



Tax treaty between the PRC and the Netherlands

Increasing opportunities for mutual investments

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Trade between PRC and NL:

NL = 2nd largest destination of PRC's investments in the EU.

13% of the Chinese companies in Europe, are located in NL.

NL is 9th - largest investor in the Chinese economy.

Articles 10,11 and 12 PRC – NL tax treaty (old vs. new)

	Dividends		Interest	Royalties
	Qualifying dividends	Portfolio dividends		
Old treaty	10%	10%	10%	10%
New treaty	0% / 5%	10%	0% / 10%	6% / 10%

Specific restrictions?

- “Beneficial Ownership”
- “Main Purpose Test”

Beneficial ownership: PRC vs. OECD

Technical conflict?.... May be!

“beneficial ownership should not refer to any technical meaning under domestic law of a country”

Article 13 Capital Gains protection?

Limited...

Only taxable in source country, if:

- > 25% of the shares is held, or
- > 50% assets = real property

2 important exceptions:

- Trade of listed shares, or
 - SOEs selling their shares
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“General anti-abuse rule”

- Also known as GAAR, which allows countries:

“to apply its domestic laws and measures concerning the prevention of tax evasion and avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement”

Other important changes

- Removal of tax sparing credits for interest and royalties.
- Period for construction PE to 12 months
- TP rules in China → Location Saving Adjustments

Which investors in China benefit the most the new treaty? (1)

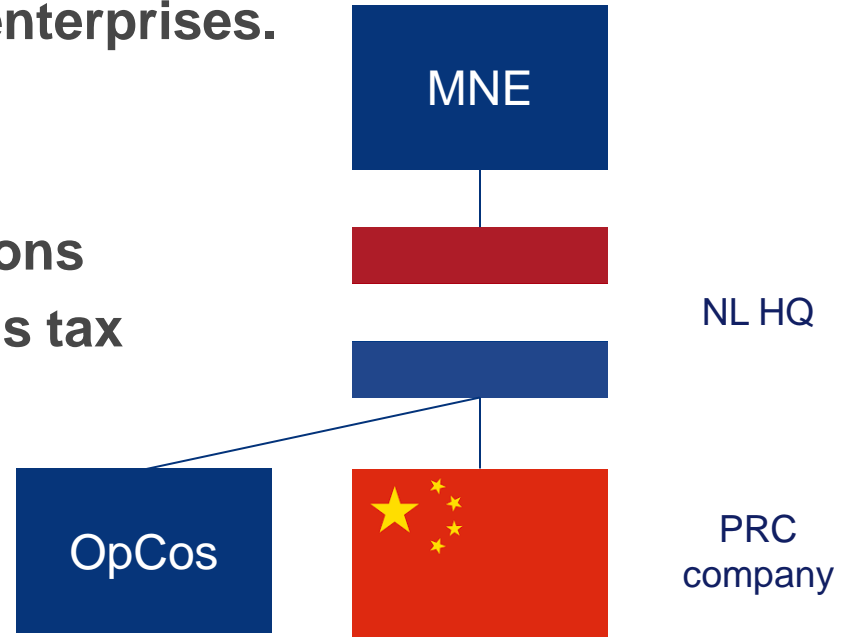
Dutch operational enterprises directly investing in PRC



Which investors in China benefit the most from the new treaty? (2)

Dutch HQs of foreign multinational enterprises.

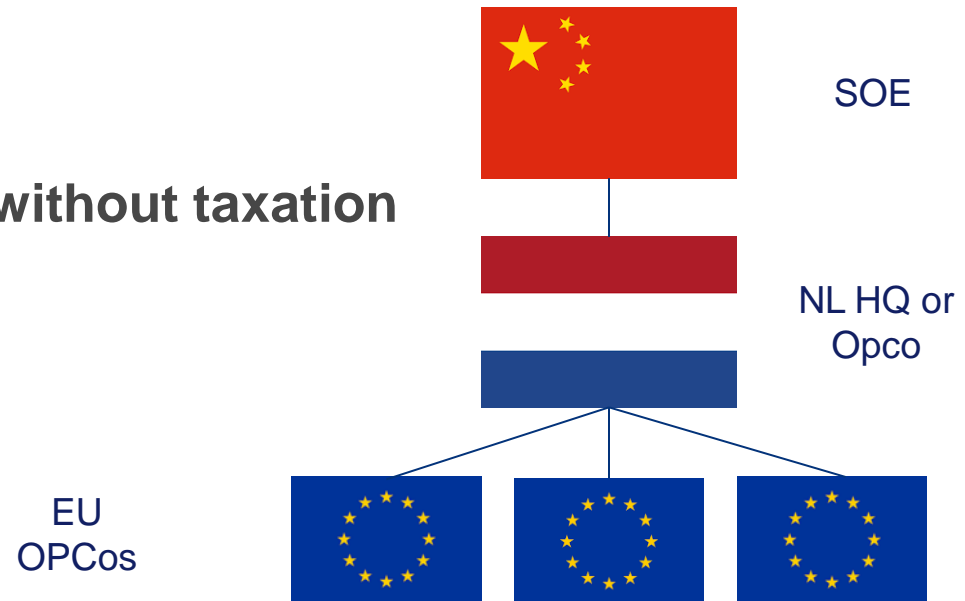
- limited taxation (5%) on repatriations
- Some protection against cap.gains tax



Which investors from China benefit the most ? (1)

SOEs investing in, or via the NL (e.g. as EU HQ)

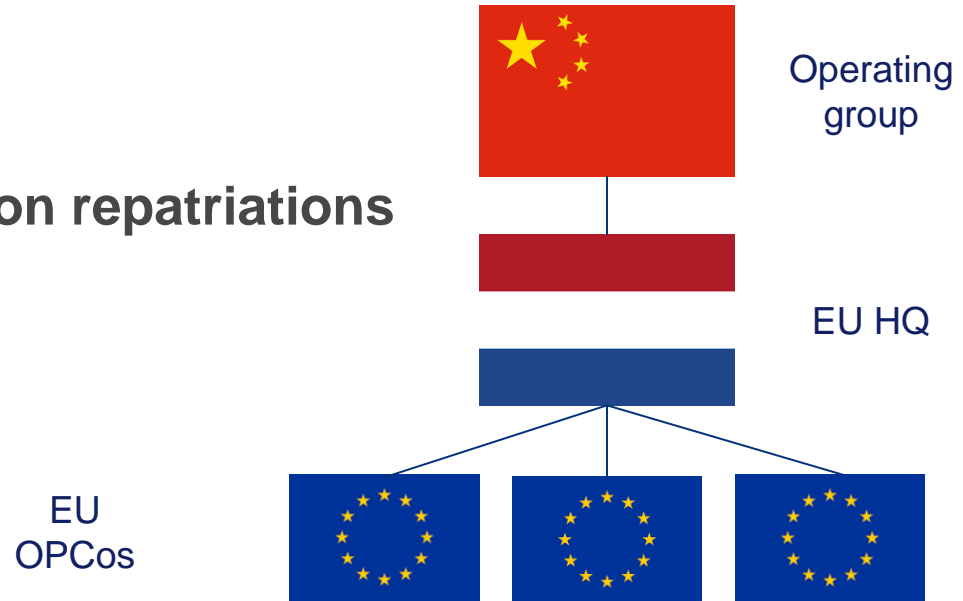
→ Repatriation to China without taxation



Which investors from China benefit the most ? (2)

Chinese operational companies using NL as a HQ, or ‘investment’ platform.

→ limited or no taxation on repatriations



Conclusion

Large improvement for investments between NL and China.

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Robert Jan specializes in advising multinationals and investment funds on international tax law. His main focus consists of international business (re-)structuring, financing and IP structures, and transfer pricing.

Robert Jan is a member of the Dutch Association of Tax advisers and Loyens & Loeff's TP team

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