



FISCAL UNITY FOR CORPORATE INCOME TAX AND VAT

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If you operate through multiple private limited companies (BVs), it may be financially advantageous, if feasible, to form a fiscal unity between the BVs. This is possible, under certain conditions, for both corporate income tax (CIT) and VAT.

The conditions are strict, and while this structure offers benefits, it also has several significant drawbacks. This Advisory Handbook covers the main aspects of fiscal unity for both CIT and VAT.

FISCAL UNITY FOR CIT

A fiscal unity for CIT is only possible upon request. Upon request, a parent company (holding company) can form a fiscal unity with one or more subsidiary companies (operational BVs) for CIT purposes. Legally, the companies remain separate, but for tax purposes, they are considered a single taxpayer. The profits of the subsidiary company or companies are then attributed to the parent company.

Important!

A request for a fiscal unity must be submitted in writing to the Dutch Tax Administration. This requires the completion of several forms, which are available on the Tax Administration's website. The request must be submitted within three months of the desired start date, as the maximum retroactive effect is three months.

CONDITIONS FOR ESTABLISHING A FISCAL UNITY

Not all BVs can automatically form a fiscal unity. A fiscal unity for corporate income tax can only be requested if the following conditions are met:

- The parent company must own at least 95% of the total legal and economic ownership of the share capital of the subsidiary. This shareholding must represent at least 95% of the statutory voting rights in the subsidiary. In all cases, the shareholding must entitle the holder to at least 95% of the profits and at least 95% of the assets of the subsidiary.
- The financial years of the participating BVs must coincide. An exception applies if a BV is established during the year.
- All participating BVs must apply the same profit determination rules.
- Both the parent company and the subsidiary or subsidiaries must be effectively established in the Netherlands.
- The parent company must not hold the shares in the subsidiary company as stock.

Important!

Because the parent company must own at least 95% of the entire legal and economic ownership of the shares in the subsidiary, it is not possible to form a fiscal unity if the shares in the subsidiary are held and certified in a Foundation Administration Office (STAK).

It is also possible, in certain 'cross-border situations', to form a fiscal unity between Dutch companies. For instance, a fiscal unity can exist between a Dutch parent company and a Dutch grandchild company if the intermediate subsidiary is based in another EU country, Norway, Iceland, or Liechtenstein. Furthermore, two sister companies based in the Netherlands can form a fiscal unity if their parent company is located in the EU, Norway, Iceland, or Liechtenstein.

TERMINATION OF FISCAL UNITY

A fiscal unity automatically ends if the conditions are no longer met.

For example, the fiscal unity ends if the parent company sells part or all of its shares in the subsidiary, reducing its holding below 95%. The fiscal unity can also be dissolved by mutual agreement of the parent and subsidiary companies (deconsolidation). Deconsolidation cannot take place before the date on which the request is received by the Tax Administration (therefore, no retroactive effect). In the event of liquidation and settlement of a company within the fiscal unity, the fiscal unity with respect to the liquidated company also ends. However, this is not formally considered a deconsolidation. This distinction is important because anti-abuse measures may apply in the case of deconsolidation, whereas they do not apply in the case of liquidation and settlement.

ADVANTAGES OF FISCAL UNITY

A fiscal unity for CIT offers several significant advantages, such as the ability to offset losses and profits between the companies within a year.

Another advantage is that transactions between the various BVs in the fiscal unity are disregarded for tax purposes. These are offset against each other in the results. This means that assets with hidden reserves can be transferred between BVs without tax consequences. Reorganisation within the fiscal unity is therefore possible without taxation under certain conditions. However, the fiscal unity must be maintained for six years (or in some cases three years) to avoid potential taxation of hidden reserves.

Another potential benefit of fiscal unity is that if the so-called mixed costs of the BVs are sufficiently high, it may be more financially advantageous to opt for a fixed amount deduction (in 2025: €5,700 or 0.4% of the wage bill, whichever is higher) rather than the limitation of the deduction to 73.5% of the mixed costs. Mixed costs include expenses for food and beverages, representation, conferences, and study trips. Whether it is actually more advantageous to form a fiscal unity for this reason depends on a consideration of the various advantages and disadvantages of the fiscal unity.

Tip!

With a fiscal unity, only one CIT return needs to be filed.

DISADVANTAGES OF FISCAL UNITY (CIT)

In addition to its advantages, a fiscal unity for CIT also comes with several significant disadvantages:

- **Limited Use of the 19% CIT Rate:** One of the primary disadvantages is that the 19% CIT rate on the first €200,000 of taxable profit can only be applied once within the fiscal unity. Any taxable profit exceeding this threshold is subject to a 25.8% tax rate. If there are multiple BVs within the fiscal unity, each with taxable profits exceeding €200,000, only one of them can benefit from the 19% CIT rate, while the remaining profits are taxed at 25.8%.
- **Joint and Several Liability for Tax Debts:** Another significant drawback is that each BV within the fiscal unity is jointly and severally liable for the entire tax liability of the fiscal unity. This means that each BV is not only responsible for the portion of the CIT debt related to its own profits but also for the total tax debt of the entire fiscal unity.

- **Potential Issues upon Termination of the Fiscal Unity:** Problems may arise if the fiscal unity is dissolved. In certain cases, there may be a requirement to settle taxes on the increase in value of assets that were transferred between the BVs within the last six years (or three years in some situations). Additionally, the ability to offset losses incurred before and after the fiscal unity period against profits generated during that period is subject to specific restrictions.
- **Investment Allowance Limitations:** Another disadvantage can occur with the investment allowance. This is because the investments of all participating BVs within the fiscal unity are aggregated. As a result, the fiscal unity may more quickly reach the thresholds where the investment allowance either remains the same, decreases, or even ceases to apply altogether. Only in cases where the individual investments made by a BV do not exceed €2,900 per year can a benefit still arise. A benefit can also occur if investment assets are made available to each other within the fiscal unity.
- **Disinvestment Addition (Desinvesteringsbijtelling):** A further disadvantage may arise with the disinvestment addition, because the €2,900 threshold is reached sooner. The disinvestment addition applies when business assets are disposed of for an amount exceeding €2,900.
- **Risks in the Event of Bankruptcy:** A final disadvantage can occur if one of the entities within the fiscal unity goes bankrupt. In such cases, unpaid debts may be treated as taxable income within the fiscal unity, which can lead to additional tax liabilities.

FISCAL UNITY FOR VAT

The fiscal unity for VAT has its own specific rules. The following conditions must be met to establish a fiscal unity for VAT:

- All participants must, in principle, be VAT entrepreneurs.
- All participants must be domiciled or established in the Netherlands, or must have a fixed establishment in the Netherlands.
- All participants must be so financially, organisationally, and economically interconnected that they form a single entity.

Financially, organisationally, and economically interconnected means, in general terms, the following:

- **Financial Interconnection:** More than 50% of the shares of each of the companies must be directly or indirectly in the same hands.
- **Organisational Interconnection:** The companies must be under a single, unified management or the management of one company must be effectively subordinate to the management of another company.
- **Economic Interconnection:** The participants must, for example, share a common customer base or one company must primarily perform complementary activities for the other company.

Tip!

It is also possible to form a VAT fiscal unity with another legal form, such as a partnership (CV) or a foundation, but also with a natural person. For example, a VAT fiscal unity can exist between a BV and its director and major shareholder if this person rents out a property to his BV.

ESTABLISHING A FISCAL UNITY FOR VAT

No formal request or ruling from the Dutch Tax Administration is required to establish a fiscal unity for VAT. If the above conditions are met, the fiscal unity automatically exists. Companies may then operate as a fiscal unity, but they may also choose to operate as if there is no fiscal unity.

Upon request, companies can also obtain a ruling from the Dutch Tax and Customs Administration confirming the existence of the fiscal unity. The Tax Administration may also issue such a ruling on its own initiative. In that case, the fiscal unity for VAT is officially registered with the Tax Administration.

Tip!

If there is any doubt as to whether the conditions for a VAT fiscal unity are met, but it is desirable to have a fiscal unity, it is advisable to request that the Dutch Tax Administration establish the fiscal unity by issuing a ruling.

ADVANTAGES AND DISADVANTAGES

Advantages of a Fiscal Unity for VAT

The primary advantage of a VAT fiscal unity is that the participating companies do not pay VAT on mutual supplies of goods and services. This can be financially beneficial, particularly if, without the fiscal unity, the VAT charged by one company would not be fully deductible for the other company. This is often the case when one of the companies provides VAT-exempt services.

Another advantage is that only one VAT return needs to be filed. This means that individual companies do not each have to submit separate VAT returns (although they may still do so if they wish). Instead, a combined VAT return is submitted in the name of the fiscal unity. The fiscal unity is also assigned a single VAT number.

Important!

On invoices, the individual companies must continue to list their own VAT number, not the VAT number of the fiscal unity.

Disadvantages of a Fiscal Unity for VAT

A significant disadvantage is that all companies participating in the VAT fiscal unity are jointly and severally liable for the VAT debt of the fiscal unity. However, this liability only applies once a formal ruling establishing the fiscal unity has been issued by the Dutch Tax and Customs Administration. Because it is also possible to operate as a VAT fiscal unity without such a ruling, it may be wise to avoid requesting a formal ruling. In this way, joint liability can be avoided. Of course, the Tax Administration may still issue a ruling of its own accord, but such a ruling cannot have retroactive effect and will only apply from the date of the ruling.

Important!

Because a VAT fiscal unity exists automatically by operation of law if the conditions are met, it cannot be dissolved at the request of the companies. Dissolution only occurs when the conditions are no longer met, such as when one or more of the three types of interconnection (financial, organisational, or economic) cease to exist.

Tip!

If one of the companies within the VAT fiscal unity no longer meets the conditions, report this to the Dutch Tax Administration as soon as possible. That company can then no longer be part of the VAT fiscal unity. However, without notification, joint and several liability for the VAT debts will continue to exist.

CONCLUSION

In this Advisory Handbook, you have been provided with an overview of the conditions, as well as the advantages and disadvantages, of fiscal unity for CIT and VAT. The specifics make the fiscal unity regime particularly complex.

For more information regarding your specific situation, please contact us. We can provide advice on establishing or terminating a fiscal unity.

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DISCLAIMER

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