

TAX MEMORANDUM

To: Michiel Wolfswinkel
From: Melle van der Stoel / Tim Hartong / RSM Netherlands Belastingadviseurs N.V.
Date: 31-5-2023
Subject: Tie Kinetix NV – Profit repatriation consequences for groups of shareholders

Dear Michiel,

During our conversation of May 24, 2023, we discussed the potential upcoming transaction involving the sale by Tie Kinetix NV of the full shareholding in Tie Kinetix Holding BV.

To enable you to consider the options for structuring this potential exit, we have reviewed the dividend withholding tax consequences for an agreed set of shareholders. This memo is not exhaustive in the sense that we have not analysed in detail what the complete tax outcome would be for every individual shareholder. It should however be sufficient for you to consider the main consequences of the transaction for the most common shareholder positions.

We will be happy to discuss the various scenarios with you, as well as possible follow-up questions you may have. In addition, if we can assist with other aspects of the transaction, from a tax, reporting or financial advisory perspective, please let us know.

Executive summary

In this memorandum, we outline the various Dutch CIT, Dutch PIT and Dutch dividend withholding tax consequences for 4 types of shareholders of Tie Kinetix NV, resulting from the sale of Tie Kinetix Holding BV and the subsequent repatriation of profit to the shareholders. We outlined our conclusions per shareholder type in the table below:

	Dividend WHT	CIT	PIT
Individual shareholder	15% WHT due	Not applicable	Based on deemed return on investment, actual paid dividend WHT can be credited
Dutch BV with less than 5% ownership	15% WHT due	Subject to 25.8% CIT on income. Credit for WHT incurred	Not applicable
Dutch BV with more than 5% ownership	WHT exemption should apply	Dividend income should be exempt from CIT	Not applicable
A Swedish AB with more than 5% ownership	An exemption should apply if the structure is not abusive	No NL impact if the structure is not abusive: Swedish tax impact subject to Swedish tax law review	Not applicable

1. Facts and circumstances

- Tie Kinetix NV (hereinafter also referred to as: NV), a Dutch listed entity, is the 100% shareholder of Tie Kinetix Holding BV (hereinafter also referred to as: BV).
- Tie Kinetix Holding BV is the operational HQ of the Tie Kinetix group and it holds the shares in the Dutch and foreign operational subsidiaries.
- Tie Kinetix NV is considering to sell its full ownership in Tie Kinetix Holding BV.
- If and when such a transaction is completed and the full sales price has been settled, Tie Kinetix NV will have no remaining material operations and its assets would consist almost exclusively of the cash received as part of the divestment transaction.
- Tie Kinetix NV would subsequently proceed with repatriation of the sales proceeds to its shareholders. For purposes of this analysis, we have considered a repatriation of the proceeds as dividend distribution only, as a liquidation option would materially have the same Dutch tax consequences. Alternative options, such as a divestment of the NV with (part of) the cash balances still on the balance sheet of NV have not been reviewed.
- We understand that broadly speaking, Tie Kinetix NV has four main types of shareholders:
 - o Dutch tax resident individuals with less than 5% ownership of NV;
 - o Dutch tax resident individuals owning the shares through personal holding companies (BV's) with less than 5% ownership of NV;
 - o Dutch tax resident companies with more than 5% ownership in NV, 2 BV's at this time; and
 - o A Swedish AB with more than 5% ownership in NV.
- We have not reviewed or commented on the potential Dutch tax consequences for shareholders that cannot be regarded to fall within one of the above four categories.
- The Tie Kinetix group currently has negative retained earnings on its balance sheet. It is our understanding that the proceeds of the sale are expected to exceed the past losses and will result in NV having positive retained earnings after completion of the transaction. In this memo, we critically assume, that the shareholders end up with a return on investment that will exceed their initial cost of investment. In other words, NV will make a distribution in excess of its paid in capital and will distribute a dividend to the shareholders.
- We will not elaborate on the Dutch civil law requirements for and restrictions to distributions of dividends and will assume for purposes of this memorandum that a regular dividend distribution is allowed and will be made.
- We have not reviewed or commented on specific types or classes of shares and assume that all shareholders will receive a distribution in line with the percentage of their share ownership.
- We have not reviewed or commented on other aspects of the proposed transaction.

2. Scope

In this memorandum, we outline the tax consequences of the sale and corresponding profit repatriation to each of the 4 types of shareholders. In this regard, we consider application of dividend withholding tax for both Dutch and foreign shareholders and PIT and CIT consequences for Dutch shareholders.

3. CIT and PIT consequences for the various shareholders of profit repatriation

Below we outlined the various PIT, CIT and dividend withholding tax consequences for each of the shareholder types upon repatriation of proceeds from the sale.

3.1. Tax consequences for Dutch tax resident individuals with less than 5% ownership of NV

3.1.1. Dutch dividend withholding tax

Dividend payments are generally subject to 15% Dutch dividend withholding tax. If the full amount of retained earnings of NV is distributed together with a repayment of share premium reserves, Dutch dividend withholding tax is only due on the repatriated profit. Repayment of share capital and share premium are generally not subject to dividend withholding tax. If needed, we can elaborate on the Dutch tax aspects relevant for a share premium repayment.

For Dutch tax resident individuals, it is not possible to reduce the dividend withholding tax due. Non-Dutch individual shareholders resident in the EU can request a refund of part of the dividend withholding tax, if the dividend withholding tax exceeds the amount of PIT, that would be due if these individual shareholders were Dutch tax resident individuals.

3.1.2. Dutch PIT

Dutch tax resident individual shareholders with less than 5% ownership are taxed on the dividend income in Box 3 of the Dutch PIT Act. In Box 3, the shareholders are subject to tax on a deemed return on investment. The dividend income as such, has no direct impact on the PIT due for these shareholders. Instead, they are subjected to a rate of 32% PIT on a deemed 6.17% return on the value of their assets over the year 2023.

The Dutch dividend withholding tax due for these shareholders can be credited in their individual PIT returns. The tax credit for the amount of dividend withholding tax paid, cannot only be credited against the Box 3 PIT due, but also against any Box 1 and 2 PIT payable. In case the dividend withholding tax exceeds the total PIT due for a shareholder, they will receive a refund.

3.2. Tax consequences for Dutch tax resident individuals owning the shares through personal holding companies (BV's) with less than 5% ownership of NV

3.2.1. Dividend withholding tax

Dividend payments are generally subject to 15% Dutch dividend withholding tax. If the full amount of retained earnings of NV is distributed together with a repayment of share premium reserves, Dutch dividend withholding tax is only due on the repatriated profit. Repayment of share capital and share premium are generally not subject to dividend withholding tax. If needed, we can elaborate on the Dutch tax aspects relevant for a share premium repayment.

For Dutch BVs with less than 5% ownership, it is not possible to reduce the dividend withholding tax due. Non-Dutch EU shareholders can request a refund, if the dividend withholding tax exceeds the amount of CIT, that would be due if these shareholders were Dutch tax residents. In addition, double tax treaty application should be reviewed in individual cases as, depending on the relevant tax treaty, dividend withholding tax rates may need to be reduced based on the tax treaty provision.

3.2.2. Dutch CIT

BVs are subject to CIT on the proceeds from their investments. Depending on the used valuation method, the sale itself or the dividend payment will result in income for these shareholders. In principle, for corporate shareholders with a minority investment, the shares will be valued at market value on balance sheet date. In this case the dividends they receive will be treated as income as well, albeit that the value of the investment will decrease as well.

Regardless of the used accounting method, the shareholders will generally be subjected to 25.8% CIT over the income from the investment in NV. The used accounting method could merely give rise to timing differences in this regard.

The Dutch dividend withholding tax withheld from the distributions to these BV's can be credited in their Dutch CIT returns with the corporate income tax due for the year of the distribution. The tax credit is limited to the amount of CIT due in the year of the distribution. Insofar the dividend withholding tax exceeds the payable CIT, it can be carried forward to be effectuated in future years.

3.3. Tax consequences for Dutch tax resident companies with more than 5% ownership in NV

3.3.1 Dutch dividend withholding tax

Dividend payments are generally subject to 15% Dutch dividend withholding tax. If the full amount of retained earnings of NV is distributed together with a repayment of share premium reserves, Dutch dividend withholding tax is only due on the repatriated profit. Repayment of share capital and share premium are generally not subject to dividend withholding tax. If needed, we can elaborate on the Dutch tax aspects relevant for a share premium repayment.

Dutch dividend withholding tax law provides for a withholding tax exemption for legal entities, with an ownership of more than 5% in other Dutch entities. Dutch entities can claim the withholding tax exemption if the participation exemption applies to their participation in the dividend paying entity (NV). With reference to our CIT observations below, the two BVs that currently have an ownership of more than 5% in NV should be able to apply the participation exemption to their participation in NV. As such, they should also be able to apply the withholding exemption. As a result, no dividend withholding tax should be due on dividend distributions to these two BVs.

3.3.2. Dutch CIT

As the two BVs each own shares representing more than 5% of the nominal paid in capital of NV, the BVs should be eligible to the benefits of the Dutch participation exemption. Based on the Dutch participation exemption, dividend income and capital gains received from the qualifying investment are tax free at the level of the shareholders.

Notwithstanding the ownership criterion, the participation exemption cannot be applied if the following three conditions apply to the participation:

- The participation is held for passive investment purposes (the motive test);
- The participation is not subject to at least 10% CIT based on Dutch standards (the subject to tax test); and
- The participations consolidated assets consists for the majority of low taxed portfolio assets (the asset test).

Tie Kinetix NV is subject to Dutch CIT, and therefore sufficiently taxed according to Dutch standards. Furthermore, Tie Kinetix is an active group. As such, both the subject to tax test and the asset test will be met for the two BVs. As such, they should be able to apply the participation exemption and consequently also the Dutch dividend withholding exemption.

Our preliminary conclusion for this category of shareholders is that the proposed profit repatriation to these two BVs should not result in any Dutch dividend withholding tax or corporate income tax liability.

3.4. Dutch tax consequences for the Swedish AB with more than 5% ownership in NV

3.4.1. Dutch dividend withholding tax

Dividend payments are generally subject to 15% Dutch dividend withholding tax. If the full amount of retained earnings of NV is distributed together with a repayment of share premium reserves, Dutch dividend withholding tax is only due on the repatriated profit. Repayment of share capital and share premium are generally not subject to dividend withholding tax. If needed, we can elaborate on the Dutch tax aspects relevant for a share premium repayment.

For legal entities, with more than 5% ownership in other Dutch entities, it is possible to make use of the withholding tax exemption. For non-Dutch legal entities that are a tax resident of an EU member state, such as Sweden, it is also possible to claim the withholding tax exemption. In order to apply the dividend withholding tax exemption for AB, it is required that AB would be able to apply the participation exemption if it were a Dutch tax resident. As the Swedish AB is similar to the two BVs, this condition should be satisfied. Therefore, the withholding tax exemption should generally be applicable. Our comments made above with respect to the requirements for the Dutch participation exemption are applicable in this case as well.

The withholding tax exemption cannot be applied though in case the structure is deemed abusive. In this regard, AB should meet minimal substance requirements in its country of residence, and it should be considered if AB is interposed between NV and the ultimate owner of AB with the specific aim to reduce the Dutch dividend withholding tax burden. As we do not have knowledge of the facts and circumstances for AB, we cannot confirm whether or not the structure would be deemed abusive.¹ We can elaborate in more detail if more details can be provided about the Swedish shareholder.

Should dividend withholding tax be due under Dutch law, the application of the NL-Swedish double tax treaty should be reviewed in more detail.

3.4.2. Local CIT consequences for the Swedish AB

In theory, the Swedish AB could be subject to Dutch corporate income tax as a result of its investment in NV. This specific anti-abuse provision is very closely linked to the anti-abuse provision for the Dutch dividend withholding tax exemption referred to above. In case the structure would be deemed abusive, the dividend withholding tax would be credited against any Dutch CIT due on the distribution.

We can elaborate on the potential Dutch CIT aspects in more detail if specific information with respect to the Swedish shareholder is provided.

The AB will presumably be subject to Swedish CIT on its income, which is out of scope for this memorandum.

4. DAC 6

Under the EU Directive 2018/22 of 25 May 2018 ("DAC6") cross-border arrangements involving at least one EU-entity should be reported to tax authorities in Europe in case the description of certain hallmarks is met.

In this planned sale and profit repatriation, we have not identified any of the DAC6 hallmarks. As such, it should not be necessary to report this restructuring to the Dutch tax authorities.

¹ Kindly note that this anti-abuse provision only applies to foreign shareholders that wish to apply the withholding tax exemption and not to Dutch shareholders such as the two BVs.