

Newsflash



Changes in the Dutch international tax policy

On August 30, 2013, the Dutch minister for Foreign Trade and Development Cooperation and the Deputy Minister of Finance submitted a letter to Parliament (“the letter to Parliament”) explaining the position of the Netherlands following the recent Parliamentary debates on international tax planning by multinational companies (“MNCs”). This letter also announces unilateral measures that should serve to preclude unintended use of Dutch tax treaties. In this newsflash we discuss the proposed measures and share our observations.

The position of the Dutch government

The Dutch government reiterates its strong preference for addressing the issues of international tax planning in an international context. The government supports the actions the OECD announced in its July 19, 2013 Base Erosion and Profit Shifting (“BEPS”) Action Plan and will actively contribute to the implementation of the action points. The Dutch government favors a coordinated approach together with other EU and OECD member states and emphasizes that solutions should be binding on all states such that a level playing field between states and between MNCs is safeguarded.

The Dutch government acknowledges that Dutch companies belonging to foreign multinationals are often the recipients of substantial dividends, interest and royalties that are passed on to other group companies outside the Netherlands. It notes that dividend payments do not lead to base erosion in the source country because dividends are not deductible from the taxable income of the company in the source country. Interest and royalty payments may, however, be deductible in the source country and may therefore lead to the avoidance of single taxation (as

opposed to the avoidance of double taxation). The government considers it appropriate to take some pro-active measures regarding such conduit entities ahead of other measures that may be agreed at a later date in an OECD or EU context.

The measures

The letter to Parliament announces the following measures:

1. Substance requirements for conduit companies

Minimum substance requirements will henceforth apply to all resident companies that receive royalties and interest from foreign entities and pay royalties and interest to other foreign entities. These requirements will be similar to those that have been in place for some years already for conduit companies that applied for a tax ruling:

- At least 50% of the members of the board of directors with decision taking powers must be resident of the Netherlands.
- The board members must be sufficiently competent and qualified to perform their tasks.
- The (most important) board decisions must be taken in the Netherlands.
- The (main) bank account of the Dutch company is in the Netherlands.
- The bookkeeping of the Dutch company must take place in the Netherlands.
- The Dutch company must comply with all its tax obligations.
- The Dutch company must have its registered address and office in the Netherlands and is not treated as a tax resident of another country.
- The Dutch company must have a level of equity which fits with its functions.

The company must account for this substance on an annual basis in its corporate tax return. If the minimum requirements are not met, the Dutch Tax Authorities will exchange information with the source countries.

2. Exchange of information on Advance Pricing Agreements (“APAs”)

The Dutch Tax Authorities will proactively exchange information with foreign Tax Authorities about the content of APAs concluded with Dutch resident conduit companies that receive and pass on interest and royalties if the MNC does not undertake more activities in the Netherlands than these conduit financing/licensing activities.

3. No Advance Tax Rulings (ATRs) and APAs for holding companies with insufficient substance

For reasons of available human resource capacity, the Dutch ruling team will henceforth only deal with ATR and APA requests of Dutch resident holding companies if there is sufficient nexus in the Netherlands. The requirements for sufficient nexus will be similar to the substance requirements for conduit companies mentioned above.

4. Anti-abuse measures in tax treaties with developing countries

The Dutch debate on international tax planning also addresses the fair treatment of developing countries. To encourage fair treatment, the Netherlands will proactively reach out to developing countries (e.g. various African countries are mentioned) to propose the introduction of anti-abuse measures in the tax treaties concluded with these countries. The Netherlands prefers clear Limitation-on-Benefits tests to general main-purpose tests.

Our observations

The Dutch government has taken a balanced approach by clearly stating its preference for a coordinated multilateral approach whilst emphasizing the importance of having sufficient substance in the Netherlands for Dutch conduit entities. Although the announced measures can be characterised as a measured response, we are nevertheless disappointed that the government takes these measures unilaterally.

We believe that MNCs with Dutch resident holding, financing or licensing companies should review the substance level in the Netherlands, and if necessary, adjust to the new requirements once these are published. We would expect that most of our clients already meeting these requirements today. These requirements are in line with our code of conduct. For more information on our code of conduct, see <http://www.pwc.com/gx/en/tax/global-tax-practice/code-of-conduct.jhtml>.

With Best Regards
PwC TRS Team

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