

荷比卢（荷兰、比利时、卢森堡） - 进入欧洲的首选投资地

Benelux- A Preferred Option to Enter Europe as an Investment Base

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引言： 以荷比卢作为投资 欧洲的跳板

“荷比卢”是欧盟（“EU”）的三个创始成员国，即荷兰、比利时与卢森堡。这些国家位于欧洲的中心，毗邻法国和德国。尽管它们的面积很小（74102平方公里），荷比卢却是商业最为发达的欧洲地区之一，其人均收入高居世界前列。良好的基础设施、交通和物流条件、高素质的劳动力、良好的语言能力、一流的金融服务、先进的技术和研发实力等因素使荷比卢成为全球吸引外国直接投资最多的地区之一。

越来越多的中国企业开始在欧洲投资，或以欧洲为跳板在欧盟以外的其他国家进行投资。一些中国企业选择投资那些具有庞大消费市场的国家，如德国、意大利、法国等。对于中国投资者，欧洲各国的优点可能不尽相同。越来越多的投资者向不止一个欧洲国家进行拓展。目前，扩大后的欧盟市场拥有约5亿消费者，以及高度发达的经济。在多个国家开展业务时，最好将投资集中化，并通过一家欧洲控股公司来予以管理。如果没有居间公司，中国投资者就必须分别考虑中国与其余各国之间的投资及税收条约。

然而，如果在某个欧洲国家建立了居间公司，并通过这一居间公司在其他欧洲国家开展投资，则只受统一欧洲指令的约束，后者适用于所有欧盟成员国。这样就能大大简化投资结构。投资者只需考察居间公司所在国的投资和税收政策，而不需分别考察每个欧洲国家与中国达成的投资及税收条约。如果采用的结构正确（为此需要专家建议），建立欧盟居间公司不仅不会多缴税，反而会减少总税负。本文对此有进一步的说明。

从操作上讲，建立集中化的欧洲控股公司可以提高效率，便于实现持续控制和良好管理。旨在实现欧盟投资与业务集中控股的居间公司应建立在那些具有良好基础设施、优惠的税收及企业政策的国家。

Introduction: Benelux as stepping stone for European investments

The Benelux comprises three founding fathers of the European union (“EU”), namely Belgium, the Netherlands and Luxembourg. These countries are located in the center of Europe, adjacent to France and Germany. In spite of its geographical tiny territory with only 74,102 km², the Benelux is one of the most commercially active regions in Europe with one of the highest levels of per capita income in the world. Among others, good infrastructure, transportation and logistics facilities, highly qualified workforce, good language capacities, well-known financial services, advanced technologies and R&D facilities make Benelux one of the most popular regions for foreign direct investment in the world.

A growing number of Chinese investors are investing in Europe or use Europe as stepping stone for investments in other countries outside the EU. Some Chinese businesses choose to invest in countries with big consumer markets such as Germany, Italy, France, etc. Different European countries may have different attractions for Chinese investors. Increasingly investors have been expanding to more than one European country. Ultimately, the enlarged European Union now comprises a market of some 500 million consumers and highly developed industries. If business is developed in multiple countries, it is generally advisable to centralise the investments and manage the same through one European holding company. In the absence of an intermediary company, a Chinese investor will have to check the investment and tax arrangements between China and each individual country. However, if an intermediary company is established in a selected European country, the investment made by this intermediary company in other European countries will be regulated by unified European Directives applying to

all European Member States. This will greatly simplify the investment structure. The investor simply needs to check the investment and tax regime of one particular European country where the intermediary country will be established, rather than check the investment and tax regimes of each European country in respect of China. If properly structured (for this, expert advice is needed), the introduction of an EU intermediate holding company will not result in additional taxation but rather leads to reduced overall taxes. This is further explained in this newsletter.

Operationally, creating a centralised European holding is efficient and allows for continued control and good governance. Such intermediary company for centralised holding of EU investments and activities should be incorporated in a country with a favourable infrastructure, as well as favorable tax and corporate regimes.

在荷比卢选择理想地点需要考虑的因素

在这三国选择建立居间控股公司的理想地点时，必须仔细考虑所有相关因素。下文提到了其中一些与此有关的问题。税收结构非常重要，因为这可以使中国企业减少其全球收入的总体税负。税收是如此重要，以致本文第3章专门对此进行阐述。请注意，所选择的地点常常不同于中国企业实际开展业务的市场或国家。也就是说，如果主要市场位于东欧，从一开始就把欧洲总部放在比荷卢地区可能会带来巨大的好处。

投资保护

荷比卢三国（尤其是荷兰）都通过与第三国的双边条约对外国投资给予保护。这些条约可以保护中国企业不受其他国家对重要资产进行国有化的影响。这对投资天然资源的中国企业（例如在南美洲）也许尤其重要。

进入资本市场

作为纽约泛欧交易所的一部分，阿姆斯特丹交易所是综合股票市场和全球最大的交易平台，最近推出了一针对在纽约证券交易所上市的中国企业的快速通道程序，使其可以通过第二上市在泛欧上市，而不必满足有关招股说明书的要求。这为中国企业打开了欧洲资本市场的大门，使其避免繁杂的程序，减少相关成本。此外，与那些在名声有争议的地方建立离岸控股公司的企业相比，通过在荷比卢建立欧洲总部，从而在欧洲站住脚跟，可以帮助企业未来进行IPO（首次公开发行）。

基础设施与物流

荷比卢是著名的物流中心。荷兰具有位居世界第三的贸易逆差，这是由于从鹿特丹、阿姆斯特丹港以及斯基浦机场出口的海量货物。安特卫普港和卢森堡机场也是重要的物流枢纽。鹿特丹是世界第三大港和欧洲第一大港，这还不算即将开始的、规模庞大的港口扩建计划。在物流方面，我们注意到最近推出的授权经济经营者概念。这对与欧盟做生意的中国进口商影响很大，因为通过取得授权经济经营者资格，可以为企业带来优先地位，从而大大改善运营效率。有关详细中文信息，请参考www.loyensloeff.com。

投资环境

许多全球最大的公司都把（欧洲）总部放在了荷兰。中国企业也从善如流。荷比卢三国政府对外国投资的开放态度是具有决定意义的优势。例如，中国公司基本上可以毫无约束地接管卢森堡目标企业。

荷比卢三国公司法的特点是灵活，允许中国集团实现持续控制，管理其国际业务部分。例如，国际化合资企业常常采取荷兰有限责任公司的结构，为中国股东及其国际股东带来利益。即使合资企业的实际业务是在荷兰以外的地区开展，这一优势也并不受影响。

Factors in choosing the ideal location within the Benelux

Any choice of location for an intermediate holding company in the group will have to be carefully considered taking all relevant issues into account. Some of the issues which are relevant in this respect are mentioned below. Tax structuring is critically important as this allows Chinese corporations to reduce their overall tax burden on global income. It is so important that tax is dealt with separately in chapter 3 of this newsletter. Note that very often the choice of location may differ from the market or country where at a given point the Chinese corporation is actually most active. In other words, if the key market to develop is in Eastern Europe, it may be very beneficial to locate the European HQ in a Benelux country from the start.

Investment protection

Notably the Netherlands but also Belgium and Luxembourg offer protection – though bilateral treaties with third countries – of foreign investment. These treaties protect Chinese corporations against nationalization of key assets in other countries. This may be particularly interesting for Chinese corporations investing in natural resources, for example in South America.

Capital market access

Euronext Amsterdam, part of NYSE Euronext, the merged stock exchange and the largest trading platform in the world, has recently introduced a fast track procedure for Chinese corporations with a listing at NYSE to become easily listed at Euronext by way of secondary listing without prospectus requirement. This opens up the European capital market without a complex procedure and therefore at relatively low cost to Chinese businesses. Aside, creating a solid presence in Europe through a European headquarters established in the

Benelux will facilitate a future IPO (initial public offering) contrary to holdings which would be located in less reputed off shoring jurisdictions.

Infrastructure and logistics

The Benelux is obviously a centre for logistics. The Netherlands has the third largest trading deficit in the world, on account of the immense flow of goods exported out of the Rotterdam, Amsterdam ports and Schiphol Airport. The Antwerp harbor and Luxembourg airport are important logistical hubs as well. Rotterdam is the third largest port in the world and the biggest port in Europe – even before the massive port expansion program which will be put to effect shortly. In logistics, we note the recent introduction of the Approved Economic Operator concept. This is highly relevant to Chinese importers of goods in the EU as obtaining the status of Approved Economic Operator will provide a priority status and this greatly improves operational efficiency. Please refer to www.loyensloeff.com for more detailed information in Chinese.

Investment climate

Many of the world' s largest companies have domiciled their (European) headquarters in the Netherlands. Chinese businesses follow their peers. The open approach which the Benelux governments take towards foreign investment is a decisive benefit. For example, there are practically very little rules which would prohibit a Chinese corporation from taking over a Benelux target business.

Corporate law throughout the Benelux may be characterized as flexible, allowances for continued control and governance of the international part of the Chinese group. Joint ventures in an international context for example are often structured through Dutch limited liability companies, to the benefit of both Chinese shareholders and their international counterparts. This is even the case where the actual business of the joint venture is conducted outside the Netherlands.

在荷比卢任意一国建立和维持居间控股公司的成本相当合理。

尽管荷比卢三国是并非管制严格的市场，但对于某些领域仍有具体的规定。例如在化工行业，新的欧洲 REACH 指令已经生效，要求就进口产品中所含的危险化学品进行通告和清除。如需有关中文信息，可访问 www.loyensloeff.com。

此外，规模可观的华人社团、出色的居住和教育条件、以及较高的福利水平等也进一步改善了投资环境。

税收结构： 相应优势的对比

荷比卢三国具有优惠的税收政策，这是在全欧洲范围内做出投资决策时的关键因素。荷比卢三国常被著名跨国公司以及从事海外投资与业务的中国企业作为控股地点。

企业所得税

目前，名义企业所得税率在卢森堡为 29.63%，在荷兰为 25.5%，在比利时为 33.99%。

尽管乍看之下，名义企业所得税率似乎具有决定意义（各国的确不断寻求降低税率以吸引外国投资），在选择建立居间控股实体的地点时，必须充分考虑到各个国家的所有结构可能性。名义税率常常可以通过融资（杠杆）、跨境组合或合伙、集团内部转移定价或特殊利息扣除政策（例如比利时的名义利息削减政策）而得到降低。在荷比卢三国，参与免税政策规定，对来自符合规定的子公司的收入（包括资本收益）免税。

预提税

对欧洲子公司应付给其母公司的股息红利、版税及利息征收的任何预提税显然也会影响总税负成本。

The cost of maintenance and compliance of intermediate holding companies in any of the Benelux countries are modest.

Although the Benelux countries are not an overly regulated market, note that for specific sectors, specific rules apply. For example, this is the case in the chemical sector where the new European REACH directive is taking effect, requiring that dangerous chemicals included in products imported are notified and cleared. Specific information can be obtained from www.loyensloeff.com and is available in Chinese.

The investment climate is further enhanced by the availability of sizable Chinese communities, excellent housing and schooling conditions, and a high general welfare level.

Tax structuring: a comparison of applicable benefits

The Benelux countries have favourable tax regimes which are vital elements for reaching investment decisions on a Europe-wide basis. Benelux countries are frequently used as holding locations both by well known multinational corporations and by Chinese corporations investing and doing business abroad.

Corporate income tax

At present, the nominal corporate income tax rate is 29.63% in Luxembourg, 25.5% in the Netherlands, and 33.99% in Belgium.

Although the normal corporate income tax rate seems decisive at first sight (and indeed, countries are consistently pursuing lowering of the tax base to attract foreign investment), the location which ultimately is chosen for the intermediate holding entity should be carefully selected taking into account all available structuring possibilities per country. The normal tax rates can often be reduced as a result of financing (leverage), grouping or pooling arrangements on a cross-border basis, transfer pricing arrangements within a group, or special interest deduction regimes (for example the notional interest deduction in Belgium). In all Benelux countries, the participation exemption regime provides for an exemption for income (including capital gains) originating from qualifying subsidiaries.

Withholding taxes

Withholding taxes on dividends, royalties and interests, if any, payable by a European subsidiary to its parent clearly also influence the overall tax cost.

在荷比卢三国，红利预提税率常常可以削减到0%，前提是满足特定条件，或在相应的税收条约体系下提出申请。在荷兰，股息预提税通常可以按照适用的条约或通过建立卢森堡控股实体、从而利用卢森堡-香港税收条约而削减为0%。或者可以建立所谓合作企业形式的居间控股公司，因为预提税对合作企业不适用。在比利时，红利预提税为0%，前提是在与比利时达成税收条约的管辖区内建立股东公司（中国及香港已经与比利时签署此类税收条约），并要求一个控股期和最小参与。

原则上，荷兰及卢森堡不对利息和版权征收预提税。由比利时公司支付的利息和版权会导致税率为15%的预提税。不过，这一预提税可以很容易得削减到0%（例如支付给合格的欧盟相关公司），并且适用其他免税情况。

在最终的比较中还应注意到，比利时公司所获红利的95%免税，其余5%成为应税收入（税率为33.99%-实际有效税率约为1.7%），但这一应税收入税负可以与非比利时公司产生的其他成本相抵消。

协定及税务机关预先裁定

荷比卢三国都与多个其他国家达成了税收协定（此外还有普遍适用于欧盟成员国的税务规定）。其中，比利时及卢森堡与香港签署了税收协定，而目前正在磋商之中的中国-荷兰税收协定也把中国最新的税法纳入考虑。

显然，荷兰拥有全世界最有吸引力的税收协定体系，这得益于为吸引外国投资而进行的长达90年的改进工作。与此相应，中国企业会发现，采用居间控股公司甚至可以帮助在荷兰或欧盟以外的地区开展的业务提高税务效率。这再次说明，通过提前采纳专家建议，为国际化业务建立正确的结构，可以产生显著的效益。

此外，荷兰具有一项传统，即允许企业（包括跨国公司和外国企业）就其税务情况取得税务机关预先裁定。预先裁定为进一步的税务规划提供了可靠的基础。在特定条件下，关于其税务情况或与将要进行的交易有关的具体税务问题，纳税人可以从税务局获得预先裁定。这在建立投资结构之前提前实现了确定性。在卢森堡和比利时也同样可以获得预先裁定。

最重要的是，这三国都拥有高度成熟、被公认为全球最完善的条约体系。比利时和卢森堡是仅有的两个与香港达成了税收协定的欧洲国家。通过采用卢森堡与荷兰之间的特殊优惠税收政策，在卢森堡建立公司，荷兰企业也可以很容易地享受到这些条约，而不会产生多余的税负。

此外，卢森堡还实施了专业投资基金（SIF）政策，作为私有资产投资者的适当手段，而不对其收入或资本收益征税。另外，还可以采用SICAV（拥有可变资本的投资公司）形式的SIF，从而享受到由卢森堡达成的某些双重征税条约的好处。

有关荷比卢三国税收政策的详情，请见本文附件中的各国介绍。

The dividend withholding tax rate in each of the three Benelux countries can often be reduced to 0% provided certain conditions are met or under application of the available tax treaty network. For the Netherlands, the dividend withholding tax is very often reduced to 0% under the applicable treaties, or by interposing a Luxembourg holding vehicle to take advantage of the Luxembourg Hong Kong tax treaty. Alternatively, the European intermediate holding entity may be structured in the form of a so called co operative, as withholding taxes do not apply to co operatives. In Belgium the dividend withholding tax is 0% provided a shareholder company is established in a jurisdiction with which Belgium has concluded a tax treaty (China and Hong Kong have entered such a tax treaty with Belgium) subject to a holding period and a minimum participation.

In principle, the Netherlands and Luxembourg do not levy withholding taxes on interest and royalties. Interest and royalties paid by a Belgian company trigger withholding tax at the rate of 15%. However, this WHT can easily be reduced to 0% (e.g. payment to a qualifying EU-associated company) and is eligible for other exemption situations.

In the ultimate comparison, it should also be noted that Belgium exempts 95% of the dividends received by a Belgian company, the remaining 5% being a taxable income (subject to 33,99% - Effective tax rate of approx. 1,7%), but this taxable income cost may be off set by any costs incurred other the Belgian company.

Treaties and Advance Tax Rulings

Each of the Benelux countries has concluded tax treaties with multiple other countries (in addition to the tax rules generally applicable within the EU). Notably, Belgium and Luxembourg have concluded tax treaties with Hong Kong, the current tax treaty among the Netherlands and China being negotiated also to take account of the new tax laws in China.

The Netherlands clearly has the most attractive treaty network in the world – the result of a 90 years' tradition in optimizing benefits for foreign investment.

Accordingly, Chinese corporations may find that the use of an intermediate holding company leads to increased tax efficiency even pertaining to operations outside the Netherlands or the EU. Again, much value can be gained if the international operations are properly structured with expert advice in advance.

In addition, the Netherlands has a tradition in allowing companies, also multinationals and foreign companies, to obtain advance rulings as to their tax position. Prior rulings provide a reliable basis for further tax planning. Under certain conditions, a tax payer may obtain a prior decision from the tax authorities on its tax position or on specific tax issues related to a transaction to be entered into. This provides certainty up front before an investment structure is put in place. In Luxembourg, and Belgium advance tax rulings are equally obtainable.

Most importantly, the three countries have very well developed treaty systems which are considered to be among the best available. Belgium and Luxembourg are the only two European countries to have concluded tax treaties with Hong Kong. The Netherlands may quite easily and without additional tax burden take advantage of these treaties by establishing a presence in Luxembourg under application of the advantageous special tax regimes between Luxembourg and the Netherlands.

In addition, a SIF regime (specialized investment funds) has been introduced in Luxembourg, as a suitable vehicle for private equity investors, which is not liable to tax on its income or capital gains. Furthermore, a SIF in the form of a SICAV (an investment company with variable capital) will be eligible for the benefits of a selection of double taxation treaties concluded by Luxembourg.

More detailed tax features of the Netherlands, Belgium and Luxembourg are discussed in the Annexes to this newsletter on a per country basis.

结论：创造价值

由于多项原因（这些都需要仔细的分析以及专业指导），在海外开展业务的中国企业可以建立居间控股公司来产生显著的效益，即通过降低全球收入的总体税负、获得投资保护和进入资本市场等因素。

提前及时做好规划可以带来许多好处，与建立最佳结构所需的成本相比，这些好处通常都要大得多。采取这一方式的中国企业会发现，其跨国竞争者已经并且正在享受这些好处，而中国企业界的全球竞争力最终也将因此受益。

我们乐意为您提供进一步的协助。敬请访问我们的网站 www.loyensloeff.com，了解有关的中文信息。

荷兰

利用荷兰中间控股公司的优势

荷兰历来在建立有效税收的控股和融资架构方面享有盛誉。这在很大程度上是由于荷兰是国际焦点，使得国际集团在荷兰从事经营活动有诸多受益，如：

- 广泛的税收协定网络：荷兰已缔结近 80 个双重征税协定，对股息、利息和版税的可适用预提税提供减免；
- 欧盟协定和欧盟指令（如，母子公司指令）：欧盟内已执行欧盟协定。此协定规定欧盟内部关系的互惠条款，特别是避免国内差别条款和其它阻碍货物和人员在欧盟内自由移动的条款；
- 双边投资协定（BIT）：荷兰已缔结了许多双边投资协定，防止外国政府的不公平行为；和
- 融洽的国际商业环境：荷兰拥有稳定和可靠的政治体系、高素质的服务提供商和可靠的金融系统。

此外，荷兰针对国际控股和融资活动拥有国际公认的强大且灵活的法律体系和优惠的税收制度。荷兰税制的主要内容包括（i）企业所得税率为 25.5%；（ii）对从事经营活动的子公司衍生的股息和资本收益 100% 参与免税；（iii）免征利息和版税的预提税；和（iv）有可能获得事先税收裁定，预先确认荷兰纳税人的纳税标准。由于荷兰税收制度是利益平衡的体系，具有充分的现实要求和反避税条款，因此通常认为荷兰并非避税天堂。

Conclusion: value creation

It shows that for multiple reasons – all of which require careful analysis and expert guidance in each case – establishing an intermediate holding company for a Chinese corporation which is active abroad, can generate substantial value, both by reducing the overall tax cost on global income, obtaining investment protection and capital market access, and other reasons.

Timely planning in advance will prove that the benefits will normally clearly outweigh the cost required to put in place an optimal structure. Chinese corporations following this approach will find that their multinational competitors have discovered and are actively enjoying the same benefits, and ultimately this enhances the competitiveness of the Chinese business community on a global scale.

We will be more than pleased to further assist. Please also refer to our website www.loyensloeff.com and the Chinese information available there.

The Netherlands

Advantages of Using a Dutch Intermediate Holding Company

Historically, the Netherlands has been a highly appreciated location for the establishment of tax efficient holding and financing structures. To a large extent this is caused by the international focus of the Netherlands, which has resulted in many benefits for international groups acting through the Netherlands, such as the following:

- Extensive tax treaty network: the Netherlands have concluded nearly 80 Double Taxation Treaties, which provide for, inter alia, reductions of, or exemptions for, applicable withholding taxes on dividends, interest and royalties;
- EU Treaty and EU Directives (e.g. the Parent-Subsidiary Directive): within the European Union, the EU Treaty has been implemented. This treaty provides for beneficial provisions on intra-EU relations, in particular with a view to the avoidance of domestic discriminatory provisions and other provisions that obstruct free movement of goods and people within the EU;
- Bilateral Investment Treaties (BITs): the Netherlands has concluded many BITs, which provide for protection against unjust actions by foreign governments; and
- Good international business climate: the Netherlands has a stable and reliable political system, highly qualified service providers and a reliable banking system.

In addition, the Netherlands has a strong and flexible legal system and a beneficial tax regime for international holding and financing activities, which is internationally well-accepted. Important aspects of the Dutch tax system include (i) a corporate income tax rate of 25.5% with (ii) a 100% participation exemption for dividends and capital gains derived from subsidiaries that carry out business activities, (iii) the absence of withholding tax on interest and royalties, and (iv) the possibility to obtain

中国境外公司架构

对于一个中国集团来说，创建荷兰控股公司最简单的途径是开设一个荷兰私人有限责任公司（besloten vennootschap met beperkte aansprakelijkheid（荷兰语）或简称“BV”）。BV持有（营业）公司中的股份。

这种基本架构已产生了许多既得利益：

- 对国际商业伙伴透明和可接受的架构；
- 在强大的法律环境中控股；
- 受BIT（双边投资协定）保护；
- 各欧盟和协定国中预提税的扣减；和
- 可以将经营公司的股份出售给第三方，而免缴资本收益税（基于参与免税）。

但是，在荷兰由BV分配的股息将缴纳15%的股息预提税。即使此税率将根据荷中协定降至10%，它也不是向最终受益人返还超额现金的最高效税收方法。有各种方法可以减低荷兰股息税的缴纳。两种方法如下。

减低荷兰股息税的方法

方法 I – 合作公司作为控股公司

这种方法对荷兰BV而言，是设立一个所谓的合作公司（coöperatie（荷兰语）或简称“Co-op”）。在荷兰法律下合作公司是具有法律人格的实体。它不发行股票，但拥有成员。合作公司必须在公证书下开设，并应至少有两个成员组成。

简单来说，利用合作公司最重要的益处是对成员的利润分配免缴股息预提税。特别是对于如香港 - 荷兰这种无协定保护的情况，可发挥荷兰税收协定免缴预提税的优势。

此方法主要税收情况如下：

- （营业）公司的营业利润在其所在国应征税；
- 由（营业）公司分配的股息在其所在国应缴纳股息预提税（基于荷兰和所在国之间的税收协定，可以减少国内股息税率）；
- 根据参与免税制度，荷兰合作公司所得的股息免缴荷兰企业所得税；
- 荷兰合作公司可以分配来自欧洲营业公司的利润，而免缴股息预提税；
- 根据参与免税制度，荷兰合作公司出售营业公司中的股份获得的资本收益免缴荷兰企业所得税；并且
- 征收由变卖合作公司中成员利息所获资本收益的所得税的权利将根据荷兰和所在国之间的税收协定指定；

advance tax rulings confirming the tax position of Dutch taxpayers in advance. Due to the fact that the Dutch tax regime is a balanced system of benefits with sufficient realistic requirements and anti-avoidance provisions, the Netherlands is generally not considered as a tax haven by other jurisdictions.

China outbound structures

The simplest way of creating a Dutch holding structure for a Chinese group would be to set up a Dutch private limited liability company (a *besloten vennootschap met beperkte aansprakelijkheid* or “BV”). The BV holds the shares in the (operating) companies.

This basic structure would already provide for a number of the benefits that are envisaged:

- A transparent and acceptable structure for international business partners;
- A holding in a strong legal environment;
- Protection under BITs (Bilateral Investment Treaties);
- A reduction of withholding taxes in various EU- and treaty countries; and
- A possibility to sell shares in operating companies to third parties without taxation of capital gains (due to the participation exemption).

However, any dividend distributed by the BV would be subject to dividend withholding tax in the Netherlands at a rate of 15%. Even though this rate will be reduced to 10% under the Treaty between the Netherlands and China, it would not be the most tax efficient way to repatriate excess cash to the ultimate beneficiaries. There are various ways of mitigating the Dutch dividend tax exposure. Two alternatives are described below under 1.1.

Alternatives to mitigate Dutch dividend tax

Alternative I – Co-operative as holding company

As an alternative to the Dutch BV it may be considered to establish a so-called co-operative (a *coöperatie* or “Co-op”). A Co-op is an entity with legal personality under Dutch law. It does not issue shares, but instead it has members. A Co-op must be incorporated by a notarial deed and should have at least two members at incorporation.

In brief, the most important benefit of using a Co-op is that the distribution of profits to the members is not subject to dividend withholding tax. Especially, for situations in which there is no treaty protection such as in the Hong Kong – Netherlands situation, it provides the advantage of Dutch tax treaties without incurring withholding taxes.

The main envisaged tax consequences of this alternative would be the following:

- The operating profits of the (operating) companies are taxable in the resident state;
- Dividends distributed by the (operating) companies are subject to dividend withholding tax in the resident state (the domestic dividend tax rate can be reduced by virtue of the tax treaty between the Netherlands and the resident country);
- Dividends received by the Dutch Co-op are exempt from Dutch corporation tax pursuant to the participation exemption;
- The Dutch Co-op can distribute its profits from the European operating companies free from dividend withholding tax;
- Capital gains on the sale of shares in the (operating) companies by the Dutch Co-op are exempt from Dutch corporation tax pursuant to the participation exemption; and
- The right to levy income tax on capital gains realized on the sale of the membership interests in the Co-op will be appointed by the tax treaty between the Netherlands and the resident country;

方法 II – 塞浦路斯最高控股

第二种方法是在塞浦路斯法律下成立一个有限责任公司, 持有荷兰 BV 中的股份。同样, 荷兰 BV 将持有 (营业) 公司的股份。

根据欧盟母子公司指令, 原则上塞浦路斯公司可免除股息税。因此, 此公司架构的益处是可以利用“声誉良好”的荷兰 BV, 而 BV 无需为向股东分配利润而支付荷兰股息税。

此方法主要税收情况如下:

- (营业) 公司的营业利润在其所在国应征税。
- 由 (营业) 公司分配的股息在其所在国应缴纳股息预提税 (由于荷兰和所在国之间的税收协定, 可以减少国内股息税率)。
- 根据参与免税制度, 由荷兰 BV 所得的股息免缴荷兰企业所得税。
- 荷兰 BV 可以将其利润从 (营业) 公司分配到塞浦路斯公司, 而免缴股息预提税 (公司建立后的第一年除外)。
- 根据参与免税制度, 荷兰合作公司出售营业公司股份所得资本收益免缴荷兰企业所得税。
- 塞浦路斯公司变卖荷兰 BV 股份所得股息和资本收益可在塞浦路斯免缴企业所得税。

- 塞浦路斯公司变卖荷兰 BV 股份所得资本收益可免缴荷兰企业所得税 (如, 荷兰无“非居民纳税义务”)。
- 由塞浦路斯控股公司支付的股息免缴股息预提税。

结论

由于荷兰融洽的国际商业环境, 加之广泛的协定网络 (双重征税及双边投资协定)、母子公司指令和优惠的税收制度 (参与免税和有可能将股息预提税降低为零), 荷兰是非常值得向中国企业集团推荐的设立控股公司的国家。

Alternative II – Cypriot top holding

As a second alternative, it may be considered to incorporate a limited liability company under the laws of Cyprus, which would hold the shares in the Dutch BV. In turn, the Dutch BV would hold the shares in the (operating) companies.

The Cypriot company in principle qualifies for the dividend tax exemption under the EU Parent-Subsidiary Directive. Therefore, the benefit of this structure is that it offers the possibility to use the ‘well-known’ Dutch BV, without the BV being liable for Dutch dividend tax on distributions of profits to its shareholders.

The main envisaged tax consequences of this alternative would be the following:

- The operating profits of the (operating) companies are taxable in the resident state.
- Dividends distributed by (the operating) companies are subject to dividend withholding tax in the resident state (the domestic dividend tax rate can be reduced by virtue of the tax treaty between the Netherlands and the resident country).
- Dividends received by the Dutch BV are exempt from Dutch corporation tax pursuant to the participation exemption.
- The Dutch BV can distribute its profits from the (operating) companies to the Cypriot company free from dividend withholding tax (this may not be the case in the first year after establishment of the structure).
- Capital gains on the sale of shares in the (operating) companies by the Dutch Co-op are exempt from Dutch corporation tax pursuant to the participation exemption.
- Dividends received, and capital gains realized, by the Cyprus company on the shares in the Dutch BV are likely to be exempt from corporation tax in Cyprus.

- Capital gains realized by the Cypriot company on the sale of the shares in the Dutch BV are, arguably, not subject to Dutch corporation tax (i.e. no ‘non-resident tax liability’ in the Netherlands).
- Dividends paid by Cyprus Holdco are exempt from dividend withholding tax.

Conclusion

Due to the good international business climate in the Netherlands, combined with its extensive treaty network (double taxation as well as BIT), the Parent-Subsidiary Directive and the beneficial tax regimes (participation exemption and possibility to reduce dividend withholding tax to nil) the Netherlands is very recommendable as a holding country for a Chinese group.

比利时

利用比利时中间控股公司或融资公司的优势

免征资本税

向比利时公司的投资免缴资本税。仅对现金或实务方式的投资征收 25 欧元印花税。

对股息收入 95% 免税，而对资本收益 100% 免税

比利时基本企业所得税率名义上为 33.99%（小公司适用更低的税率）。

在所谓的‘参与免税’制度条件下，比利时公司收到的股息享受 95% 免税（因此有效税率为 1.7%）。5% 的股息可以进一步冲抵公司产生的其它成本，如，一般经营成本、为参股而贷款的利息支出 / 其它财务支出和这些贷款的货币损失。

比利时公司在比利时或外国子公司的股票上获得的资本收益完全免税。无控股期限或最低参股额等特定条件（股票必须仅与在管辖区域内缴纳常规企业所得税的子公司相关）。此税收特点使比利时的控股制度在欧洲极具竞争力。

对分配至中国、中国香港和其它管辖区域的股息免征预提税

在比利时，由当地公司向设立在与比利时签订税收协定的国家的母公司分配或支付的股息分配可以免缴预提税。比利时是与中国和中国香港缔结税收协定的国家之一。从比利时公司支付到中国公司或中国香港公司的股息可以免缴预提税。

值得一提除了卢森堡之外，比利时是目前与香港缔结税收协定的仅有的两个欧洲国家之一。

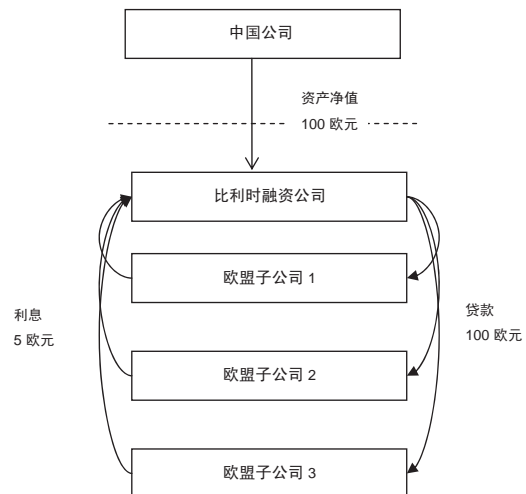
利息和版税的有限的预提税

比利时公司支付的利息和版税将支付 15% 的预提税。但是大多数情况下，此预提税可轻松降至 0%，如公司从有资格的欧盟关联公司、比利时银行或设立于税收协定国的银行借款，或者向非居民纳税人发行记名债券。

其它投资特点（NID 等）

比利时不仅在控股活动领域具有竞争力，而且自 2007 纳税年度执行虚拟利息抵扣制度以来也逐渐成为集团内融资活动的所在地。虚拟利息抵扣制度允许每年从应纳税的基础上自动扣除认定利息（2009 年度估定为 4.307%），从而降低了比利时公司的有效企业税率。

虚拟利息抵扣的数量在对其进行某些修正后（如适用）根据公司资产净值进行计算。它导致比利时股份制公司有效税率的实质性减少。



Belgium

Advantages of Using a Belgian Intermediate Holding or Financing Company

Exemption of capital contribution tax

Contributions made to a Belgian company are exempt from capital tax. Only a stamp duty of EUR 25 applies to contributions in cash or in kind.

95% exemption for dividends income and 100% exemption for capital gains

The basic nominal corporate income tax rate in Belgium amounts to 33.99% (lower tax rates apply to small companies).

Under the conditions of the so called ‘participation exemption’ regime, dividends received by a Belgian company benefit from a 95% exemption (effective tax rate is therefore 1.7%). The 5% dividends can further be compensated with other costs incurred by the company, e.g. general operating costs and interest expenses/other financial charges on loans taken out for the acquisition of a participation and currency losses on such loans.

Capital gains realized by a Belgian company on shares in a Belgian or a foreign subsidiary are fully exempt. No specific condition, such as a holding period or minimum participation, is required (the shares must only relate to a subsidiary which is subject to a normal corporate income tax in its jurisdiction). This tax feature makes the Belgian holding regime very competitive in Europe.

Exemption of withholding on dividend distribution to China, Hong Kong and other jurisdictions

Dividend distributions allocated or paid by a resident company to a parent company established in a country with which Belgium has entered into a Tax Treaty can be exempt from withholding tax in Belgium. Belgium has among other concluded Tax Treaties with China and Hong Kong. Dividends from a Belgian company to a Chinese company or to a Hong Kong company can be paid free of withholding tax.

With Luxembourg, it is interesting to note that Belgium is one of the sole two European countries to have currently concluded a tax treaty with Hong Kong in addition to Luxembourg.

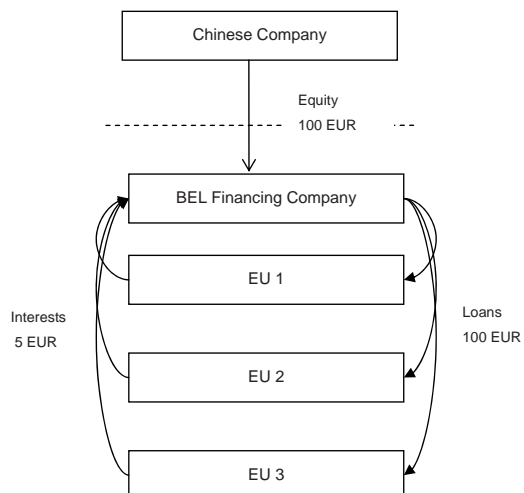
Limited withholding tax on interest and royalties

Interest and royalties paid by a Belgian company trigger Belgian withholding tax at the rate of 15%. However, this withholding tax can in most cases be easily reduced to 0%, if the company, for example, borrows from a qualifying EU-associated company, a Belgian bank or a bank located in a tax treaty country, or has issued registered bonds to non-resident taxpayers.

Other investing features (NID, etc.)

Belgium is not only competitive in the field of holding activities but also gradually a location for inter-group financing activities with the implementation of the notional interest deduction regime as from tax year 2007. The notional interest deduction regime allows a deemed interest (4.307% for the assessment year 2009) to be automatically deducted annually from the taxable basis and thus lowers the effective corporate tax rate of a Belgian company.

The amount of the notional interest deduction is calculated on the equity amount of the company after certain corrections (if applicable) to it. It leads to a substantial reduction of the effective tax rate of equity-financed companies in Belgium.



在下列情况中，三家欧盟子公司需要从中国母公司获得现金。明智的做法是设立一家比利时融资公司并将所需现金作为资本注入其中，而不是中国母公司直接向三家子公司提供贷款。由比利时融资公司批准贷款，且比利时公司所获利息将享受低税率。

此公司架构具有以下优势：

支付给比利时公司的利息在各欧盟国家可免缴预提税（利息 - 版税指令），并且应可在各管辖区域内从欧盟公司获得的收入中抵扣课税；

由比利时公司所收的利息将享受低税率（可轻松达到10%以下）。在上述架构中，有效税率将降低到4.71%；

在比利时，由比利时公司所得的收入可返还中国投资者并免缴预提税。

另外在某些情况下，比利时公司在研发方面的投资可以适用课税扣除，使研究人员的所得税减少25%到65%。而且，有资格的比利时公司可以在应征税的基础上扣除80%的专利收入，使专利收入的有效税率最高为6.8%。除上述研发相关费用可扣除课税外，这种专利收入扣除也可适用于纳税人公司。除了这些优惠的税收制度，比利时公司法也相当灵活，允许在短时间内以低成本设立比利时公司。

卢森堡

卢森堡和中华人民共和国香港特别行政区（“香港”）近来就所得税和资本税方面避免双重征税和防止逃税达成协议（“协定”）。到今年年初为止，卢森堡已对知识产权净收入和净资本收益实行80%免税；因此，该收入的有效税率已从29.63%的普通税率（卢森堡市）降低到5.93%。2007年2月，卢森堡颁布了专业投资基金法（‘SIF法’）。

利用卢森堡中间公司的优势：卢森堡 - 香港协定

此协定仍需两国批准。一旦生效，此协定将在卢森堡适用于2008年1月1日起或之后的税期，而在香港适用于2008年4月1日起或之后的税期。

此协定允许香港在欧洲投资后可将利润返还香港并免缴预提税。因此，卢森堡会在构建香港和欧洲之间的投资架构方面起到重要作用。

此协定的主要特点总结如下。

协定的适用性

此协定适用于有香港或卢森堡（各为“缔约方”）居民资格的“人”。术语“人”包括个人、公司、合伙企业及其他任何社团。术语“人”也适用于香港信托。

对于卢森堡来说，“居民”特指任何因其住所、居住或管理场所而有纳税义务的人。

In the following situation, the three EU subsidiaries need cash from the Chinese parent. Rather than offering loans from the Chinese parent directly to the three subsidiaries, it is advisable to establish and inject the required cash as capital in a Belgian financing company. Loans will be granted by the Belgian financing company and interests received by the Belgian company will be subject to a low taxation.

This structure offers the following advantages:

the interests paid to the Belgian company can be paid free of withholding taxes in the various EU countries (interest-royalties directives) and should be tax deductible in the various jurisdictions from the income realized by the EU companies;

the interests received by the Belgian company will be subject to a low tax rate (less than 10% can be easily achieved). The effective tax rate will decrease to 4.71% in the above-described structure;

the income received by the Belgian company can be repatriated to the Chinese investor free of withholding tax in Belgium.

In addition, a Belgian company investing in research and development can apply a tax credit in some cases, resulting in 25% to 65% income tax reduction for researchers. Furthermore, qualifying Belgian company can benefit from a reduction of 80% of the patent income from the taxable basis, resulting in an effective tax rate on patent income of maximum 6.8%. Such patent income deduction can be applied to the taxpayer company in addition to the aforementioned tax-deductibility of R&D related expenses. In addition to these favourable tax regimes, Belgian company law is rather flexible and allows establishing a Belgium company within a short period time and at low cost.

Luxembourg

Luxembourg and Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") recently entered into an agreement for the avoidance of double taxation and prevention of tax evasion with respect to taxes on income and capital ("Treaty"). As of the beginning of this year, Luxembourg has introduced an 80% exemption for net income and net capital gains from intellectual property; the effective tax rate for such income is thereby reduced from the general rate of 29.63% (Luxembourg City) to 5.93%. In February 2007, Luxembourg has also enacted the law on specialised investment funds (the 'SIF Law').

Advantages of Using a Luxembourg Intermediate Company : The New Luxembourg - Hong Kong Treaty

The Treaty must still be ratified in both countries. Once in force, the Treaty will apply for tax periods starting on or after 1st January 2008 in Luxembourg and for tax periods starting on or after 1st April 2008 in Hong Kong.

The Treaty allows investments from Hong Kong into Europe in a way that profits can be repatriated to Hong Kong without withholding tax. Luxembourg may therefore play an important role in structuring such investments between Hong Kong and Europe.

The main features of the Treaty are summarised below.

Eligibility to the Treaty

The Treaty applies to "persons" that qualify as residents of either Hong Kong or Luxembourg (each a "Contracting Party"). The term "person" includes an individual, a company, a partnership and any other body of persons. The term "person" also applies to Hong Kong trusts.

In the case of Luxembourg, "resident" means inter alia any person who is liable to tax by reason of his domicile, residence or place of management.

对于香港来说，“居民”特指：

- 通常居住于香港的任何个人；
- 任何在香港组成的、或受正常管理或约束的公司；
- 香港法律下指定的或在香港受正常管理或约束的其他任何人。

缔约方的政府或也具备居民资格的任何地方职能部门。

此协定不包含特别的“受益限制条款”。因此，非卢森堡或非香港居民可以通过香港或卢森堡居民投资来间接享受此协定的益处。

所得税

不动产收入

不动产衍生收入将由不动产所在的缔约国征税。

营业收入

缔约国企业的收入可仅在该缔约国缴税，除非此收入是通过设在另一缔约国的常驻机构而获得。此收入也可在另一缔约国缴税，但仅在收入源于此常驻机构的范围内。“常驻机构”的定义包括建筑用地或建筑、装配、安装工程或与之相关的监督活动（该活动持续至少6个月）；及服务，包括由企业直接提供的服务，或通过企业雇佣员工或出于此目的使用的其他人员所提供的咨询服务，但仅限于此类性质的活动（对于同一或相关工程）在12个月内持续累计超过180天。

股息

由一缔约方中的公司居民向另一缔约方中的居民支付的股息可由后者征税。若支付公司为缔约方居民，此类股息也可在缔约方缴税，但是，如果支付到另一缔约方中的受益人居民，则此类征税不可超过以下标准：

如果受益人为公司（除合伙企业外），且直接持有支付股息的公司至少10%的资本或在支付股息的公司占至少120万欧元的购置成本，则征税不可超过股息总额的0%。

- 其它任何情况下，均不可超过股息总额的10%。

利息

利息仅应在受益人为其居民的缔约方内被征税。

版税

由一缔约方中的公司居民向另一缔约方中的居民支付的版税可由后者征税。此类版税也可被支付公司为其居民的缔约方征税，但是，如果支付到另一缔约方中的受益人居民，则此类征税不可超过版税总额的3%。

版税的定义包括任何文学、艺术或科学作品（包括电影胶片）的版权，或工业、商业或科学体验的使用或使用权的报酬。

资本收益

一般而言，资本收益可仅在其让与人为居民的缔约方内被征税，以下所让与的资产除外：

- 位于另一缔约方的不动产；
- 分配到另一缔约方中常驻机构的动产；或
- 超过50%的资产价值来源于位于另一缔约方的不动产之公司的股份（以下适用的股份例外（i）在某一证券交易所挂牌；（ii）在重组、合并、分割或类似操作的框架内转让；和（iii）超过50%的资产价值来源于从事经营的不动产之公司中的股份）。

In the case of Hong Kong “resident” means inter alia:

- any individual who ordinarily resides in Hong Kong;
- any company incorporated or normally managed or controlled in Hong Kong;
- any other person constituted under the laws of Hong Kong or being normally managed or controlled in Hong Kong.

The government of a Contracting Party or any local authority thereof also qualifies as a resident.

The Treaty does not contain a specific “limitation on benefits provision” . Thus, non-Luxembourg or non-Hong Kong residents may indirectly take advantage of the Treaty benefits by investing through a Hong Kong or Luxembourg resident.

Taxation of income

Income from immovable property

Income derived from immovable property may be taxed by the Contracting Party in which the immovable property is situated.

Business income

Income derived from an enterprise of a Contracting Party may only be taxed in that Contracting Party, unless such income is derived through a permanent establishment situated in the other Contracting Party. Such income may be taxed in that other Contracting Party as well, but only to the extent it is attributable to that permanent establishment. The definition of “permanent establishment” includes a building site or a construction, assembly, installation project or supervisory activities carried out in connection therewith if the activity lasts for at least 6 months; and furthermore services, including consultancy services, that are furnished by an enterprise directly or through employees or other personnel engaged by an enterprise for such purpose but only if activities of that nature continue (for the same or a connected project) for a period or periods aggregating more than 180 days within any twelve month period.

Dividends

Dividends paid by a company resident in one Contracting Party to a resident of the other Contracting Party may be taxed in that other Party. Such dividends may also be taxed in the Contracting Party of which the paying company is a resident, however, if paid to a beneficial owner resident in the other Contracting Party, such taxation may not exceed:

0 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR 1.2 million in the company paying the dividends;

- 10 per cent of the gross amount of the dividends in all other cases.

Interest

Interest is only taxable in the Contracting Party of which the beneficial owner is a resident.

Royalties

Royalties paid by a company resident in one Contracting Party to a resident of the other Contracting Party may be taxed in that other Party. Such royalties may also be taxed in the Contracting Party of which the paying company is a resident; however, if paid to a beneficial owner resident in the other Contracting Party, such taxation may not exceed 3% of the gross amount of the royalties.

The definition of royalties includes among other things any copyright of literary, artistic or scientific work including cinematograph films or payments for the use of, or the right to use industrial, commercial or scientific experience.

Capital gains

Capital gains may, generally speaking, only be taxed in the Contracting Party in which the alienator is a resident, except if the alienated asset qualifies as:

- immovable property situated in the other Contracting Party;
- movable property allocated to a permanent establishment in the other Contracting Party; or

在这些情况下，不动产或常驻机构所在的缔约方有权征收资本收益税。

其它收入

此协定的具体条款中未涉及且来源于一缔约方的收入项目可能会由该缔约方征税。此协定的具体条款中未涉及的其他收入项目原则上专由接收方为居民的缔约方征税。

资本

以不动产或构成常驻机构营业财产一部分的动产所代表的资本可由不动产或常驻机构所在缔约方征税。其它资本通常仅由所有人为其居民的缔约方征税。

消除双重征税的方法

香港通过抵免方式避免双重征税。卢森堡通过以下方式避免双重征税：

- 对可能在香港征税的收入源衍生的收入（尤其是（某些）股息和版税），卢森堡允许将香港的税款冲抵卢森堡的税款，最高不超过卢森堡在此收入项的税款。
- 对于其它可能在香港征税且由卢森堡纳税居民产生的收入，卢森堡应从卢森堡税款中免除，除非香港适用此协定使香港对此类收入免税。

其它条款

此协定还明确规定，它不妨碍卢森堡或香港自行实施避税相关国内法律和措施，无论是否作此描述。

在卢森堡来自知识产权的收入免税 80%

卢森堡所得税法令中的新条款规定对于由使用或许可使用以下类别的知识产权而产生的净收入免税 80%：(i) 软件版权；(ii) 专利；(iii) 商标；(iv) 设计；和 (v) 模型。净收入定义为总收入减去与此收入直接相关的费用，包括折旧和摊销。

转让此知识产权的净资产收益也免税 80%，虽然所转让的知识产权在转让当年或上一年度衍生的净损失已‘征收’。此类损失不在免税的适用范围内。此外，免税 80% 不适用于转让知识产权之前产生的资本收益。

为了避免滥用，免税 80% 不包括从关联公司获得的知识产权。关联公司在此定义为拥有纳税人资本至少 10%，纳税人至少拥有 10% 的资本或同样拥有纳税人资本至少 10% 的第三方公司拥有至少 10% 的资本的公司。

- shares of a company more than 50% of the value of which is derived directly or indirectly from immovable property situated in the other Contracting Party (with exceptions applying to shares (i) quoted on certain stock exchanges; (ii) alienated in the framework of a reorganisation, merger, division or similar operation; and (iii) in a company deriving more than 50% of its asset value from immovable property in which it carries on its business).

In these cases the Contracting Party in which the immovable property or the permanent establishment is situated is entitled to tax the capital gains.

Other income

Items of income not dealt with in the specific articles of the Treaty and derived from sources in a Contracting Party may be taxed by that Contracting Party. Other items of income not dealt with in the specific articles of the Treaty may in principle exclusively be taxed by the Contracting Party of which the recipient is a resident.

Capital

Capital represented by immovable property or by movable property forming part of the business property of a permanent establishment may be taxed by the Contracting Party in which the immovable property or the permanent establishment is situated. Other capital may normally only be taxed by the Contracting Party of which the owner is a resident.

Methods for elimination of double taxation

Hong Kong avoids double taxation by applying the credit method. Luxembourg avoids double taxation in the following manners:

- For income derived from sources that may be taxed in Hong Kong (inter alia (certain) dividends and royalties) Luxembourg will allow a credit against Luxembourg tax for Hong Kong tax up to the amount of Luxembourg tax on such items of income;
- For other income that may be taxed in Hong Kong and derived by a Luxembourg tax resident, Luxembourg shall provide an exemption from Luxembourg tax, unless Hong Kong applies the Treaty such that Hong Kong exempts such income.

Miscellaneous provisions

The Treaty furthermore explicitly stipulates that it does not prevent Luxembourg or Hong Kong from applying its respective domestic laws and measures concerning tax avoidance, whether or not described as such.

The 80% tax exemption for income from intellectual property in Luxembourg

The new provisions in the Luxembourg Income Tax Act, provides an exemption of 80% of net income stemming from the use or the concession to use the rights to the following categories of intellectual property: (i) copyrights on software; (ii) patents; (iii) trademarks; (iv) designs; and (v) models. Net income is defined as the gross income minus costs in direct relation to such income, including depreciation and amortisation.

Net capital gains on the alienation of such intellectual property are also 80% exempt, albeit that net losses stemming from the alienated intellectual property in the year of alienation or previous years are 'recaptured' : the exemption is not applicable to the extent of such losses. Furthermore, the 80% exemption is not applicable to the extent previous capital gains were rolled over to the alienated intellectual property.

In order to avoid possible abuse, the 80% exemption

对于纳税人在其经营活动中自主研发的专利，如果专利已许可给第三方，则自专利申请注册之日起可以抵扣相当于 80% 可实现净收入的金额。但是，如果专利申请已撤销或被拒绝，则抵扣将取消。

申请日之前的费用和摊销将按当日核定为资本，并且添加到相应财政年度的应征税利润。

纳税人可以利用知识产权常用的估价方法来决定自己的知识产权的价值；他有举证责任来证明所采用的方法是适当的。

但是，考虑到管理成本负担，中小型企业可能并不采用这种定价方法，他们可能会选择使用相当于知识产权研发累计总费用的 110% 的估价。

卢森堡新的免税基金制度 (SIF)

引言

2007年2月，卢森堡颁布了专业投资基金法（‘SIF法’）。SIF法代替了1991年证券集体投资计划（‘UCI’）的法律，通常被称为机构投资者基金，不向公众提供的有价证券。对于有资格的国际投资者来说，这是一个管制轻松、操作灵活且节税的投资基金制度。

主要条件

法律结构

SIF 制度可适用于卢森堡实体下构成的任何实体，包括 FCP 和 SICAV。总的说来，SIF 可适用于：

- 由合约安排建立的税收透明的共同基金（fonds commun de placement（互惠投资基金）），由卢森堡管理公司管理（简称“FCP-SIF”）；
- 具有可变资本的投资公司（“SICAV”），公司形式为私人有限责任公司（société à responsabilité limitée 或 ‘S.à r.l.’）、公开有限责任公司（société anonyme 或 ‘SA’）、股份有限公司（société en commandite par actions 或 ‘SCA’）或以公开有限责任公司为形式的合作公司（société coopérative sous forme de société anonyme 或 ‘SCSA’）（‘SICAV-SIF’）；
- 卢森堡法律下构成的任何实体，包括有限合伙公司（société en commandite simple 或 SCS）。

符合条件的投资者

任何机构的、专业的或‘消息灵通的’的投资者可以投资、发起或开办 SIF。‘消息灵通的’的投资者基本需要在基金中投资至少 125,000 欧元，或者在较小投资的情况下，由信贷机构、有资格的投资企业或管理公司进行评估，证明投资者的专业技术、经验和知识能够获得足够在相关 SIF 中投资的评估。因此，并非 SIF 本身‘专业’，而是投资者必须‘专业’。

监督

设立 SIF 无需卢森堡金融业监管委员会（Commission de Surveillance du Secteur Financier 或 ‘CSSF’）的预先授权。但是，相关 SIF 的惯例文件必须在 SIF 设立后一个月内由 CSSF 归档。尽管 CSSF 将审核相关 SIF 和其董事在准许 SIF 加入正式 SIF 清单之前是否遵守适用的法律和法规，而使此准入待定，原则上 SIF 一经设立即可开展活动。

is excluded from intellectual property acquired from related companies. Related companies are defined for this purpose as companies that own at least 10% in the capital of the taxpayer, are owned for at least 10% by the taxpayer or that are owned for at least 10% by a third company that also holds at least 10% in the taxpayer.

For self-developed patents the taxpayers use in their business operations, a deduction may be taken equal to 80% of the net income that could have been realised if the patent had been licensed to a third party, as of the date the application for registration of the patent is pending. The deduction will be undone, however, if the application is withdrawn or refused.

The expenses and amortisations taken before the date of application are to be capitalised as per that date and thus added to taxable profit of the relevant fiscal year.

General methods available for the valuation of intellectual property may be utilised by a taxpayer for the determination of the value of his own intellectual property; he has the burden of proof that the method applied is an adequate one.

However, in recognition of the administrative burden, such determination may pose for small and medium business enterprises, they may opt to use a valuation equal to 110% of the aggregate amount of expenses made for developing the intellectual property.

The new Luxembourg tax exempt fund regime (SIF)

Introduction

In February 2007 Luxembourg enacted the law on specialised investment funds (the ‘SIF Law’). The SIF Law replaces the 1991 law on undertakings for collective investment (‘UCIs’), commonly referred to as institutional investor funds, the securities of which are not intended to be offered to the public. The result is a lightly regulated, operationally flexible and tax-efficient investment fund regime for an internationally qualified investor base.

Main conditions

Legal structure

The SIF regime may be applied to any entity formed under Luxembourg entity including the FCP and SICAV. In summary, the SIF regime can be applied to:

- A tax-transparent common fund established by a contractual arrangement (fonds commun de placement), managed by a Luxembourg management company (a “FCP-SIF”);
- An investment company with variable capital (“SICAV”) in the corporate form of a private limited liability company (société à responsabilité limitée or ‘S.à r.l.’), public limited liability company (société anonyme or ‘SA’), partnership limited by shares (société en commandite par actions or ‘SCA’) or cooperative company in the form of a public limited liability company (société coopérative sous forme de société anonyme or ‘SCSA’) (a “SICAV-SIF”);
- Any entity formed under Luxembourg law, including a limited partnership (société en commandite simple or SCS).

Eligible investors

Any institutional, professional or ‘well-informed’ investor may invest in, but also initiate or launch, a SIF. The ‘well-informed’ investor status basically entails that an investor invests at least EUR 125,000 in the fund, or in the case of a smaller investment, obtains an appraisal from a credit institution, a qualifying investment enterprise, or a management company certifying the investor’s expertise, experience and knowledge justifying his adequate appraisal of an investment in the relevant SIF. It is thus not the SIF itself that is ‘specialised’, but it is the investor base which must be ‘specialised’.

Supervision

Establishing a SIF does not require prior authorisation by the Luxembourg regulatory authority for the financial sector (Commission de Surveillance du Secteur Financier or ‘CSSF’). However, the constitutional documents of the relevant SIF must be filed with the CSSF within one month following the establishment of the SIF. Although the CSSF will verify that the relevant SIF and its directors have complied with

投资政策

尽管 SIF 法提出了 SIF 遵循风险分担政策的条件，但是该法并未详细阐述任何定量、定性、地域或其它类型的投资限制。为了加速监管部门审批进度，CSSF 已颁发公告（07/309），提供关于此风险分担原则的附加指导。依照该公告，SIF 的投资一般不得超过其 30% 的资产或由同一发行者发行的同一种有价证券形式的承诺事项。但是，免税可适用于由 OECD 成员国或其区域内公共团体，包括国际或当地机构和超国家团体发行的或证明的有价证券投资，和其它证券集体投资计划中遵循风险分担要求（至少在目的和本质上与 SIF 所提要求相当）的投资。

关于由同一发行者发行的不超过 SIF 资产 30% 的类似有价证券，不允许 SIF 处于空头。如果 SIF 投资于衍生金融工具中，必须通过相关资产的多样化这一风险分担策略来确保投资。

这些方针适用与所有 SIF，尽管 CSSF 适当时可以准予免税。另外，视投资政策而定，CSSF 可要求相关 SIF 采用附加投资限制。第二份公告（07/310）提供了有关 SIF 必须采纳的财务报告义务的详细信息。

征税

SIF 税收制度有赖于久经检验和证明的卢森堡投资基金税收制度。无论 SIF 是否具有法律人格，均无义务缴纳所得税或资本收益税。设立时已一次性支付资本税 1,250 欧元。

SIF 应缴纳根据净资产总额 0.01% 的年度认购税 (taxe d'abonnement)。对于其它证券集体投资计划中已缴纳税年度认购税以及对于以某些货币市场票据投资或执行养老金联营计划的 SIF，可免除一定的年度认购税。

SICAV-SIF 可享受卢森堡和其它地区缔结的双重征税协定的利益。

仅管理一个 FCP 的 FCP-SIF 的卢森堡管理公司（通常以 S.a r.l. 的形式）可以从 SIF 的税收制度中获益，并免缴卢森堡课税。

SIF 实践

到 2008 年 1 月 25 日为止，SIF 的总数为 572。这些现存的 SIF 拥有广泛的投资政策选择，从传统的有价证券基金到基础设施、物流、私人实体和对冲基金。实践证明 SIF 已成为受欢迎的房地产投资基金平台。SIF 还被进一步用于各种基金的基金、雨伞基金和主从基金。关于 SIF 用作房地产投资基金和雨伞基金的基金工具的实例，请参照以下结构图。

the applicable laws and regulations prior to admitting the SIF to the official SIF list, pending such admittance the SIF may in principle launch its activities once it has been established.

Investment policy

Although the SIF Law imposes the condition that the SIF adheres to a policy of risk diversification, the law does not elaborate on any quantitative, qualitative, geographical or other type of investment restrictions. In order to speed up the regulatory approval process, the CSSF has published a Circular (07/309) which provides additional guidance as to this risk diversification principle. Pursuant to this Circular, a SIF should generally not invest more than 30% of its assets or commitments in securities of the same kind issued by the same issuer. However, exemptions may apply to investments in securities issued or certified by an OECD Member State or by its territorial public communities, including international or local institutions and supranational bodies, and investments in other undertakings for collective investment that are subject to risk diversification requirements which in purpose and nature are at least comparable to the requirements imposed on SIFs.

The SIF is not permitted to be in a short position with respect to similar securities issued by the same issuer for more than 30% of the SIF's assets. If the SIF invests in derivative financial instruments, it must ensure, through a diversification of its underlying assets, a comparable risk diversification policy.

These guidelines apply to all SIFs, although the CSSF may grant exemptions, if appropriate. In addition, depending on the investment policy, the CSSF may require the relevant SIFs to adopt additional investment limitations. A second Circular (07/310) provides detailed information on the financial reporting obligations that must be adopted by SIFs.

Taxation

The tax regime of the SIF relies on the proven and tested tax regime of Luxembourg investment funds. Regardless whether the SIF is organised with or without legal personality, it is not liable to tax on its income or capital gains. Upon its establishment, a one-off lump-sum capital duty charge of EUR 1,250 is due.

The SIF is subject to an annual subscription tax (taxe d'abonnement) of 0.01% assessed on the total of its net assets. There are certain exemptions to this annual subscription tax with respect to investments in other undertakings for collective investment that have already been subject to an annual subscription tax, and for SIFs that invest in certain money market instruments or that implement pension pooling schemes.

SICAV-SIFs will be eligible for the benefits of a selection of double tax treaties concluded by Luxembourg with other jurisdictions.

The Luxembourg management company of an FCP-SIF (typically in the form of an S.a r.l.) managing solely one FCP may benefit from the tax regime of the SIF, and as such is exempt from Luxembourg taxation.

SIF in practice

As of January 25, 2008 the total number of SIFs in place is 572. These existing SIFs adhere to a wide selection of investment policies ranging from traditional securities funds to infrastructure, logistics, private equity and hedge funds. Practice has proven that SIFs have also become popular as a platform for real estate investment funds. SIFs are further also being used for a variety of fund-of-funds, umbrella funds and master/feeder funds. Please be referred to the below structure charts for some practical examples of a SIF being used as a fund vehicle for, respectively, a real estate investment fund and an umbrella fund.

团队成员



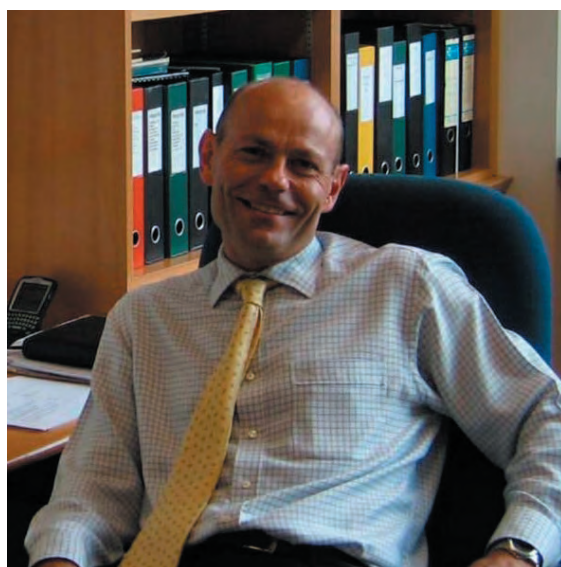
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