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Netherlands required to extend fiscal unity regime to Dutch companies owned by foreign parent

In an article on MNE Tax, Wiebe Dijkstra and Klaas Vesteeg comment on the decision by The Dutch Court of Appeal of April 26, which ruled that the Dutch fiscal unity regime is incompatible with the Netherlands/Israel double tax treaty. As a result of the decision, the Netherlands will be required to extend its fiscal unity-regime to Dutch companies that have foreign parents resident in Israel or resident in countries that have a tax treaty that is similar to the Netherlands/Israel treaty.

Currently, the Dutch corporate income tax act allows a Dutch tax resident company to form a fiscal unity with its Dutch subsidiaries if it holds at least 95 percent of the legal and economic ownership of the subsidiaries. Forming a fiscal unity brings many advantages: tax losses can be offset against taxable profits and profits on intercompany transactions can be eliminated, essentially allowing the tax free transfer of assets and liabilities between all fiscal unity members. This could result in a lower effective tax rate.

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