Proposed Changes to Dutch Dividend Withholding Taxation

Currently, dividend distributions from corporations such as NVs and BVs that are residents of the Netherlands are generally subject to a 15 percent Dutch dividend withholding tax. This rate may be reduced under an applicable tax treaty. A Dutch cooperative is, however, not subject to Dutch dividend withholding tax on profit distributions to its members, except in so-called abusive tax structures. This difference in tax treatment has been a topic of discussions within the Dutch government for some time now.

Last week, the Dutch Ministry of Finance sent a letter to the Dutch Parliament containing proposals to eliminate the difference in tax treatment of (i) corporations and (ii) cooperatives. This letter is not yet a legislative proposal and is likely to be followed by a draft bill. The Ministry of Finance aims for the changes to become effective as of 1 January 2018, at the latest.

Proposals

The letter holds two proposals:

1. It is proposed that Dutch resident corporations such as NVs and BVs will also be exempt from Dutch dividend withholding tax, if:
   - such corporations are part of an active business structure;
   - the parent company receiving the distribution owns an interest of at least 5 percent; and
   - the parent company receiving the distribution is a resident of a country with which the Netherlands has a tax treaty.
2. Furthermore, it is proposed that profit distributions by Dutch cooperatives will remain exempt from Dutch dividend withholding tax if the receiving member has an interest of less than 5 percent. However, profit distributions by Dutch cooperatives to members that have an interest of 5 percent or more become subject to Dutch dividend withholding tax. A full withholding tax exemption applies under the exact same rules as explained above, i.e., if:

> such cooperatives are part of an active business structure; and

> the member receiving the distribution is a resident of a country with which the Netherlands has a tax treaty.

The proposed legislation is announced to include adequate rules to combat improper use and abuse using the “active business structure” requirement, in order to prevent the facilitation of untaxed rerouting of dividends from the Netherlands to non-treaty countries and tax havens.

We will closely follow further developments in relation to this suggested legislative change and will keep you up to date on any more definitive changes.

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