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# *Netherlands: Draft legislation for cross-border tax consolidation published*

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## *In brief*

Dutch legislators published draft proposals for consolidation (fiscal unity) in the Netherlands on October 16, 2015. The legislation proposes: a Dutch fiscal unity between a Dutch parent company and a Dutch sub-subsidiary owned by an intermediary company established in another EU member state, and a Dutch fiscal unity between Dutch sister companies owned by an EU parent company.

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The European Court of Justice (ECJ) in June 2014 ruled that the Dutch consolidation rules infringed on the freedom of establishment. The rules infringed by not allowing consolidation of a Dutch parent company and a Dutch sub-subsidiary held by an EU intermediate subsidiary or two Dutch sister companies that are held through a joint EU parent company.

Dutch legislators have introduced draft legislation — replacing a temporary Decree effective as of December 16, 2014 — that would allow the above-mentioned cross-border fiscal unities. The draft proposal would consolidate taxable results between the included Dutch entities.

For sister-company consolidation, the proposal includes the ability to

designate which sister company would act as the parent company of the consolidated group. Both sister companies would need to end their current fiscal year before entering into a consolidation. The EU parent company must be subject to tax on its profits.

For consolidation of a Dutch parent company and its Dutch sub-subsidiary held by an EU intermediate subsidiary, the Dutch parent company would continue to be the parent company of the consolidated group. The draft legislation also would form a consolidation if the shares of the Dutch subsidiary are held by more than one foreign (EU) intermediate holding company. The subject-to-tax requirement mentioned above also applies to the intermediate holding companies in this scenario.

The draft legislation also contains specific anti-abuse provisions applicable to cross-border consolidations in conjunction with Dutch interest deductibility provisions (article 13l CITA), liquidation losses, and depreciation of receivables within a consolidated group.

## *The takeaway*

Taxpayers should review existing structures to assess whether the proposed consolidations could be possible and beneficial. The consolidations could be beneficial if a multinational owns loss-generating and profit-generating companies in the Netherlands that are not yet included in a consolidated group for tax purposes.

### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:



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