box of Figure 8). The table was compiled by selecting all the companies with main activity 'exploitation of patents and licences' and with data available on the location of the ultimate shareholder (or the ultimate known shareholder; the data is not complete in this regard).⁷⁸ It covers about half of the companies with this sector classification in the Netherlands. Table 6 also provides information on royalty conduit companies that are serviced by trust offices. No less than 3% of all companies using trust services are classified as exploiting patents, licences, etc – the fourth category after financial holdings, investments in financial assets, and trust offices for shares and bonds – which corroborates that the sector classification chosen includes royalty conduit companies.

⁷⁷ J. Mongon and A. Johal, PwC, 'Conduit entity rules are key to IP planning,' International tax Review, Oct 2005, p. 1.

⁷⁸ See Note 39.

Table 6: Location of Parent Company of Companies classified as exploiting of patents and royalties.

Country	All companies		Companies using trust	
	Number	Share (%)	Number	Share (%)
Non tax havens:				
Netherlands	679	58	48	17
United States	62	5	24	8
Great Britain	53	5	29	10
Italy	17	1	12	4
Spain	15	1	12	4
France	15	1	1	0
Germany	14	1	3	1
Others	60	5	23	8
Total	915	79	152	54
Tax havens:				
Netherlands Antilles	150	13	83	29
Luxemburg	33	3	19	7
Switzerland	17	1	3	1
British Virgin Islands	15	1	13	5
Belgium	14	1	5	2
Bermuda	6	1	3	1
Singapore	3	0	1	0
South Africa	2	0	-	-
Bahamas	2	0	2	1
Cyprus	2	0	1	0
Cayman Islands	2	0	1	0
Barbados	1	0	0	0
Gibraltar	1	0	0	0
Honkong	1	0	0	0
Panama	1	0	0	0
Total	250	21	131	46
Total	1,165	100	283	100

Source: own computations using REACH

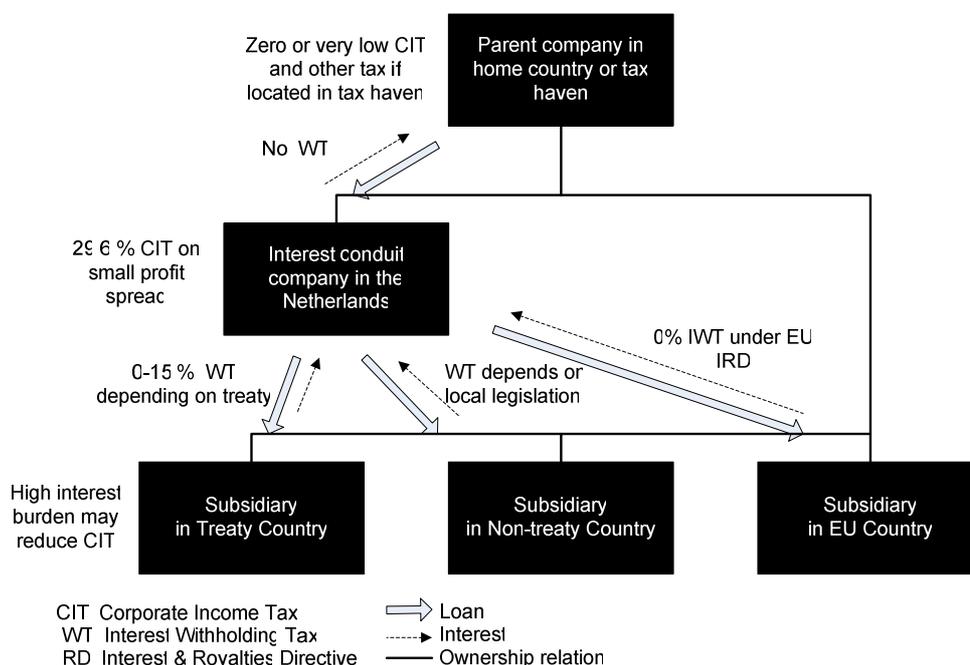
The figures confirm that the parent companies of royalty conduit companies are generally located in a tax haven country. The highest share (58%) of the parent companies in the 'all companies' column are located in the Netherlands. It is hardly surprising that the Netherlands tops the list, as there are probably many companies which are not part of a royalty conduit structure and therefore have their parent company in the Netherlands. It is also possible that another parent company exists on top of the Dutch parent company, which is located in a tax haven. This would not be picked up by the figures shown. Companies using trust services are almost by definition part of tax planning structures and are therefore much more likely to use the royalty conduit structure. It is therefore not surprising that 29% of such companies, the highest share, have their parent company situated in the Netherlands Antilles. Other popular tax haven locations are Luxemburg (7%) and the British Virgin Islands (5%).

4.6. Dutch interest conduit and group financing companies

Financing companies may be divided into interest conduit companies, group financing companies, and fundraising vehicles.⁷⁹

Fundraising vehicles are less relevant in the context of this report. They are used for borrowing or issuing bonds in international capital markets (see box on Parmalat in chapter 3). The funds are then lent onwards to subsidiaries and the parent company. The benefit of this structure is that interest payments from subsidiaries and the parent company can be exempted from withholding tax due to the Dutch double tax treaty network, and no withholding tax is paid on outgoing interest by the Dutch fundraising vehicle either.

Figure 9: Interest conduit structure

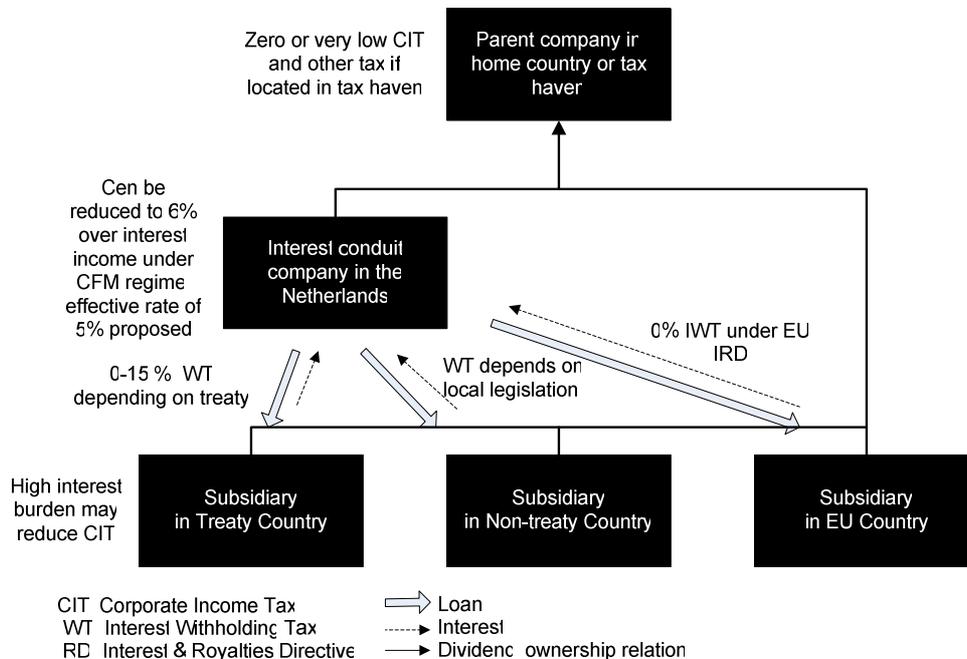


Interest conduit companies are similar to royalty conduit companies but are used for the purpose of making inter-group or third-party loan interest payments where tax withholding would take place if the interest were to be paid directly between the two principal parties to the arrangement. Withholding tax is saved by routing the loan through the Netherlands at the price of a small tax liability arising in the Netherlands over the 'spread' between interest received and paid. Like the royalty conduit company, the parent company is normally located in a tax haven. Again, advance rulings are available on what is an

⁷⁹ TCI, "International tax planning - The Dutch Finance Company," http://www.taxci.nl/read/dutch_finance_company (Sep 2006).

acceptable margin to be made in the Netherlands. It is suggested that the margins could be as low as 0.5%.⁸⁰ The attractiveness of this arrangement has also been reduced by EU Directives, but plans are now being mooted to re-establish Dutch pre-eminence in this market.

Figure 10: Group financing structure



Group financing companies also provide loans to other companies within the group. However, they are different from interest conduit companies in the sense that they are financed by equity instead of loans from the parent company. Group treasury and financing activities may be centralised in the Dutch company. Structures also exist with a Dutch BV with a branch in Luxembourg or Switzerland, which have special tax regimes for group financing activities.⁸¹ A Dutch group financing company can be used to avoid taxes in other countries by making excessive loans to subsidiaries abroad. As a result, the subsidiaries become thinly capitalised, which means that they have a very high or even negative ratio of debt to equity. The high interest payments on these debts lead to lower taxable profits reported by the subsidiaries, or even turn them into losses. Alternatively, a group finance company may not provide excessive loans, but charge artificially high interest rates on the intra-group loans instead.

⁸⁰ Lowtax.net, "Netherlands: Interest Conduit Companies," <<http://www.lowtax.net/lowtax/html/offon/netherlands/netint.html>> (Jul 2006).

⁸¹ TCI, "International tax planning - The Dutch Finance Company," http://www.taxci.nl/read/dutch_finance_company (Sep 2006).

Under a Dutch law introduced in 1997, called the *Concernfinancieringsactiviteiten* (CFA) regime in Dutch, group finance companies were able to operate at pre-agreed margins unrelated to changes in commercial situations. In addition, reserves could be made against up to 80% of income from financing activities.⁸² These are unusual and contrary to the bases of calculation of tax liabilities usually used, lowering the effective rates of tax charged to 6%, even though the standard rate of corporate income tax was charged on the remaining 20% of income (29.6% corporate tax on 20% of income is 5.9% effective tax on income). Tax allowable reserves can be made, for example, for the cost of replacing assets and investments, which is almost unknown in any other taxation system where the anticipation of expenditure is normally strictly forbidden.⁸³

Various experts consider that the CFA regime is the most harmful aspect of the current Dutch tax system. It has been found to be in breach of the EU Code of Conduct on Business Taxation and will be discontinued under pressure from the EU and OECD.⁸⁴ Since 11 July 2001, new companies can no longer apply for the regime. For corporations that were already using the CFA regime, it will remain in force until 2011, although apparently for some the regime might already end in 2007.⁸⁵ Alternative arrangements are, however, being planned for group finance companies, which are discussed in chapter 5 on proposed changes in the Dutch tax system. The newly proposed 'group interest box' reduces the effective tax rate on interest income to 5% for qualifying interest income.⁸⁶

4.7. Holding, financing, and licensing activities combined

Financing companies do not need to own the subsidiaries to which they provide loans in order to benefit from the 0% withholding tax under Dutch double tax treaties, they can simply lend money to any (group) company. Furthermore, finance conduit companies or fundraising vehicles may be held by the parent company outside normal holding structures

⁸² Ernst & Young, "Concernfinancierings-maatschappij blijft gehandhaafd tot 2011," News release 27 Feb 2003, <http://www.ey.nl/?pag=788&nieuws_id=1549&PHPSESSID=d6f4edbf634da31db771653148cdb679> (Nov 2006); M. Vrouwenvelder, "Tax planning to reduce foreign taxes for U.S. multinationals – an EU and Netherlands tax update," *Tax Management International Journal*, Vol. 30, Issue 9 (7 Sep 2001), p. 403-14.

⁸³ KPMG, 'Investment in the Netherlands' 2004, page 64

⁸⁴ Primarolo Group, "Code of Conduct (Business Taxation)," 29 Nov 2000, <<http://www.uv.es/cde/TEXTOS/primarolo.html>> (Sep 2006); OECD, "Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices," 2000, <<http://www.oecd.org/dataoecd/9/61/2090192.pdf#search=%22towards%20global%20tax-cooperation%22>> (Sep 2006); Tax expert, 12 Oct 2006, interview by M. Van Dijk.

⁸⁵ Uncorrected stenogram, Legislative meeting, Vaste commissie voor Financiën, 18 Sep 2006; Ernst & Young, "Concernfinancierings-maatschappij blijft gehandhaafd tot 2011," News release 27 Feb 2003, <http://www.ey.nl/?pag=788&nieuws_id=1549&PHPSESSID=d6f4edbf634da31db771653148cdb679> (Nov 2006).

⁸⁶ Wijziging van belastingwetten ter realisering van de doelstelling uit de nota "Werken aan winst" (Wet werken aan winst), Document 30 572 No. 2, Art. 12c; W. Paardekooper, Baker & Mackenzie, "World Tax Review 2006 on the Netherlands," <<http://www.internationaltaxreview.com>> (Jul 2006), p. 2.

and theoretically even external service companies, not owned by the corporation, could be used for these purposes.⁸⁷ In practice, however, group financing, holding and finance conduit activities are often combined, usually involving a hierarchical structure of several Dutch BVs that can be quite complex.

It must be stressed that in many groups of companies, profits are retained within intermediate holding companies so long as these are stable, low tax environments and are not returned to the parent company. This is possible because most parent companies do not themselves distribute all their profits to their shareholders by means of dividends. For companies publicly listed in the UK, for example, a payout ratio of 30% - 40% is common.⁸⁸

A Dutch holding company that receives low taxed dividends or gains from its own subsidiary companies can effectively defer these gains for its parent company, almost indefinitely. Because of the Netherlands' extensive range of double tax treaties and because the Netherlands has a reasonably high corporation tax rate, it is not subject to what are called 'controlled foreign company' rules used by most developed countries to control tax haven abuse by parent companies in their territories seeking to shelter profits offshore. The consequence of this is that the profits of the Dutch subsidiary cannot be taxed in the home state of the parent company, and as result the profits can be left in the Netherlands indefinitely without the higher rate of tax arising that would be due if the profits were paid to the parent company.

Therefore part of the dividend, capital gains, royalties and/or interest income is often left or accumulated in the Netherlands. This does not, however, prevent the profits being used by the parent company. For example, the profits retained in the Netherlands can be lent from the Dutch holding to the parent company with a very low rate of tax being charged in the Netherlands on the resulting interest income (maybe only 5% in future), but with the parent company getting full tax relief, for example at rates of up to 30% in the UK. This increases the attractiveness of tax structures involving the Netherlands.

4.8. Alternative tax planning structures

The conduit structures outlined above mainly involve companies limited by shares (*Besloten Vennootschap*, BV). Very brief information was found on a number of alternative tax planning structures which involve other types of legal entities.

Some mention has been made of the orphan structure or asset protection structure. This structure is used to split off the legal title of assets from the equity and/or control of the original owner. In the Netherlands this is done by placing the shares of a BV in a Foundation. Orphan structures are normally set up by a trust office which sits on the board of directors of the foundation and the BV.

⁸⁷ J. Peters, "Conduit entity rules are key to IP planning," *International Tax Review* (Oct 2005), p. 1.

⁸⁸ Data from research used to produce 'Mind the Tax Gap', The Tax Gap Limited, 2006, available from www.taxjustice.net/cms/upload/pdf/Mind_the_Tax_Gap_-_final_-_15_Jan_2006.pdf

The main goal of an orphan structure is to ensure that the assets and liabilities of the subject company are treated as off-balance with respect to the sponsor of the structure.⁸⁹ Other reasons for creating an orphan structure are to avoid or minimise regulation which might otherwise apply to a structure, and to ensure that the company is 'bankruptcy remote' from companies in the same group as the sponsor. Orphan structures are also used for securitisation and estate planning. In the latter case, the related foundation is called a stichting administratiekantoor.

Finally, the finding that apart from BVs and foundations, a substantial share of the mailbox companies domiciled by trust offices are limited partnerships and cooperations suggest that tax planning structures also exist involving these type of legal entities.

⁸⁹ http://en.wikipedia.org/wiki/Orphan_structure (27-09-06).

Chapter 5

Changes in the Dutch tax system

5.1. Pressure for change

The Dutch tax system has been passing through a period of change due to pressure from the EU, OECD, and various individual countries. In 1998, the OECD issued the report 'Harmful tax competition: An emerging global issue', which marked the start of a working programme on harmful tax practices. A second report in 2000 identified potentially harmful regimes in different OECD countries, including several Dutch model rulings and risk reserves for international group financing.⁹⁰

Parallel to this, the EU Code of Conduct Group on Business Taxation, under the chairmanship of Dawn Primarolo from the UK, reported its initial findings to the EcoFin Council on 29 November 1999, identifying 15 practices included in Dutch law that were considered violations of the Code.⁹¹ All countries had some such transgressions, but the Netherlands was especially heavily criticised.⁹² The following harmful practices were identified:

1. Cost plus pricing rulings, suggesting the OECD arm's length transfer pricing rules were not respected;
2. Abusive intra-group financing rules on non-arm's length terms, implying that standard OECD arrangements were not required, and were quite often sanctioned by prior agreement with the Dutch tax authorities;
3. The participation exemption provided a low tax on foreign source income;
4. The taxation of royalty income was at low rates;
5. The allowance of reserve accounting for group finance companies was a non-standard tax practice reducing tax rates;
6. The taxation of foreign branches was not in line with international norms;
7. The regime for taxing shipping was non-standard;
8. Advance rulings were given on certain tax arrangements which might result in artificial or non-standard arrangements.

These issues were serious, and unusually extensive. The Netherlands had deliberately created these opportunities. It was required to take action to change them under the terms of the Code. All the changes had to be made by 2011 at the latest. The result is that all the

⁹⁰ OECD, "Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices," 2000, <http://www.oecd.org/dataoecd/9/61/2090192.pdf#search=%22towards%20global%20tax-cooperation%22> (Sep 2006)

⁹¹ Full text available at <http://www.uv.es/cde/TEXTOS/primaloro.html> accessed 12 July 2006

⁹² R. Veremeulen, "belastingparadijs grachtengordel," *Algemeen Dagblad*, 21 Oct 2000, Magazine, p. 24.

historic structures which have made the Netherlands an attractive tax haven to date will be subject to change, the details of which are given below. The OECD model for transfer pricing arrangements was already adopted in 2002 and is now required by Dutch law.

The second reason for change in the Dutch tax system has been the impact of decisions of the European Court of Justice on Dutch tax law. Such decisions have impacted on the Netherlands, and perhaps most particularly in the case known as *Bosal Holdings NV*, after the Dutch steelmaker which brought and won the case. As a result of their successful claim in 2003, *Bosal* proved that the Netherlands had to provide it with tax relief on the cost of borrowing funds to enable it to buy and finance subsidiary companies, even though the dividends and capital gains it received from those subsidiary companies were not taxable in the Netherlands.⁹³ This put the Netherlands in the unenviable position of finding that the participation exemption required it to provide tax relief (and therefore pay potential tax refunds) while giving it no right to collect tax to match that relief. This threatened any benefit it might have received as a tax haven and as such it reacted by introducing new tax anti-avoidance rules in 2004. These consisted of the following:⁹⁴

- ❑ Amending the participation exemption to allow costs to be offset as required by the European Court of Justice decision;
- ❑ Introducing thin capitalisation rules, which effectively limit the amount of interest which can be subject to tax relief;
- ❑ Limiting the carry forward of losses for holding and finance companies, to try to limit the overall loss of income the government might suffer as a result of the *Bosal* case.

Thirdly, there has been pressure from the European Commission to change the Dutch ruling practice, because companies in other countries cannot obtain certainty in advance as to how their transactions will be taxed, and this allows Dutch companies an unfair advantage.⁹⁵ This has led to the current system of ATRs and APAs described in the previous chapter.

In combination, these pressures from the EU under its Code of Conduct, from the European Court of Justice and from the European Commission, have pressurised the Netherlands into a programme of reform of its taxation laws. The major changes resulting from that programme are scheduled to commence in 2007. As is also noted below, the Dutch government is making the detailed changes required of it by the EU, but appears to remain committed to the use of the Netherlands as a tax haven by companies whose parent organisation is resident elsewhere.

⁹³ For a summary of the case see, for example, http://www.ey.com/GLOBAL/content.nsf/UK/IT_-_Alerts_-_03_10_DC_-_Dutch_thin_capitalisation_rules#5 accessed 14-7-06

⁹⁴ See, for example, commentary by Tax Consultants International at http://www.taxci.nl/read/participation_exemption_2004

⁹⁵ "Geen fiscaal paradijs": Staatssecretaris Bos vindt Brusselse kritiek niet terecht," *Algemeen dagblad*, 10 Nov 2000, Sec. Economy, p. 13.

5.2. Currently proposed changes

In April 2005, the Dutch Ministry of Finance published its plans for reform of the Dutch tax system, called *Werken aan winst* ('Work on Profit, Towards a Lower Tax Rate and a Broader Tax Base').⁹⁶ The key elements are:⁹⁷

- ❑ A plan to cut tax rates from 31.5% in 2005 to 25.5%. 25% had been proposed, but this is not possible as it falls foul of the Netherlands – Japan double tax treaty.⁹⁸
- ❑ The introduction of what has become known as 'tick the box' options for taxation of certain sorts of income. Under these arrangements, pioneered in the USA, application can be made for certain forms of income to be taxed in special ways. The arrangements in the Netherlands will relate to royalty and group interest income.
- ❑ The first 'box' option will be for patent income ('*octrooibox*' in Dutch). Under this option, income from self-generated (rather than purchased) patents will be taxed at an effective rate of 10%. However, there are some doubts as to whether the patent income box will actually be used by a substantial number of companies, due to the restrictions that apply.⁹⁹
- ❑ The second 'box' option is the 'group interest box' ('*groepsrentebox*' in Dutch) and reduces the effective tax rate on interest earned on group loans to 5%, subject again to a maximum limit. Income from short-term investments such as bank deposits will also benefit from the 5% rate in some cases. This option replaces the interest conduit and group finance company facilities that have been available to date, and offers an exceptionally low tax rate. In contrast to the CFA regime, the group interest box cannot be used for interest conduit activities, because pure financing conduit companies are financed by loans rather than equity and the group interest box limits the amount of preferentially treated interest income to a fixed percentage of the average equity of the company. This percentage is equal to the standard interest rate charged (or credited) by the Dutch tax authority and is currently 3.75%. The group interest box would therefore be attractive for group financing companies and combinations of financing and holding operations only.

⁹⁶ Kamerstuk 30 107 No. 2, Fiscaal Vestigingsklimaat, Nota Werken aan winst: Naar een laag tarief en een brede grondslag, 29 April 2005.

⁹⁷ This analysis is based on a wide range of sources. Amongst these are Wouter Paardekooper, Baker & Mackenzie in *World Tax Review 2006 on the Netherlands*, page 2, at www.internationaltaxreview.com (12 Jul 2006), and Peter Kirpensteijn and Bereket Gündüz; Udink & De Jong, 'The Dutch Go Into the Offensive' for Udink & de Jong, Attorneys, at www.iln.com/articles/pub_249.doc (14 Jul 2006).

⁹⁸ Freshfields Bruckhaus Deringer, 'The Netherlands: white paper for 2007 corporate tax reform – draft legislation published' May 2006

⁹⁹ Wijziging van belastingwetten ter realisering van de doelstelling uit de nota "Werken aan winst" (Wet werken aan winst), Document 30 572 No. 2, Art. 12c; Uncorrected stenogram, Legislative meeting, Vaste commissie voor Financiën, 18 Sep 2006.

Some have pointed out that harmful constructions, such as 'double dipping', will be possible under the proposed legislation.¹⁰⁰

- The participation exemption is to continue but will be modified so that the same rules apply to domestic and foreign subsidiaries, which should then overcome EU objections to the arrangement, which do not allow such differentiation. In fact, the requirements for the use of the participation exemption have been relaxed. For subsidiaries other than portfolio investment companies, the subject-to-tax requirement is dropped.¹⁰¹
- In December 2005, The Netherlands reached an agreement with the Netherlands Antilles to revise the current *Belastingregeling voor het Koninkrijk (BRK)*, the tax treaty covering the Netherlands, Netherlands Antilles, and Aruba. The 8.3% withholding tax on dividends paid by a Dutch subsidiary to a parent in the Netherlands Antilles will no longer apply. For financial corporations and publicly traded companies supervised by the central bank, the rate will be 0%. Withholding tax will also be 0% if dividends are invested in the Netherlands Antilles *Herstelbank* (reconstruction bank) for a period of two years, and 75% of the dividend for a further two years. This requirement was devised to prevent tax evasion. The *Herstelbank* is still to be established. For other companies, the rate will be 5%.¹⁰²

These changes will not eliminate the advantages for foreign multinationals passing financial flows through the Netherlands. They suggest that the Netherlands remains committed to operating as a tax haven for international groups of companies and is trying not to lose the existing cash flowing from tax haven entities. The proposed changes have already been passed by the Dutch House of Representatives, but still need approval from the Dutch Senate. Furthermore, some aspects of the proposed legislation, such as the patent income box and group interest box, also need to be approved by the European Commission before they can enter into force. It is possible that the EU will not accept the proposed changes and consider them as potentially harmful tax practices. Experts expect that measures such as the new 'group interest box' will mainly attract new SFIs and, apart from a small number of highly skilled jobs, will not generate substantial new employment in the Netherlands.¹⁰³

¹⁰⁰ Wijziging van belastingwetten ter realisering van de doelstelling uit de nota "Werken aan winst" (Wet werken aan winst), Document 30 572 No. 2, Art. 12c; Uncorrected stenogram, Legislative meeting, Vaste commissie voor Financiën, 18 Sep 2006; W. Paardekooper, Baker & Mackenzie, "World Tax Review 2006 on the Netherlands," <<http://www.internationaltaxreview.com>> (Jul 2006), p. 2.

¹⁰¹ Based on KPMG data available at <http://www.kpmg.com/Services/Tax/IntCorp/CTR/>; Wijziging van belastingwetten ter realisering van de doelstelling uit de nota "Werken aan winst" (Wet werken aan winst), Document 30 572 No. 2, Art. 13.;

¹⁰² Zibb.nl belastingadvies & accountancy website, "Belastingakkoord tyussen Nederland en Antillen," based on De Volkskrant, 2 Dec 2005 (Sep 2006); Nivra website, "Nul procent dividendbelasting Antillen," 3 Dec 2005, <http://www.nivra.nl/index.asp?FD_Nieuws/20051203_antillen.htm> (Sep 2006); PwC Nederland Website, "Nieuw belastingakkoord met Nederlandse Antillen," 2 Dec 2005 (Sep 2006).

¹⁰³ Tax experts, 12 Oct 2006 and 3 Nov 2006, interviews by M. Van Dijk.

Chapter 6

Conclusions and recommendations

6.1. Conclusions

Despite the Netherlands having an international reputation as a tax haven for about 30 years now, to the best of our knowledge this SOMO report is the first comprehensive research on the issue. This was not an easy task. Tax planning is a very complex and technical matter and it seems that the government, the Dutch Central Bank (DNB) and multinational corporations all have an interest in disclosing as little information as possible. In addition, current accounting standards do not require corporations to report revenues and tax payments by location or to report intra-group financial flows and this is precisely the data required for a more detailed analysis. Therefore the report has been largely based on indirect evidence, such as the large presence of Special Financial Institutions (SFIs) in the Netherlands and the tax avoidance structures advertised by tax consultants, plus a small number of case studies.

Yet the empirical data and analyses presented in this report leave no doubt about the conclusion that the Netherlands can be regarded as a tax haven. This is because it deliberately offers companies who would not otherwise seek to be resident within its territory the means to reduce their taxation charges on royalties, interest, dividends and capital gains received from subsidiary companies. Although not all tax planning structures are harmful in nature, some certainly are. The Dutch group financing (CFA) regime, which will be abolished by 2011, is often regarded as one of the most harmful tax policies. Corporate structures that use the rather unique Double Taxation Treaty (DTT) network of the Netherlands to facilitate financial flows to and from other tax havens, such as the Netherlands Antilles and Cayman Islands, seem to be particularly harmful as well.

Many of the arrangements created by the Netherlands to facilitate these objectives have been found to be unacceptable by either the OECD or the European Union, and as a result they have been or are being revised. The tax ruling system, for example, was revised in 2001 and stripped of its harmful characteristics. It is clear that the revisions that are being made are those necessary to ensure that the new arrangements will comply with the basic requirements of those organisations, but certainly not all of them will comply with the spirit of international tax cooperation that they are seeking to promote. Indeed, from 2007 it is possible that the Netherlands will be offering tax rates as low as 5% on interest income under the 'group interest box' in the current proposal for modifying tax legislation "*Werken aan Winst*" to replace the CFA regime. This could mean that the Netherlands will be offering the lowest tax rates on financial flows in the developed world.

The Netherlands benefits primarily from attracting financial flows to its territory by increasing the tax yield it enjoys from corporate income and from employment generated

in the trust and tax consultancy sector. According to the DNB there are 12,500 Special Financial Institutions in the Netherlands (as of 2002), which facilitate these flows and largely consist of 'mailbox companies' and 'paper headquarters'. These generate some 2,500 direct jobs and a total direct revenue for the Dutch state of €1.7 billion. In addition, it has been estimated that the Netherlands hosts nearly 20,000 so-called 'mailbox companies', which do not have a substantial commercial presence. The data also indicate every year more new mailbox companies are established, in particular during the period 2003-2006. Experts expect that measures such as the new 'group interest box' will mainly attract new SFIs and, apart from a small number of highly-skilled jobs, will not generate substantial new employment in the Netherlands.

However, these benefits do not outweigh the negative consequences for other countries. It affects both the capacity of developing country governments to supply essential services to their populations and the capacity of developed country governments to provide finance for development in the form of debt relief and official development aid. The Dutch tax policy is therefore clearly inconsistent with the policy on Official Development Assistance (ODA) and the associated high contribution to financing the achievement of the Millennium Development Goals (MDGs). Furthermore, it can have a substantial negative impact through the resulting shift of the tax burden to other sources of income such as labour, and the reduced possibilities for smaller companies to compete with multinational corporations. The tax haven features of the Netherlands also facilitate money laundering and attract companies with a dubious reputation.

6.2. Recommendations

The conclusions above are based on an analysis of the empirical data gathered during the study. This study has attempted to provide an objective reflection and interpretation of this data. In this paragraph, SOMO presents a set of recommendations. In contrast to the rest of the report, these are not intended to be neutral, but seek to promote a fair and just global economic system in which tax avoidance by multinational corporations is minimised. The recommendations below are partly based on recommendations which other actors have elaborated elsewhere in more detail. No claim is made that these represent the views of organisations other than SOMO, however.

- **The Netherlands should put an end to all beneficial arrangements that allow multinationals to avoid taxation.** These include the elements of the current proposal for modifying tax legislation "*Werken aan Winst*" that may be considered as harmful tax practices, such as the group interest box, and the lack of sufficient anti-avoidance provisions for the use of Double Taxation Treaties (DTTs) that currently allows the Netherlands to be used as a conduit country for other tax havens. Continuing to allow tax avoidance practices is inconsistent with the Dutch policy on Official Development Assistance (ODA) and the associated high contribution to financing the achievement of the Millennium Development Goals (MDGs).

- ❑ **At the same time, the Netherlands should actively put pressure on other OECD countries to put an end to harmful tax practices and to tax havens in general.** As has been pointed out, tax havens are a global problem that require a global solution. Putting an end to harmful tax policies in the Netherlands is a necessary but small step towards solving the global tax problem. If other countries do not take similar steps, multinational corporations might move their group financing and royalty companies to other tax havens and choose to route financial flows through other conduit countries. While this will probably mitigate some of the aggressive tax avoidance strategies that for example use the rather unique Dutch network of Double Taxation Treaties (DTTs), the main result will be that the problem is displaced. International coordination and cooperation are therefore essential in fighting the effects of harmful tax practices.
- ❑ **Alternative approaches to taxation of internationally operating businesses should be considered.** These include the proposals that various actors have put forward for unitary taxation, an alternative minimum tax, and a global tax jurisdiction the revenues of which go into funding a development facility.¹⁰⁴ Due to the global operations and intra-group financial flows of multinational corporations, the true tax base in each country is difficult to determine and can easily be manipulated, as has been shown in this report. Unitary taxation, for example, addresses this by calculating the profits that can be attributed to a country's tax jurisdiction partly on the basis of global profit figures. As alternative approaches have not been discussed in this report, we will not make a judgement or more specific recommendation about them. However, when devising a solution for the global problem of tax havens and harmful tax practices, such alternative approaches should also be considered.
- ❑ **The Dutch government should commission an official study on the Netherlands as a tax haven.** The study should include a detailed and quantitative analysis of the extent of tax planning by foreign multinationals in and via the Netherlands and identify which tax structures are harmful and which are not. To the best of our knowledge, this SOMO report is the first comprehensive report on this issue. Due to the complex nature of tax avoidance structures and the lack of available data, a more detailed study would be desirable. An attempt should also be made to quantify the amount of tax revenues foregone in developing countries as a result of the harmful tax structures involving the Netherlands.

¹⁰⁴ See for example Oxfam GB, "Tax havens: Releasing the hidden billions for poverty eradication," Policy paper, Jun 2000, <http://www.oxfam.org.uk/what_we_do/issues/debt_aid/tax_havens.htm>; Groupe de travail sur les nouvelles contributions financières internationales, "Rapport à Monsieur Jacques Chirac, Président de la République," 21 Oct 2003, <http://www.france.attac.org/IMG/pdf/Rapport_final.pdf>; H.M. Wachtel, "Tax Distortion in the Global Economy," Paper originally presented at Inter-Disciplinary Council on the Global Economy, 2000, <<http://www.tni.org/archives/wachtel/distortion.htm>>; H.M. Wachtel, "The Vanishing Corporate Profit Tax," Aug 2004, <<http://www.tni.org/archives/wachtel/vanishing.pdf>>; S. Picciotto, "Tax Jurisdiction & Global Apportionment," Presentation to 2nd Essex Conference, Jul 2004, <http://www.taxjustice.net/cms/upload/pdf/Picciotto_Essex2004.pdf> (all Nov 2006).

- **The Dutch Central Bank (DNB) should regularly publish statistical information on the number, transactions, liabilities and assets of Special Financial Institutions (SFIs).** This would probably be the only reliable quantitative data that offers insight into the extent of tax avoidance in and via the Netherlands. The fact that the DNB has published this data twice in the past indicates that they are available, but not fully disclosed.

- **All relevant actors should recognise refraining from tax avoidance, including through the use of tax havens, as a core element of Corporate Social Responsibility (CSR).** Multinational corporations should include this element in an integral way in their CSR policies, management systems, and reporting mechanisms. Managing and communicating tax issues in a proactive manner also increasingly appears to be in the long-term interest of multinationals themselves. Recent reports by Henderson Global Investors and SustainAbility/Tax Research LLP found that concerns about the economic impact of multinationals are rising quickly and the financial and reputation-related risks from aggressive tax avoidance strategies are often not sufficiently recognised.¹⁰⁵

Similarly, the Dutch government should include responsible tax issues in all its policies and programmes intended to stimulate CSR. Civil society organisations (CSOs), especially those promoting CSR or entering into partnerships with multinational corporations, need to advocate fair and transparent tax payments as well. In particular, accepting large charitable donations from corporations should be conditional on the corporation having responsible tax practices. The reason is that aggressive tax avoidance combined with charitable donations is highly undesirable and may make a multinational corporation seem very responsible, while it is in fact escaping its basic obligations to society. CSR consultants, sustainability analysts and other CSR-related service providers should take on board tax issues as well. Although some tax issues require a certain amount of fiscal expertise, other issues such as a multinational's presence in obvious tax havens and the use of mailbox companies can be easily picked up by any organisation.

- **A new mandatory International Accounting Standard should be adopted that requires multinationals to provide detailed information on the countries in which they operate, their subsidiaries in those countries and the financial information of these subsidiaries, including information on turnover and tax payments by location.** Such a standard has already been developed by the Association for Accountancy and Business Affairs (AABA) and is readily

¹⁰⁵ Henderson Global Investors, "Responsible tax," Oct 2005, <http://www.henderson.com/global_includes/pdf/corporate_governance/ResponsibleTax.pdf> (Nov 2006); Henderson Global Investors, Feb 2005, <http://www.henderson.com/global_includes/pdf/sri/tax_paper.pdf> (Nov 2006); SustainAbility & Tax Research LLP, "Taxing issues: Responsible business and tax," 2006, <<http://www.sustainability.com/insight/research-article.asp?id=450>> (Nov 2006).

available.¹⁰⁶ Investors and civil society alike have a strong interest in adequate information about tax payments. This is supported by the Henderson Global Investors and SustainAbility/Tax Research LLP studies and has been recently acknowledged by the International Accounting Standards Board (IASB) in response to a call for country-by-country reporting. Furthermore, increased exposure will reduce the incentives for aggressive tax evasion strategies, such as the use of tax havens, and will therefore help to create a level playing field for all companies. The disclosure of tax payments per country will also enhance transparency about a corporation's contribution to host country revenues and related development impacts.

¹⁰⁶ R. Murphy, "Reporting Turnover and Tax by Location: A Proposed International Accounting Standard," AABA, 2003, <http://www.taxjustice.net/cms/upload/pdf/new_int_Account_Standard.pdf> (Nov 2006).

Annex 1

Glossary

This glossary is based on that in the report 'Tax Us If You Can' published by the Tax Justice Network¹⁰⁷ and reproduced with permission, but adapted for the particular purposes of this report with appropriate additions to suit the Dutch environment.

Vocabulary	Dutch equivalent	Explanation
Aggressive tax avoidance		the use of complex schemes of uncertain legality to exploit taxation loopholes for the benefit of taxpayers who can afford the fees charged by professional advisers who create such arrangements.
Capital gains tax		A tax on the profits from the sale of capital assets such as stocks and shares, land and buildings, businesses and valuable assets such as works of art.
Scheme concerning international financing activities (also group financing activities (GFA) scheme)	Concern-financierings-activiteiten (CFA) regeling (or Concern-financierings-maatschappij (CFM) regime)	A Dutch law introduced in 1997 that allows group finance companies to operate on pre-agreed margins unrelated to changes in commercial situations. In addition, reserves could be made against up to 80% of income from financing activities, lowering the effective rates of tax charged to 7%. The CFM regime had been found in breach of the EU Code of Conduct on Business Taxation and will be discontinued. For corporations currently using the CFM regime, it will end at the latest by 2011.
Corporation tax (or corporate tax)	Vennootschaps-belasting	A tax on the profits made by limited liability companies and other similar entities in some countries, but otherwise usually being similar in application to income tax.
Deferred tax	Latente belasting	A liability that results from income that has already been earned for accounting purposes but not for tax purposes. If an expense is recognised for tax purposes more quickly than it is for accounting purposes (which is common with much plant and equipment) this means that the tax cost for the years when this happens are understated. Conversely, when all the tax allowances have been used on the assets there might still be accounting charges to make and the tax cost would then be overstated. To balance this equation a deferred tax is charged to

¹⁰⁷ TJN, "Tax us if you can: A true story of global failure," TJN Briefing paper, Sep 2005 (Sep 2006).

Vocabulary	Dutch equivalent	Explanation
		the profit and loss account in the earlier years and put on the company's balance sheet as a liability. The liability is released as a credit to profit and loss account in the later years and supposedly over the life of the asset all should balance out. In practice, however, tax may sometimes be deferred indefinitely.
Double Tax Treaty (DTT)	Verdrag ter voorkoming van dubbele belasting	An agreement between two sovereign states or territories to ensure, as far as possible, that income arising in one and received in the other is taxed only once. Includes rules to define Residence and Source, and limits on Withholding Taxes. Also usually includes provisions for cooperation to prevent avoidance, especially information exchange.
Effective tax rate		The percentage of tax actually paid in relation to the total income of the person paying the tax.
EU Interest and Royalties Directive (IRD)	EU Interest en Royalty Richtlijn	Under this Directive (No. 2003/49/EC), a 0% withholding tax applies for qualifying interest and royalty payments between associated corporations in the EU. A corporation is considered associated if it has cross holdings of at least 25% or a third corporation has a direct minimum holding of 25% in the two other EU corporations. The beneficial owner of the interest or royalties must be a corporation of another EU Member State or an EU Permanent Establishment of such a corporation. It must also be subject to tax in that Member State without exemptions.
EU Parent-Subsidiary Directive (PSD)	EU Moeder-Dochter Richtlijn	Under this Directive (No. 90/435/EEC amended by 2003/123/EC), no withholding tax applies for dividend payments between a subsidiary in one Member State and its parent (or a Permanent Establishment) in another Member State. The parent must hold at least 20% (from 1 Jan 2007: 15%) of the shares of the subsidiary and the subsidiary must be a resident in that Member State and subject to tax without exemptions in the Member State where it is resident.
General anti-avoidance principle		A law that seeks to prevent a tax payer from obtaining the taxation benefit arising from any transaction if they undertook it solely or mainly to obtain a tax benefit. It does so by looking at the motivation of the taxpayer at the time of entering into the transaction, for which reason the concept of tax compliance is important. If the person was seeking to be tax compliant then they should probably keep the benefit they obtained from the transaction. If they were taxation non-compliant then they should not.

Vocabulary	Dutch equivalent	Explanation
		Compare with a general anti-avoidance rule.
General anti-avoidance rule		A general anti-avoidance rule seeks to tackle those who try to break the rules of taxation through the use of further rules. Rather than considering intention, it lays down ways of interpreting series of events to determine whether the benefit of tax legislation can be given to the tax payer. However, because rules are invariably open to interpretation a general anti-avoidance rule runs the risk of increasing the opportunity for abuse.
Holding company	Houdstermaatschappij	A parent or intermediate parent company that usually has no or little business operations of its own, but has a group function and controls its subsidiaries.
International Business Corporations (IBC)		A type of company offered by many offshore finance centres and tax havens, usually one which receives all or most of its income from abroad. IBCs usually pay an annual registration fee but are subject to minimal or zero tax rates.
Offshore		Offshore relates to any jurisdiction (regardless of whether they are islands) which provides tax and regulatory privileges or advantages, generally to companies, trusts and bank account holders on condition that they do not conduct active business affairs within that jurisdiction. The term "offshore" is very broad and normally includes "onshore" tax havens such as Andorra, Lichtenstein, etc.
Offshore financial centre		Although most tax havens are Offshore Finance Centres (OFCs) the terms are not synonymous. Tax havens are defined by their offering low or minimal rates of tax to non-residents but may or may not host a range of financial services providers. An OFC actually hosts a functional financial services centre, including branches or subsidiaries of major international banks. States and microstates that host tax havens and OFCs dislike both terms, preferring to use the term International Finance Centres.
Parent company	Moederbedrijf	A company that either wholly owns or owns more than 50% of another company, the latter being called a subsidiary. This can be either direct or indirect through an intermediate company. An intermediate (parent) company is a company which has one or more subsidiaries but is itself owned by another company. The term 'global ultimate parent' refers to the one that is finally not controlled by another company.

Vocabulary	Dutch equivalent	Explanation
Participation exemption	Deelnemings-vrijstelling	An exemption from corporate income tax regarding profits derived from qualifying shareholdings. All corporate taxpayers except qualifying Dutch investment companies can benefit from the participation exemption. It is unique to The Netherlands, although some other countries such as Luxemburg and Switzerland offer variations on this exemption.
Preferential tax treatment		A situation in which individuals or companies can negotiate their tax treatment in the state in which they have a tax liability. Pioneered by Switzerland in the 1920s, the arrangement is commonplace in the offshore world.
Ring-fencing		Different and preferential tax and regulatory treatment given by tax havens to companies and trusts owned by non-residents as contrasted to companies and trusts owned by residents.
Special Financial Institutions (SFIs)	Bijzondere Financiële Instellingen (BFIs)	Netherlands-based companies or institutions whose shares are held directly or indirectly by non-residents, which specialise in raising funds outside the Netherlands and on-lending or investing them outside the Netherlands. The funds raised by these institutions are on-lent or invested almost entirely within the group of which they form part. These institutions are based in the Netherlands partly for fiscal reasons, enjoying tax advantages either in the Netherlands, or in the country where the parent company is established.
Special purpose vehicles		Any company, trust, LLP, partnership or other legal entity set up to achieve a particular purpose in the course of completing a transaction, or series of transactions, typically with the principal or sole intent of obtaining a tax advantage. Similar to SFIs.
Spread	Marge	Margin between interest, royalties and/or dividend payments received and paid by a conduit company. The spread is the operating margin of the conduit company that gives it some substance, even though this may be artificial and relatively small. This operating margin is taxable in the conduit country and therefore often required by that country's fiscal authorities.
Subsidiary company	Dochterbedrijf	A company 50% or more owned by another company which is its parent company.
Tax avoidance	Belasting-ontwijking	The term given to the practice of seeking to minimise a tax bill without deliberate deception (which would

Vocabulary	Dutch equivalent	Explanation
		<p>be tax evasion or fraud).</p> <p>The term is sometimes used to describe the practice of claiming allowances and reliefs clearly provided for in national tax law. It is, however, now generally agreed that this is not tax avoidance. If the law provides that no tax is due on a transaction then no tax can have been avoided by undertaking it. This practice is now generally seen as being tax compliance. So what the term tax avoidance now usually refers to is the practice of seeking to not pay tax contrary to the spirit of the law. This is also called aggressive tax avoidance.</p> <p>Aggressive tax avoidance is the practice of seeking to minimise a tax bill whilst attempting to comply with the letter of the law while avoiding its purpose or spirit. It usually entails setting up artificial transactions or entities to recharacterise the nature, recipient or timing of payments. Where the entity is located or the transaction routed through another country, it is international avoidance. Special, complex schemes are often created purely for this purpose. Since avoidance often entails concealment of information and it is hard to prove intention or deliberate deception, the dividing line between avoidance and evasion is often unclear, and depends on the standards of responsibility of the professionals and specialist tax advisers. An avoidance scheme which is found to be invalid entails repayment of the taxes, due plus penalties for lateness.</p>
Tax efficiency		A term used by tax professionals to suggest getting away with paying as little tax as possible.
Tax evasion	Belasting-ontduiking	The illegal non payment or under-payment of taxes, usually by making a false declaration or no declaration to tax authorities; it entails criminal or civil legal penalties.
Tax haven	Belastingparadijs	<p>Any country or territory whose laws may be used to avoid or evade taxes which may be due in another country under that other country's laws.</p> <p>The Organisation for Economic Cooperation and Development defines tax havens as jurisdictions where:</p> <p>Non-residents undertaking activities pay little or no tax;</p> <p>There is no effective exchange of taxation</p>

Vocabulary	Dutch equivalent	Explanation
		<p>information with other countries;</p> <p>A lack of transparency is legally guaranteed to the organisations based there;</p> <p>There is no requirement that local corporations owned by non-residents carry out any substantial domestic (local) activity. Indeed, such corporations may be prohibited from doing business in the jurisdiction in which they are incorporated.</p> <p>Not all of these criteria need to apply for a territory to be a haven, but a majority must.</p>
Tax mitigation		A phrase used by tax professionals when describing the desire to pay as little tax as possible.
Tax planning	Belastingplanning	A term used in two ways. It can be used as another term for tax mitigation. When, however, tax legislation allows more than one possible treatment of a proposed transaction the term might legitimately be used for comparing various means of complying with taxation law.
Tax shelter		An arrangement protecting part or all of a person's income from taxation. May result from pressures on government or a desire to encourage some types of behaviour or activity, or may be a commercial or legal ruse, often artificial in nature, used to assist tax planning.
Thin capitalisation	Onderkapitalisatie	Financing a company with a high proportion of loans rather than shares. Used by Transnational Corporations to reduce the business profits of a subsidiary, since the interest on loans is usually allowed as a deduction, but dividends on shares are paid out of after-tax income. The interest is usually paid to another subsidiary of the transnational corporation located in a tax haven where no tax is paid upon its receipt, resulting in an overall reduction in the tax charge of the group of companies.
Transfer pricing		A transfer pricing arrangement occurs whenever two or more businesses (whether corporations or not) which are owned or controlled directly or indirectly by the same people trade with each other. The term transfer pricing is used because if the entities are owned in common they might not fix prices at a market rate but might instead fix them at a rate which achieves another purpose, such as tax saving. If a transfer price can be shown to be the same as the market price then it is always acceptable for tax. What are not acceptable for tax purposes are transfer prices which increase the cost or reduce the sales value in states which charge higher tax rates and increase the sales value or reduce the costs in

Vocabulary	Dutch equivalent	Explanation
		states with lower tax rates. The difficulty for many corporations at a time when over 50% of world trade is within rather than between corporations is that there is no market price for many of the goods or services that they trade across national boundaries because they are never sold to third parties in the state in which they are transferred across national boundaries within the corporation. This gives rise to complex models in which attempts are made to allocate value to various stages within the supply chain within a company, which process is open to potential abuse. For this reason it is argued that such firms should be taxed on a unitary basis.
Withholding tax	Bronbelasting	Tax deducted from a payment made to a person outside the country. Generally applied to investment income, such as interest, dividends, royalties and licence fees.

Annex 2

Dutch double tax treaties

Withholding tax rates to the Netherlands

Country	dividends %	Interest %	royalties %	Country	dividends %	Interest %	royalties %
Argentina	10/15	0/12	3/5/10/15	Malaysia	/	10	8
Aruba	10	0	0	Malta	0	0	0
Australia	15	10	10	Mexico	0/5/15	5/10/15	10
Austria	15/5	0	0/10	Moldova	15/5	5	2
Bangladesh	10/15	10	10	Morocco	10/25	10/25	10
Belarus	5	0/5	0/3/5/10	N. Antilles	0	0	0
Belgium	15	10	0	N. Zealand	15	10	10
Brazil	0	15	15	Nigeria	7.5/10	7.5	7.5
Bulgaria	5/15	0	0	Norway	0	0	0
Canada	15/10/5	10/0	10/0	Pakistan	10/20	20	5/15
China	10	10	10	Philippines	15	15	15
Croatia	0/15	0	0	Poland	0/5/15	0/5	5
Czech Rep.	0/10	0	5	Portugal	10	10	10
Denmark	0	0	0	Romania	0/5/15	0/3	0/3
Egypt	0	12	12	Russ. Fed.	5/15	0	0
Estonia	5/15	10	5/10	Singapore	10	0	
Finland	0	0	0	Slovak Rep.	0/10	0	5
France	0/5/15	0/10	0	South Africa	0	0	0
Georgia	Not yet in force			Spain	10	10	6
Germany	0	0	0	Sri Lanka	10/15	10	10
Greece	0	10	7	Suriname	7.5/15/20	0	0
Hungary	5/15	0	0	Sweden	15/0	0	0
Iceland	0/15	0	0	Switzerland	0	5	0
India	0	10	10	Taiwan	10	10	10
Indonesia	15/10	0/10	10	Thailand	10	15	15
Ireland	0	0	0	Tunisia	20	10	11
Israel	5/10/15	10/15	5	Turkey	5/10	10/15	10
Italy	5/10/15	0/10	5	Ukraine	0/5/15	2/10	0/10
Japan	5/15	10	10	USSR	5/15	0	0
Kazakhstan	5/15	10	10	UK	(4)	0	0
Korea	10/15	15	10/15	US	15/5	0	0
Kuwait	10	0	5	Uzbekistan	15	10	10
Latvia	5/15	10	5/10	Venezuela	0/10	5	5/7/10
Lithuania	5/15	10	5/10	Vietnam	5/10/15	10	5/10/15
Luxembourg	0/2.5/15	0	0	Zambia	5	10	10
Macedonia	15	0	0	Zimbabwe	10	10	10

Source: Amicorp Group, "The Netherlands: Management, administration, fiduciary, consulting and corporate structuring services," 2004 (Sep 2006), p. 33-34.

Withholding tax rates from the Netherlands

Country	dividends %	Interest %	royalties %	Country	dividends %	Interest %	royalties %
Argentina	10	0	0	Malaysia	0	0	0
Armenia	0/5	0	0	Malta	0/5	0	0
Aruba	5/7.5/15	0	0	Mexico	5	0	0
Australia	15	0	0	Moldova	0/5/15	0	0
Austria	0/5	0	0	Morocco	10	0	0
Bangladesh	10	0	0	N. Antilles	8.3	0	0
Belarus	0/5	0	0	N. Zealand	15	0	0
Belgium	0/5	0	0	Nigeria	12.5	0	0
Brazil	15	0	0	Norway	0	0	0
Bulgaria	5	0	0	Pakistan	10	0	0
Canada	5	0	0	Philippines	10	0	0
China	10	0	0	Poland	0/5/15	0	0
Croatia	0/15	0	0	Portugal	0/10	0	0
Czech Rep.	0	0	0	Romania	0/5/15	0	0
Denmark	0	0	0	Russ. Fed.	5	0	0
Egypt	0	0	0	Singapore	0	0	0
Estonia	5	0	0	Slovak Rep.	0	0	0
Finland	0	0	0	South Africa	5	0	0
France	0/5	0	0	Spain	0/5	0	0
Georgia	0/5/15	0	0	Sri Lanka	10	0	0
Germany	0/10	0	0	Suriname	7.5/15	0	0
Greece	0/5	0	0	Sweden	0	0	0
Hungary	5	0	0	Switzerland	0	0	0
Iceland	0	0	0	Taiwan	10	0	0
India	10	0	0	Thailand	5	0	0
Indonesia	10	0	0	Tunisia	0/20	0	0
Ireland	0	0	0	Turkey	5	0	0
Israel	5	0	0	Ukraine	0/5	0	0
Italy	0/5/10/15	0	0	USSR	15	0	0
Japan	5	0	0	UK	0/5	0	0
Kazakhstan	0/5	0	0	US	5	0	0
Korea	10	0	0	Uzbekistan	5	0	0
Kuwait	0/10	0	0	Venezuela	0	0	0
Latvia	5	0	0	Vietnam	5/7/10/15	0	0
Lithuania	5	0	0	Yugoslavia	5	0	0
Luxembourg	0/2.5	0	0	Zambia	5	0	0
Macedonia	0/15	0	0	Zimbabwe	10	0	0
Malawi	15	0	0	Non-treaty	25	0	0

Source: Amicorp Group, "The Netherlands: Management, administration, fiduciary, consulting and corporate structuring services," 2004 (Sep 2006), p. 33-34.

Annex 3

List of regulated trust offices

Trust Office	Type	Address	Statutory seat	# of mailboxes
ABN AMRO Special Corporate Services B.V.	Independent trust office	Gustav Mahlerlaan 10, 1082 PP Amsterdam	Amsterdam	210
Albacross Corporate Services B.V.	Independent trust office	Nicolaas Maesstraat 66 2hg, 1071 RC Amsterdam	Amsterdam	3
Alco Trust B.V.	Independent trust office	Sophialaan 33, 1075 BL Amsterdam	Amsterdam	17
Alea Management B.V.	Independent trust office	P Cornelisz Hooftstr 150, 1071 CG Amsterdam	Amsterdam	25
Alkemade Administratieve & Fiscale Dienstverlening B.V.	Independent trust office	Palladiostraat 13, 3066 AH Rotterdam	Rotterdam	8
Amaco (1)	Trust group	Amsteldijk 166 6 hg, 1079 LH Amsterdam	Amsterdam	1074
Amfa Beheer B.V (2)	Independent trust office	President Kennedylaan 19, 2517 JK 's-Gravenhage	The Hague	106
Amicorp Netherlands B.V.	Trust group	Prof J H Bavinklaan 7, 1183 AT Amstelveen	Amsterdam	606
Andante B.V.	Independent trust office	Luzerneklaver 17, 3069 DS Rotterdam	Rotterdam	22
Apollo Corporate Services B.V.	Independent trust office	Apollolaan 133-135, 1077 AR Amsterdam	Amsterdam	24
Associatie Cassa B.V (3)	Independent trust office	Spuistraat 172, 1012 VT Amsterdam	Amsterdam	71
ATC (4)	Trust group	Fred. Roeskestraat 123, 1076 EE Amsterdam	Amsterdam	1183
Aufisco B.V.	Trust group	Laan Copes v Cattenburch 52, 2585 GB 's-Gravenhage	The Hague	213
Balance & Trust B.V.	Independent trust office	Kimwierde 414, 1353 EX Almere	Almere	23
Beemd Trust B.V.	Independent trust office	Beemdstraat 25, 5653 MA Eindhoven	Eindhoven	37
BK Corporate International B.V.	Trust group	Oudegracht 202, 1811 CR Alkmaar	Amsterdam	240
BNP Paribas Trust B.V.	Trust group	Herengracht 440, 1017 BZ Amsterdam	Amsterdam	62
Bonheem Intertrust B.V.	Independent trust office	Gelderlandhaven 2 Y, 3433 PG Nieuwegein	Utrecht	17
Box Consultants B.V.	Independent trust office	Parklaan 81A, 5600 CJ Eindhoven	Eindhoven	47
Brabant Management & Trust Company (BM&TC) B.V.	Independent trust office	Bosseweg 45, 5682 PE Best	Best	29
Brabers, Douma, Van Nispen, Leenen (Maatschap)	Trust group	Hogeweg 16, 2585 JD 's-Gravenhage	The Hague	42
Calyon Trust B.V.	Trust group	Strawinskyalaan 3501, 1077 ZX Amsterdam	Amsterdam	55
Capital Support Group B.V.	Independent trust office	Churchillplein 5e, 2517 JW 's-Gravenhage	The Hague	2
C-Corp (5)	Independent trust office	Haaksbergweg 31, 1101 BP Amsterdam Zuidoost	Amsterdam	38
Citco Nederland B.V.	Trust group	Naritaweg 165, 1043 BW Amsterdam	Amsterdam	1214

Trust Office	Type	Address	Statutory seat	# of mailboxes
CMF Netherlands B.V.	Independent trust office	Hardwareweg 32, 3821 BM Amersfoort	Rotterdam	19
Coadit B.V.	Independent trust office	Nieuwe Stationsstraat 10, 6811 KS Arnhem	Arnhem	29
Confitrust B.V.	Trust group	Reaal 2A, 2353 TL Leiderdorp	Leiderdorp	31
Delfin Trust B.V.	Independent trust office	Avenue Ceramique 223, 6221 KX Maastricht	Maastricht	23
Deutsche International Trust Company N.V.	Independent trust office	Herengracht 450, 1017 CA Amsterdam	Amsterdam	227
Docklands Trust & Financial Services B.V.	Independent trust office	Burgemeester Bosstraat 73 B, 3043 GC Rotterdam	Rotterdam	20
Ducorp (6)	Independent trust office	Wijnhaven 3B, 3011 WG Rotterdam	Rotterdam	140
Dufisco N.V.	Independent trust office	Maassluisstraat 416A, 1062 GS Amsterdam	Amsterdam	52
Duma Corporate Services B.V.	Independent trust office	De Boelelaan 7, 1083 HJ Amsterdam	The Hague	268
Dunnewijk, mr. drs. M. - Advocaat & Procureur	Independent trust office	Kleine Tocht 7 B, 1507 CB Zaandam		29
Dutch Trust Management B.V.	Independent trust office	Strawinskylaan 1431, 1077 XX Amsterdam	Amsterdam	87
EQ Management B.V. (7)	Trust group	Strawinskylaan 3105, 1077 ZX Amsterdam	Amsterdam	1729
Equity Estate B.V.	Independent trust office	Kabelweg 37, 1014 BA Amsterdam	Amsterdam	259
Esmerald Corporate Services B.V.	Independent trust office	Prins Hendriklaan 21, 1075 AZ Amsterdam	Amsterdam	49
Euryton Trust Management B.V.	Independent trust office	Oosteinde 7-11, 1017 WT Amsterdam	Amsterdam	43
Executive Management Trust B.V.	Trust group	Drentestraat 24 BG, 1083 HK Amsterdam	Amsterdam	430
F. van Lanschot Trust Company B.V.	Trust group	Herculesplein 5, 3584 AA Utrecht	Utrecht	255
FF Services B.V.	Independent trust office	Kleine Kade 45, 4461 AS Goes	Rotterdam	15
Fidessa N.V.	Independent trust office	Claudius Prinsenlaan 142, 4818 CP Breda	Breda	22
Fiducorp B.V.	Independent trust office	A. Hofmanweg 5A, 2031 BH Haarlem	Amsterdam	114
First Alliance (8)	Trust group	Claude Debussylaan 44, 1082 MD Amsterdam	Amsterdam	583
Fortis Intertrust (Netherlands) B.V.	Trust group	Rokin 55, 1012 KK Amsterdam	Amsterdam	2583
Frassino Management Services B.V.	Independent trust office	Spiegelgracht 15, 1017 JP Amsterdam	Amsterdam	48
Freeland Corporate Advisors N.V.	Independent trust office	Weena 210-212, 3012 NJ Rotterdam	Rotterdam	70
FTC Trust B.V.	Trust group	Schiphol Boulevard 231, 1118 BH Luchthaven Schiphol	Wassenaar	209
Gregory International Consultants B.V.	Independent trust office	van Cralingenstraat 17, 3267 BD Goudswaard	Goudswaard	37
H.F. Blik-Levy Holding B.V. (h.o.d.n. Erez Management)	Independent trust office	Vaartweg 74, 1217 SW Hilversum	Hilversum	22
HBA Trust Services B.V.	Independent trust office	Valkenburgerweg 67, 6419 AP Heerlen	Heerlen	43
Hogeweg, mr. W.	Independent trust office	Nieuwe Schoolstraat 4, 2514 HX 's-Gravenhage		6

Trust Office	Type	Address	Statutory seat	# of mailboxes
Holding & Finance Company Rabobank Trust B.V. (9)	Trust group	Croeselaan 18, 3521 CB Utrecht	Utrecht	200
Holender Ventures B.V.	Independent trust office	Rapenburgerstraat 204, 1011 MN Amsterdam	Amsterdam	52
Hyksos (10)	Independent trust office	Bloemgracht 45, 1016 KD Amsterdam	Amsterdam	49
Independium B.V.	Independent trust office	Strawinskylaan 29, 1077 XW Amsterdam	Amsterdam	30
ING Management (Nederland) B.V.	Trust group	Teleportboulevard 140, 1043 EJ Amsterdam	Amsterdam	556
Insinger de Beaufort Associates B.V.	Independent trust office	Parklaan 60, 5613 BH Eindhoven	Amsterdam	20
ITPS (Netherlands) B.V.	Independent trust office	Nieuwe Uitleg 15, 2514 BP 's-Gravenhage	The Hague	117
JJ Trust B.V.	Independent trust office	Wormerhoek 14F, 2905 TX Capelle aan den IJssel	Capelle aan den IJssel	36
Kempen Deelnemingen B.V.	Trust group	Beethovenstraat 300, 1077 WZ Amsterdam	Amsterdam	69
Larapide International B.V.	Independent trust office	Nachtegaallaan 47, 1e etage vz, 3055 CP Rotterdam	Rotterdam	4
LFS (11)	Independent trust office	Saturnusstraat 25 i, 2132 HB Hoofddorp	Amsterdam	143
LPM Trust B.V.	Trust group	Horsterweg 18 C, 6199 AC Maastricht Airport	Maastricht Airport	49
Maprima Management B.V.	Trust group	Kruisdonk 66, 6222 PH Maastricht	Heerlen	67
Matcorp B.V.	Trust group	Polarisavenue 136, 2132 JX Hoofddorp	Hoofddorp	7
Meisch Verbier & Cie. B.V.	Independent trust office	Veerplein 5, 1404 DA Bussum	Amsterdam	32
Molade Trust Management B.V.	Trust group	Startbaan 5A, 1185 XP Amstelveen	Amstelveen	99
Monterey Management B.V.	Trust group	Max Euwelaan 61, 3062 MA Rotterdam	Rotterdam	201
Mr. N. Scholtens Trust-Maatschappij B.V.	Independent trust office	Lange Voorhout 82, 2514 EJ 's-Gravenhage	The Hague	41
Mutual Trust Netherlands B.V.	Trust group	Polarisavenue 45, 2132 JH Hoofddorp	Amsterdam	143
N.V. Algemeen Nederlands Trustkantoor ANT	Trust group	Herengracht 420, 1017 BZ Amsterdam	Amsterdam	168
NC Trust B.V.	Trust group	Leliegracht 10, 1015 DE Amsterdam	Amsterdam	114
New Amsterdam Cititrust B.V.	Independent trust office	Johannes Vermeerplein 11, 1071 DV Amsterdam	Amsterdam	139
NieboerSchouten Trust & Participaties B.V.	Independent trust office	Overgoo 13, 2266 JZ Leidschendam	The Hague	72
Nieuwenhuis Services B.V.	Independent trust office	Paasheuvelweg 16, 1105 BH Amsterdam Zuidoost	Noordwijk	148
Noble Management B.V.	Independent trust office	Watermanweg 90, 3067 GG Rotterdam	Rotterdam	11
Noordbrabantse Participatiemaatschappij "De Kempen" B.V.	Independent trust office	Aarle Rixtelseweg 14, 5707 GL Helmond	Nuenen	61
Nova Trust Group B.V.	Trust group	Oslo 24, 2993 LD Barendrecht	Rotterdam	87
P & M Financial Services B.V.	Trust group	Laagveen 17, 2461 HG Ter Aar	Ter Aar	111

Trust Office	Type	Address	Statutory seat	# of mailboxes
Pan-Invest B.V.	Trust group	Martinus Nijhofflaan 2, 2624 ES Delft	Delft	349
Pelican Trust B.V.	Independent trust office	Torenstraat 2, 1981 BC Velsen-Zuid	Velsen	10
Phibren International Management B.V.	Independent trust office	Koningin Emmalaan 13, 1405 CJ Bussum	Bussum	27
Phoenix Management Services B.V.	Trust group	Schothorsterlaan 11, 3822 NA Amersfoort	Amersfoort	23
Pimm Services B.V.	Independent trust office	Beethovenstraat 107, 1077 HX Amsterdam	Amsterdam	4
Poliedro Services B.V.	Independent trust office	Herengracht 400, 1017 BX Amsterdam	Amsterdam	14
Polyvesta Trust Management B.V.	Trust group	Van Heuven Goedhartlaan 937, 1181 LD Amstelveen	Amsterdam	94
Private Equity Services (Amsterdam) B.V.	Independent trust office	Koningslaan 17, 1075 AA Amsterdam	Amsterdam	111
PTS Partner Trust Services B.V.	Independent trust office	Hollandsch Diep 63, 2904 EP Capelle aan den IJssel	Alphen aan den Rijn	51
Red Flag B.V.	Independent trust office	Utrechtseweg 83, 1213 TM Hilversum	Hilversum	6
RijnHove Groep B.V.	Trust group	Baronielaan 139, 4818 PD Breda	Breda	163
Ro-Trust B.V.	Independent trust office	Hoofdweg 52, 3067 GH Rotterdam	Rotterdam	41
S.A. Business Partners Services B.V.	Trust group	Bergweg 133A, 3037 EE Rotterdam	Rotterdam	13
Schimmelpenninck Trust & Management B.V.	Independent trust office	Voorstraat 5, 3633 BA Vreeland	Amsterdam	19
Sin.Fid. B.V.	Independent trust office	Oostelijke Handelskade 1169, 1019 DN Amsterdam	Amersfoort	17
Sorato Trust B.V.	Independent trust office	Spoorhaven 88, 2651 AV Berkel en Rodenrijs	Rotterdam	65
Stichting Trustee & Representation Services	Independent trust office	Rapenburgerstraat 109, 1011 VL Amsterdam	Amsterdam	39
Temmes Management Services B.V.	Independent trust office	Keplerstraat 34, 1171 CD Badhoevedorp	Amsterdam	33
Teslin Trust Services B.V.	Independent trust office	Woudenbergseweg 11, 3953 ME Maarsbergen	Utrecht	67
The Netherlands Management and Trust Company B.V.	Trust group	Schipholpoort 100, 2034 MC Haarlem	Haarlem	101
TMF Management B.V.	Trust group	Locatellikade 1, 1076 AZ Amsterdam	Amsterdam	1703
Trident Consultants B.V.	Independent trust office	Rosweydelaan 36, 3454 BN De Meern	Amsterdam	4
Trofin B.V.	Trust group	Ringbaan Oost 8 - 14, 5013 CA Tilburg	Tilburg	23
Trust Stichting Ruig & Partners	Independent trust office	Stadhouderslaan 100, 2517 JC 's-Gravenhage	The Hague	40
Trustland B.V.	Independent trust office	Leeteinde 20-22, 1151 AK Broek in Waterland	Broek in Waterland	6
Two B Management B.V.	Trust group	Coolwijkseweg 1A, 3218 VC Heenvliet	Heenvliet	32
Tyche Groep Financiële Dienstverlening B.V.	Independent trust office	Raamweg 1B, 2596 HL 's-Gravenhage	The Hague	18
Unsworth & Associates B.V.	Independent trust office	Herengracht 483, 1017 BT Amsterdam	Amsterdam	60
Uplink Trust B.V.	Independent	Ginnekenweg 281, 4835 Breda	Breda	12

Trust Office	Type	Address	Statutory seat	# of mailboxes
	trust office	NC Breda		
Van Baerle Trust Company B.V.	Independent trust office	Stadhouderskade 125 hs, 1074 AV Amsterdam	Amsterdam	117
Van Beemen Beheer B.V.	Independent trust office	Koningslaan 51, 1406 KG Bussum	Bussum	3
VDV Trust Services B.V.	Independent trust office	Schoutstraat 63, 1315 EW Almere	Almere	9
VE Management & Investment B.V.	Independent trust office	Stadionweg 70, 1077 SP Amsterdam	Amsterdam	11
Veco Trust (NL) B.V. (12)	Trust group	Weteringschans 26, 1017 SG Amsterdam	Amsterdam	144
Vreewijk Management B.V.	Independent trust office	Kingsfordweg 151, 1043 GR Amsterdam	Renkum	114
Zarf Trust Corporation B.V.	Independent trust office	Zeemansstraat 13, 3016 CN Rotterdam	Rotterdam	187
Zenco Corporate Services B.V.	Trust group	Weena 674, 3012 CN Rotterdam	Rotterdam	281

Notes:

- | | |
|---|---|
| (1) Includes IMFC Management B.V. and Intrud Management B.V. | (7) Includes Equity Trust Co. N.V. and BTM Trust (Holland) B.V. |
| (2) Includes Eversteijn Trusthouse B.V. | (8) Includes Trust Company Amsterdam |
| (3) Includes Kas-Trust B.V. | (9) Includes RCS Management B.V. Vestiging Utrecht |
| (4) Includes NCS Benelux B.V., RCS Investments B.V. and Kaiton B.V. | (10) Includes Sovereign Trust (Netherlands) B.V. |
| (5) Includes HIL Trust & Fiduciary Services B.V. | (11) Includes Winchester Trust and Consultancy B.V. |
| (6) Includes Modern Treuhand B.V. | (12) Excludes Kaiton B.V. |

Sources: REACH and DNB register of trust offices.

Annex 4

Tax planning sources

The following sources present specific information for tax planning using the Netherlands.

- ❑ <http://www.dutchtax.net>
- ❑ http://taxci.nl/read/using_netherlands_tax_planning
- ❑ <http://lowtax.net/lowtax/html/offon/netherlands/nethhold.html>
- ❑ <http://www.anglo-legal.com>
- ❑ <http://www.amicorp.com>
- ❑ <http://www.hjc.nl>
- ❑ <Http://www.offshore-manual.com/taxhavens/Netherlands.html>

Annex 5

Tax Havens

The Caribbean and Americas	Africa	Europe
	Liberia	Aldernay
Anguilla	Mauritius	Andorra
Antigua and Barbuda	Melila	Belgium
Aruba	The Seychelles	Campione d'Italia
The Bahamas	Sao Tome e Principe	City of London
Barbados	Somalia	Cyprus
Belize	South Africa	Gibraltar
Bermuda		Guernsey
British Virgin Islands	Midde East and Asia	Hungary
Cayman Islands	Bahrain	Iceland
Costa Rica	Dubai	Ireland (Dublin)
Domini	Hong Kong	Ingushetia
Grenada	Labuan	Isle of Man
Montserrat	Lebanon	Jersey
Netherlands Antilles	Macau	Liechtenstein
New York	Singapore	Luxembourg
Panama	Tel Aviv	Madeira
Saint Lucia	Taipei	Malta
St. Kitts & Nevis		Monaco
Saint Vincent and the Grenadines	Indian and Pacific Oceans	Netherlands
	The Cook Islands	Sark
Turks and Caicos Islands	The Maldives	Switzerland
Uruguay	The Marianas	Trieste
US Virgin Islands	Marshall Islands	Turkish Republic of Northern Cyprus
	Nauru	
	Niue	Frankfurt
	Samoa	
	Tonga	
	Vanuatu	

Source: Offshore Business Magazine, <http://www.magverlag.com/offshore_magazine09.pdf> (20 Sep 2006), p.66-67 and Tax Justice Network, "Tax us if you can", *ibid*.