Netherlands

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New Rules on Qualifying Subsidiaries under the Dutch Participation Exemption Regime

This note outlines the revised rules regarding subsidiaries that qualify for the application of the participation exemption, which are applicable from 1 January 2010. The author concludes that although the rules may look complex, in practice, they are straightforward to implement and the outcome should be the same in most instances as under the old rules.

1. Introduction

The Netherlands is well-known for its participation exemption. The participation exemption is founded on several basic principles. This includes the idea that businesses should compete in the market on a level playing field; i.e. all competitors should suffer the same – domestic – tax burden.This, inter alia, is offered in support of the principle of capital import neutrality. Most would agree, however, that in certain situations, capital import neutrality is not appropriate. Hence, a distinction should be made between 'good' and 'bad'. Socrates himself demonstrated that such a distinction is not self-evident.

This note provides an overview of the development of the Dutch rules from the 1970s until today and the new Dutch rules applying from 2010.

2. The 1970s, 1980s and Early 1990s

From 1970 to 1997, the requirements for foreign subsidiaries to qualify for the participation exemption remained, in essence, the same.

Originally, in domestic situations, the participation exemption applied if at least 5% was held and the subsidiary was not an investment institution taxed at a rate of 0%; in that situation, taxing the income and gains in the hands of the parent would not lead to double taxation, as the subsidiary did not pay tax. If the shareholding was less than 5%, an additional requirement, that the shares not be held as a passive investment by the parent, applied. The basic idea was to apply similar rules for foreign subsidiaries. The carve-out for foreign subsidiaries (i.e. non-qualifying foreign subsidiaries) could not, however, be done in the same way; i.e. the carve-out could not be accomplished by defining ineligible regimes; there were simply too many. Hence, two additional requirements for foreign subsidiaries were included: (1) the subsidiary should be subject to taxation on its profits and (2) the shares should not be held as a passive investment.[1] In practice, the scope of the carve-out in relation to foreign subsidiaries was broader than that applicable to domestic subsidiaries.

Some minor changes were made, without changing the substance of the rules. The main change was the introduction of a special provision for subsidiaries meeting the requirements of the Parent-Subsidiary Directive (90/435/EEC). For such foreign subsidiaries, the participation exemption also applied if the shares were held as a passive investment, provided that the subsidiary was not subject to taxation under a special regime.[2]

3. The 1997 and 2002 Changes

The rules for qualifying subsidiaries became increasingly subject to discussion. The tax authorities learned that Dutch multinationals substantially reduced their global tax burden by using low-taxed foreign group finance companies. Shares in a group finance subsidiary are generally not held as a passive investment and, therefore, such a subsidiary could qualify for the participation exemption as long as it was not fully tax exempt. In the view of the government, a passive group finance company was comparable to a passive investment; hence, the participation exemption should not apply. As a result, the law changed by the end of 1996 and shares in a passive foreign group finance company were deemed to be held as a passive investment. The difference between the domestic carve-out and the international carve-out increased significantly.[3]

Some Member States applied less strict rules to passive foreign group finance companies. The Dutch tax authorities felt that the new rules on group finance subsidiaries were being circumvented by interposing EU holding companies between a passive foreign group finance company and a Dutch parent. As a result of the Dutch implementation of the Parent-Subsidiary Directive, the participation exemption applied in such situations. As from 2002, an additional anti-abuse requirement was introduced for subsidiaries meeting the requirements of the Parent-Subsidiary Directive, disallowing the participation exemption if the EU intermediary holding's main function and purpose was holding non-qualifying subsidiaries (at first non-qualifying non-EU subsidiaries, but as from 2003 all kinds of non-qualifying subsidiaries).[4]

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1. Art. 13, Para. 2 Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting1969* – CITA) (1970-1996 version). Parliamentary dossier 6 000.
2. Art. 13g CITA (1992-2001 version).
3. Art. 13, Para. 2 CITA (1997-2006 version). Parliamentary dossier 19 968.
4. Art. 13g CITA (2002-2006 version). Parliamentary dossiers 28 034 and 28 608.

4. The 2007 Reform

The system to divide subsidiaries into the good (subject to the participation exemption) and the bad (subject to taxation) remained essentially the same from 1970 to 2006. The pressure on the system was, however, increasing:

- the tax authorities felt that it was still too easy for multinationals to use low-taxed foreign subsidiaries to shelter passive income;
- given the developments in the case law of the European Court of Justice (ECJ), the difference in the requirements applicable to domestic and EU subsidiaries became increasingly difficult to defend;
- the detailed rules for subsidiaries qualifying under the Parent-Subsidiary Directive were felt to be too complex; and
- more generally, the prevailing opinion was that the requirements were too rigid.[5]

In 2005, the Ministry of Finance started a project aimed at modernizing the corporate income tax system. Part of the project was to make the participation exemption fully compliant with EU law and to revise the distinction between qualifying and non-qualifying subsidiaries. The project resulted in new legislation that was effective from 1 January 2007.

The intention of the legislator was to apply the participation exemption except in situations where liquid capital was shifted to low-tax locations; or, in other words, the Dutch participation exemption was not to be used for artificial structures with low-taxed subsidiaries.[6]

The 2007 rules did not distinguish between domestic and foreign subsidiaries or between EU and non-EU subsidiaries.[7]

The 2007 rules can be summarized as follows. The participation exemption applied to all subsidiaries, unless the subsidiary was a low-taxed passive subsidiary. In general, a shareholding is a shareholding in a subsidiary if at least 5% of the nominal share capital in a company or corporation is held. Smaller shareholdings may qualify in certain circumstances. Also, interests in other types of entities may qualify.[8]

A subsidiary was a low-taxed passive subsidiary if (1) more than half of its direct and indirect assets were of a (deemed) passive nature, (2) its tax burden was less than 10% of taxable profit calculated using Dutch rules and (3) less than 90% of its assets consisted of real estate assets. Loans granted to the Dutch parent company or parties related to the Dutch parent company were deemed to be of a passive nature, except in two specific situations. If the loan was granted by an active group finance company, the loan was not deemed to be of a passive nature. Further, if the loan was granted by a company less than one-half of whose assets were assets of a passive nature or a group loan, the group loan was also not deemed to be of a passive nature. In other words, a subsidiary would not be a low-taxed passive subsidiary if it passed one of the three tests (the asset test, the tax burden test and the real-estate test).[9]

5. Criticism of the 2007 Rules

The 2007 rules have been subject to criticism from the beginning. Many authors viewed the new rules as difficult to apply in practice and contended that the participation exemption was being denied in situations that were not intended by the legislator.[10]

In the author's experience, it was possible to give assurance to clients regarding the application of the participation exemption on the basis of the asset test or the real-estate test. These tests are generally easy to apply. The classification of direct and indirect assets into business and non-business assets or into real estate and non-real estate can generally be performed by a client. Such classification generally provides sufficient comfort on the asset test, i.e. there is a sufficient margin of good assets over bad assets.

The tax burden test is, in the author's view, much more difficult to apply. There are always significant differences between local rules for determining taxable profit and the Dutch rules and the effect of some of these rules may be difficult to anticipate. Further, the legislation, as well as the discussion in parliament, did not provide conclusive answers to questions such as how to deal with international double taxation rules, group taxation schemes, loss carry-forward rules and other issues affecting the amount of tax to be paid.[11] In the author's practice, there was never a situation where the client had to rely solely on the tax burden test.

In a few situations, however, the outcome of the rules in question was not in line with the legislator's intent. Soon after the provision was introduced, a decree was issued with additional rules. Under these rules, the participation exemption applied in situations where the asset test could not have been met on the basis of the wording

5. Parliamentary dossiers 30 107 and 30 572. H.K.C. Bakker and W.M.J.A. van de Rijt, "Netherlands Corporate Income Tax Reform 2007 – Bill 'Working on Profit'", *Bulletin for International Taxation* 8 (2006), p. 308. M.V. Lambooij and S. Peelen, "The Netherlands Holding Company – Past and Present", *Bulletin for International Taxation* 8 (2006), p. 335.
6. Parliamentary dossier 2005/2006, 30572 No. 3, p. 13.
7. Within the credit system that may apply if the participation exemption does not apply, a distinction between EU and non-EU subsidiaries is made. F.P.J. Snel, "The Netherlands Tax Treatment of Subsidiaries with Special Reference to Credit Regimes", *European Taxation* 5 (2009), pp. 235-240.
8. The definition of subsidiary under the 2007 rules is the same as under the 2010 rules.
9. Art. 13, Paras. 9-13 CITA (2007-2009 version). Parliamentary dossier 30 572. Bakker and Van de Rijt, see note 5, p. 308. Lambooij and Peelen, see note 5, p. 335.
10. S.A.W.J. Strik, "Wetsvoorstel Werken aan winst: gaat het werken?", *Weekblad Fiscaal Recht* 2006/1049, pp. 1049-1063. J.W. Thoen, M. van Leeuwaarden and H.C.J. Fortuin, "De laagbelaste beleggingsdeelneming: de bezittingentoets nader geanalyseerd", *Weekblad Fiscaal Recht* 2007, pp. 1031-1038. S.E. Faber, "The good, the bad and the ugly. Naar een alternatieve benadering van de toerekeningsbalans bij de bezittingentoets", *Weekblad Fiscaal Recht* 2007, pp. 1285-1290.
11. Parliamentary dossier 2005/2006, 30 572, No. 3, p. 59 Parliamentary dossier 2005/2006, 30 572, No. 8, pp. 35-36. Parliamentary dossier 2006/2007, 30 572, No. E, p 5. Parliamentary dossier 2006/2007, 30 572, No. G, pp. 2-3 and 8-9.

of the law, but where there was clearly no shift of funds to a low-tax location. As a result of these additional rules, the application of the participation exemption was excluded in only a few situations that could not be characterized as the shifting of liquid capital to low-tax jurisdictions.[12]

The 2007 rules can also be criticized on a different basis. The spread between the standard Dutch corporate tax rate (25.5%) and the minimum tax burden required under the tax burden test (10%) is substantial: 10% may be sufficient to be considered a non-low-tax jurisdiction, but it is significantly lower than the Dutch rate. In extreme situations, a corporate group based in the Netherlands could, with clever structuring, achieve a consolidated tax burden of (slightly more than) 10%. As passing the tax burden test is all that is required, the 2007 rules allow liquid capital to be shifted from the Netherlands to a place where it is taxed substantially lower.

Therefore, taking into account that there is no perfect world, in the author's view, the 2007 rules are not too narrow and can be applied relatively easily in practice. There is some room for improvement, but severe criticism is unjustified.

6. The 2010 Rules

6.1. Introduction

The Ministry of Finance acknowledged that the 2007 rules were too complex in practice. In a bill published in September 2009, new rules were proposed. In the explanation to the proposal, it was reconfirmed that the intention was to apply the participation exemption, unless there was a shifting of liquid capital to a low-tax location. The proposed rules apply from 1 January 2010. The rules combine the features of the 1970 and 2007 rules.[13]

As in the 2007 rules, the 2010 rules do not distinguish between domestic and foreign subsidiaries. The same rules apply for both. In the author's view, the new rules will only result in an outcome that is different from the 2007 rules in a limited number of cases.

Diagram 1 demonstrates the applicable taxation regime.

Questions 2, 3 and 4, i.e. the rules that distinguish between 'good subsidiaries' (participation exemption) and 'bad ones' (no participation exemption), are discussed further in 6.

Diagram 1

1. Shareholding in a subsidiary? → no → full taxation
   ↓
   yes
   ↓
2. Subsidiary (deemed to be) held as passive investment (intention test) → no → participation exemption
   ↓
   yes
   ↓
3. Direct and indirect assets of subsidiary ≥ passive nature (asset test) → no → participation exemption
   ↓
   yes
   ↓
4. Subject to tax under a qualifying regime (tax burden test) → yes → participation exemption
   ↓
   no
   ↓
5. Effectively subject to tax? → no → full taxation
   ↓
   yes
   ↓
6. Parent-Subsidiary Directive? → no → 5% credit
   ↓
   yes
   ↓
7. Dividend → no → 5% credit
   ↓
   yes
   ↓
   Credit for actual underlying tax or 5% credit (taxpayer's choice)

6.2. Subsidiary

The participation exemption only applies if the shareholding qualifies as a subsidiary (*deelneming*). The definition of subsidiary under the 2010 rules remains the same as under the 2007 rules. The general rule is that a subsidiary exists where at least 5% of the nominal share capital of a company with capital divided into shares is held. Also an interest of 5% in a fund or in a closed limited partnership qualifies as a subsidiary. An interest below 5% still qualifies as a subsidiary in the following situations: (1) a related entity holds an interest of at least 5%, (2) an interest of at least 5% was held at any time in the last three years, or (3) an interest in a related party is held. The threshold for a related party is one-third. A membership of a cooperative (*coöperatie*) is also a subsidiary – there is no minimum threshold.[14]

6.3. Intention test

The test for determining whether or not the subsidiary is (deemed to be) held as a passive investment is, in essence, the same test[15] as was applied in the 1970-2006 period. There are, however, some differences.

First, the subject-to-tax requirement, which applied from 1970-2006, no longer applies. A major improvement contained in the 2007 rules, i.e. that the participation exemption can apply to subsidiaries that are not subject to taxation, has been maintained. Second, the

12. Decree of 28 February 2008, No. CPP2008/257M.
13. Parliamentary dossier 2009/2010, 32 129, No. 3, p. 15.
14. Art. 13, Paras. 2-5 and 14 CITA (2007-2010 version).
15. Art. 13, Paras. 9 and 10 CITA (2010 version).

provisions regarding subsidiaries deemed to be held as passive investment are not identical.

From the case law, the following general rule can be derived: if the asset is held for the purpose of obtaining an ordinary return, i.e. what can be expected with ordinary asset management, it is held as a passive investment. Even if the parent company is not engaged in a genuine enterprise (trade or business), it can still be involved in more than ordinary asset management and qualify for the participation exemption. Also, intermediary holding companies are generally considered to meet the no-passive-investment test if there is a link between the business of the group and that of the subsidiary. Further, if the parent company is actively involved in the management of the subsidiary, generally the subsidiary is not held as a passive investment.[16]

If the parent company has mixed intentions, its main intention should be determined. If the main intention is a passive holding, then the intention test will not be met.[17]

A subsidiary is deemed to be held as a passive investment in two situations:

- If, usually, more than 50% of the assets of a subsidiary on a consolidated basis are equity participations of less than 5% in other entities. The consolidation technique involves a pro rata consolidation of all direct and indirect subsidiaries in which the subsidiary holds an interest of at least 5%; or
- If the subsidiary's main activity is group finance. Group finance means financing the shareholder or parties related to the shareholder (the threshold for being deemed related in this respect is one-third). Group finance not only includes loans and other credit instruments, but also equipment leases, intangibles and other assets. For this purpose, the activity of the subsidiary and the activities of its direct and indirect subsidiaries are taken into account. There is no decisive criterion used to determine the main function. One should look at the balance sheet, turnover, profits, time spent by employees and similar factors.[18]

The second situation is a continuation of the carve-out for group finance subsidiaries introduced in 1996. Those rules were modified in 2007; the 2010 wording returns to the 1996 text. The 1996 and 2010 rules take into account the function of the subsidiary, whilst the 2007 rules focused on the assets. In the author's view, in practice, the differences between the rules are relatively immaterial. In the majority of borderline cases, the outcome would be the same, regardless of whether the case is assessed under the 1996, 2007 or 2010 rules.

6.4. Asset test

The asset test was introduced in the 2007 rules and was modified in the 2010 rules.

The asset test implies that at least half of the assets must be good assets, or, put the other way, a subsidiary fails the test if over half of the assets are bad. Bad assets are "low-taxed-free-passive assets". The assets must each be taken into account at their fair market value.[19]

Free passive assets are: (1) passive assets other than those needed for the business of the owner; and (2) group finance assets. Real property, including rights over real property, are not considered to be free passive assets, unless held by a Dutch exempt investment institution (*vrijgestelde beleggingsinstelling*) or 0%-taxed investment institution (*fiscale beleggingsinstelling*).[20] Group finance assets include loans and other credit instruments, as well as assets (equipment, intangibles and others) leased out. Group finance assets are not viewed as free passive assets if they are held by an entity that qualifies as an active group finance entity or if the acquisition has been financed with third party debt.[21]

Free passive assets are low-taxed if, in fact, the tax burden attributable to the income and gains from those assets is usually below 10%. In this respect, the same approach applies that is applicable to the tax burden test (see 6.5.).[22]

Under the 2007 rules, the asset test had to be continuously met. If the test was not met, even for a day, the participation exemption did not apply to dividends and gains that could be traced back to that day (unless of course another test was met). Under the 2010 rules, the participation exemption applies the entire financial year if usually (*doorgaans*) the asset test is met during that year. Therefore, a failure to meet the test for a single day is no longer an issue. It is not entirely clear what is meant by '*doorgaans*'. In parliament, it was mentioned that a short period of failure should not jeopardize the participation exemption. In its ordinary meaning '*doorgaans*' can mean 'in the majority of cases', but also 'in almost all cases'; one synonym in the dictionary is '9 out of 10'. The latter seems to be a defensible mathematical approach.[23]

For the asset test, both the direct and indirect assets of a subsidiary must be taken into account. In this respect, the following rules apply. If the subsidiary has a shareholding of at least 5% in another company, instead of the shares in that company a pro rata part of the assets of that company must be taken into account. If this company, in turn, has an interest of 5% in another company, the same should be done, without a maximum of tiers. Therefore, this is not a consolidation: loans granted by a subsidiary are not set off against a corresponding debt. Furthermore, a special rule applies if less than 30% of the assets held by the company are low-taxed-free-passive

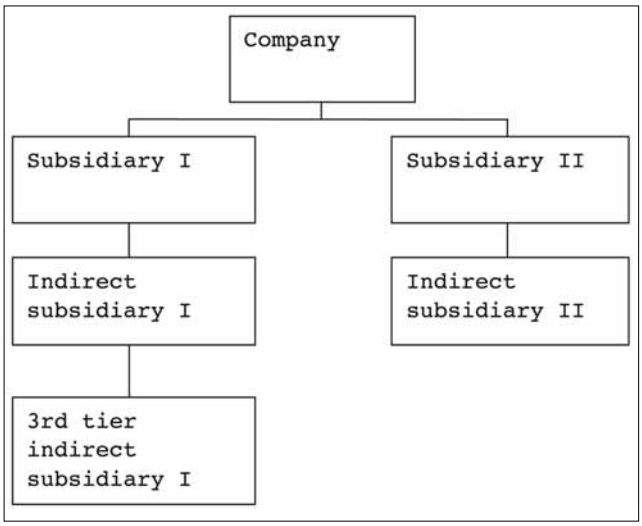
16. Parliamentary dossier 2009/2010, 32 129, No. 3, pp. 58-59.
17. Id., pp. 59-60. Parliamentary dossier 2009/2010, 32 129, No. 8, p. 29.
18. Art. 13, Para. 10 CITA (2010 version). Parliamentary dossier 2009/2010, 32 129, No. 3, pp. 60-61.
19. Art. 13, Paras. 11-13 CITA (2010 version).
20. In theory, a non-resident entity can also be a *fiscale beleggingsinstelling* or *vrijgestelde beleggingsinstelling*.
21. Art. 13, Paras. 11-12 CITA (2010 version). Parliamentary dossier 2009/2010, 32 129, No. 3, pp. 65-68.
22. Art. 13, Para. 13 CITA (2010 version). Parliamentary dossier 2009/2010, 32 129, No. 3, p. 68.
23. Parliamentary dossier 2009/2010, 32 129, No. 3, p. 65.

assets. In such a situation, only a pro rata share of the other assets should be attributed to the subsidiary for the asset test.[24]

Example 1 demonstrates how direct and indirect assets shall be taken into account.

Under the 2007 rules, real estate subsidiaries constituted a separate category. If at least 90% of the consolidated assets consisted of real property, the participation exemption applied, unless the real property was held by a Dutch 0%-taxed investment institution. This separate category has been abolished. Real estate, even if held as a passive investment, is considered a good asset and not a low-taxed-free-passive asset. Also, the relevant definition has been amended. The 2007 rules referred only to real property (*onroerende zaken*); rights over such real property, for example, leaseholds and apartment rights, were not included in the definition. In a decree, the definition was extended to include also these rights. Under the 2010 rules, the definition in the law includes both real property and rights over real property.[25]

Example 1



6.5. Tax burden test

The tax burden test has also been modified in comparison to the tax burden test in the 2007 rules.

The tax burden test under the 2007 rules was unclear. The explanations in parliament were somewhat contradictory. In situations where the taxable income was minimal and there was significant exempt income (under the Dutch rules), the outcome of the test may have been unreasonable. A very small difference between the calculation of taxable income in the Netherlands and the country of the subsidiary, could result in the failure of the test, whilst on the main question (exempt income) both systems would have the same answer. Further, in situations involving losses, tax groups, foreign-source income, voluntary rules and many other situations that were not straightforward, there were no clear answers on how to apply the test.[26]

Nevertheless, the main principle was relatively clear: if the general rate was at least 10% and there were no important differences in calculating the taxable income of the relevant subsidiary, the tax burden should have been considered to be sufficient.[27]

The above-mentioned principle has now been clearly laid down in the law and confirmed in the parliamentary debates. The tax burden test takes into account how the tax system applicable to the subsidiary works with regard

24. Parliamentary dossier 2009/2010, 32 129, No. 3, pp. 65-66.
25. Art. 13, Para. 12 CITA (2010 version).
26. See note 10.
27. Parliamentary dossier 2005/2006, 30 572, No. 3, p. 59.

	Company	Subsidiary I	Indirect subsidiary I	3rd tier indirect subsidiary I	Subsidiary II	Indirect subsidiary II	Elimination	Assets for asset test
Sub I	100							0
Good assets	100	100						100
Bad assets	**0**	**50**						**50**
Indirect sub I		50					–50	0
Good assets			100					100
Loan to 3rd tier			**50**					**50**
Other bad Assets			**50**					**50**
3rd tier indirect sub I			100				–100	0
Good assets				50				50
Bad Assets				**100**				**100**
Sub II	100							
Good assets					100			100
Bad assets					**100**			**100**
Indirect sub II					100		–100	0
Good assets						75		75
Bad assets						**25**	**–25**	**0**
	300	200	300	150	300	100		775
Equity	300	100	50	100	100	100		
Loan from parent				50				
Other liabilities	0	100	250	0	200	0		
	300	200	300	150	300	100		

In this example, the good assets amount to 425 and the bad assets amount to 350. Accordingly, the asset test is satisfied.

to the specific situation of the subsidiary. In contrast to the asset test, the tax burden test only takes into account the position of the direct subsidiary. In parliament, numerous examples were given to provide further guidance on how to apply the test. It goes beyond the scope of this article to go into the details of all the examples, but a few points should be mentioned. Differences in rules on loss compensation are not relevant. The same applies for group regimes. A progressive rate system with a starting rate below 10% is not a problem, if the main rate is at least 10%. Different rules regarding exemptions, including exemptions for foreign profits and income from subsidiaries, are relevant. As a result of the latter, the tax position of indirect subsidiaries may be indirectly relevant.[28]

Another difference between the 2007 and the 2010 rules is that under the 2010 rules Dutch companies, other than exempt investment institutions (*vrijgestelde beleggingsinstelling*)[29] or 0%-taxed investment institutions (*fiscale beleggingsinstelling*), are deemed to satisfy the tax burden test automatically. This implies an indirect distinction between a domestic and a foreign subsidiary, which may lead to the conclusion that the 2010 tax burden test is not (fully) EU compliant.

6.6. The credit system

In general, the credit system provides a credit on the basis of a deemed 5% underlying tax plus the actual withholding tax (if any). For dividends from qualifying EU subsidiaries, the actual underlying tax may be credited.[30]

6.7. Are the new rules complex?

At first glance, the 2010 rules may look complex. Indeed, they are more detailed than the 2007 rules, which were already more detailed compared to the 1970 rules. It appears to be a general trend for rules to become more complex. This tendency is also based on the fact that more and more is being learned about what taxpayers do, especially how they react to certain legislative measures. This tendency also comes from the understanding that simple rules may be clear, but can have undesired (unjustified) effects in non-standard cases.

If one looks at the situation from the perspective of the potential activities of a subsidiary, the rules are quite simple. For the vast majority of subsidiaries the question of whether or not the participation exemption applies will (almost) be a no-brainer. The following rules of thumb will predict the outcome of the formal rules in almost all cases:

(1) If the subsidiary's main activity is carrying on an enterprise, the participation exemption applies;

(2) If the subsidiary's main activity is real property investment, the participation exemption applies, unless it is a Dutch 0%-taxed investment institution;

(3) If the subsidiary is a holding company and its main subsidiaries are subsidiaries of the type mentioned under (1) and (2), the participation exemption generally applies. If such a holding company also granted loans to its subsidiaries, the participation exemption still applies;

(4) If the subsidiary is an investment company or a fund qualifying for a favourable tax regime, the participation exemption does not apply, unless the subsidiary is in fact a holding company of the type mentioned under (3);

(5) If the subsidiary is a group finance company, the participation exemption will not apply, unless the subsidiary is comparable to a real bank; and

(6) If the subsidiary is engaged in leasing out equipment, holding intangibles or similar activities that are between financial and operational activities, the participation exemption applies if the subsidiary is sufficiently active and/or has sufficient third-party debt and/or third-party clients.

Only in very anomalous situations, will the rules not lead to the correct outcome. Altogether, in the author's view, the 2010 rules are sufficiently clear to be applied in practice.

6.8. Advance tax rulings

Advance tax ruling by the Dutch tax authorities on the participation exemption will automatically be terminated as a result of the amended legislation. The intention of the legislator is, however, to loosen the requirements, not to tighten them. It is likely that the participation exemption will only cease to apply in a limited number of cases. The Dutch tax authorities have also realized this. In the parliament the Ministry of Finance indicated that the Dutch tax authorities would continue to apply existing advance tax rulings on the participation exemption.[31] In other words, companies that had an advance tax ruling prior to 2010 do not have to file for a new one (assuming their factual situation remains, in essence, the same).

7. Conclusion

The Netherlands has revised the rules regarding good and bad subsidiaries for the application of the participation exemption. In essence, the new rules combine the features of the 1970, the 1996 and the 2007 rules. The 2010 changes seek to provide more clarity and to ensure that the rules at issue are easier to apply. In the author's opinion, although the rules may look complex, in practice, they are straightforward to implement. The outcome of the new rules should only be different in a limited number of cases. Existing advance tax rulings will, in practice, continue to apply.

28. Parliamentary dossier 2009/2010, 32 129, No. 3, pp. 61-65. Parliamentary dossier 2009/2010, 32 129, No. 8, pp. 31-36.
29. In theory, a non-resident entity can also be a *fiscale beleggingsinstelling* or *vrijgestelde beleggingsinstelling*.
30. Arts. 13aa and 23c CITA. See also Snel, note 7.
31. Parliamentary dossier 2009/2010, 32 129, No. E, p. 12.