

Corporate Tax Alliance

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What does the future hold for the Dutch royalty conduit companies? *by Jos Peters*



Reorganising Dutch royalty conduit structures, due to several new rules and regulations that will enter into force in 2014, seems unavoidable, writes Jos Peters, the Senior Tax Partner at Merlyn International Tax Solutions Group

On August 30, 2013 the Dutch government announced a number of measures to counter abuse and unintended use of Dutch royalty conduit companies. Curiously, this was done despite earlier announcements that the Netherlands would not take unilateral actions on this point and that any changes should be made within a multilateral context, to avoid that other countries would take lighter measures or no measures at all.

Probably the political pressure was too high: the fact that the Netherlands does not levy a royalty withholding tax allows tax payers to use Dutch legal entities to route royalty payments to tax havens. Everyone will by now have heard about the 'Double Irish/Bermuda' structures operated by big multinationals like Apple, Google, Yahoo!, Starbucks etc. In addition, the Netherlands government seems to be convinced that the OECD and the European Commission would put pressure on all countries which play a role in the royalty conduit business in the same manner, so 'staying ahead of the music' might be the best way to act under the circumstances.

A 'Double Irish/Bermuda' structure for instance only works because the royalty payments from the Irish company based in Ireland are routed to the other Irish company based in Bermuda via the Netherlands. The royalty payment Ireland – Netherlands is covered by the EU rules that prohibit Ireland to levy a royalty withholding tax. In the Netherlands a relatively small spread (1-2%) is taken out as the gross margin for the operations of the Dutch entity from which it pays all its operating expenses and realizes a small taxable profit. The onward payment of the other 98 – 99% of the royalty income of the entity in the

Netherlands to Bermuda is not subject to any withholding since the Netherlands has no royalty w/h tax. The Irish and Dutch governments have only limited possibilities to do something about this situation.

The Dutch/Irish tax treaty does not contain a beneficial ownership article but in the OECD commentary to royalty articles the position is taken that such beneficial ownership is 'assumed'. In my view, if a Dutch company pays 98-99% of its income onwards under a contract to a third party, the Dutch entity is certainly not the beneficial owner of the royalties and the Irish tax authorities could in my view have done more to 'stop the bleeding'. But they haven't and the very size of the operations of Yahoo!, Apple, Google etc. in Ireland may have something to do with this.

What also plays a role here, is that the Dutch government has been heavily criticized one time earlier on the ease with which multinationals could use Holland as a stepping stone to hide royalty income in tax haven jurisdictions. This happened in 2001 as part of the 'Harmful Tax Competition' investigations by the European Commission. On that occasion the Netherlands vowed to Brussels to pay more attention to the legal and economical 'substance' of Dutch intermediate holding companies and interest and royalty conduit companies. In severe cases, if a Dutch entity would lack 'substance', this would be signalled to the foreign tax *Continued on page 2 >>*

INDEX

What does the future hold for the Dutch royalty conduit companies	1
Legal measure of the Czech upper house	2
Benefits of Cyprus permanent residence and citizenship	3

Continued from page 1 >>

authority of the EU country where the dividends, interest payments or royalties arose, so the foreign revenue service could review the (non) withholding of tax and if needed assess the paying entity for the missing income, or get back to the Dutch conduit entity (via the usual tax treaty article dealing with mutual assistance in collecting taxes).

In practice, to my knowledge, such 'international signalling' has never taken place, however, even though

the Netherlands officially put down the substance requirements in a transfer pricing Regulation on March 31, 2001. At that time the Dutch Act on the International Exchange of Tax Information was also adjusted, to allow for the signalling, by removing possible objection grounds to such signalling which were part of this Act from it.

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Legal measure of the upper house by Helena Navratilova



The Lower House has approved the Upper House's legal measure whereby income tax will be changed as of 1 January 2014 in connection with the private law recodification (No. 344/2013, Coll.). The legal measure also included a number of other changes proposed in the original bill.

Selected changes

All gratuitous earnings subject to inheritance and gift tax until the end of 2013 will newly be subject to tax. Many, however, will remain tax exempt.

New definitions of tax-related terms and expressions have been added, such as tax resident and tax non-resident, business assets, things, property-related rights, financial lease, basic investment fund and public benefit taxpayer. Moreover, terms and expressions of the new private law will also be used, such as commercial corporation member, credit financial instrument, lending, gratuitous grant, usufructuary lease, building right, trust fund. Corporate income taxpayers newly include mutual funds, pension funds, trust funds and unit funds that are taxpayers pursuant to the law of another state. The time test for a personal income tax exemption in relation to a sale of securities has been extended from six months to three years. The time test for tax exempting each share in a commercial company acquired by one member will be assessed individually starting next year. The limit for applying withholding tax to taxpayers who failed to sign a tax declaration has been increased from CZK 5,000 to CZK 10,000 per month. This applies only to income

from service agreements. Income earned from practical teaching and practical training, i.e. as related to trainees and students, will be tax exempt (and exempt from social security and health insurance contributions).

The amendment does not permit the following:

- tax credit proposed by the government for childcare services (namely, for placing a preschool-aged child in a childcare facility) has not been approved;
- preferential treatment of employees introduced by Act No. 458/2011, Coll., has been cancelled;
- dividends, liquidation balance, settlement shares and similar income that were tax exempt pursuant to Act No. 458/2011, Coll., will be subject to the income tax; and
- the 5% tax rate has been preserved for investment funds and the 15% withholding tax rate applies to payouts from such funds.

Tax on acquisition of immovable items The Upper House's legal measure regarding tax on the acquisition of an immovable item was published in the Collection of Laws under No. 340/2013, Coll. As regards purchasing or exchanging immovable items, the tax is to be paid by the transferor, unless the transferor and the transferee agree otherwise. In other cases, the transferee is the taxpayer. Acquisition of a building right will also be subject to taxation based on the concept of "immovable item" as defined in the new Civil Code. Acquisition of an immovable item for consideration through usucaption, a trust fund or acquisition of a structure unrightfully built on a third party's land will also become subject to taxation. The scope of tax exempt items has also been changed. Contributions of real property to the registered capital of a commercial company will no longer be tax exempt. On the contrary, first transfers of apartments and new family houses for consideration will generally be tax

exempt provided the real property is transferred within five years from the date of the occupancy permit.

The new act also limits the obligation to present expert opinions for determining the tax base. Provided certain conditions are fulfilled, expert opinions will no longer be required, for example in the case of a transfer of immovable items used for housing or recreation, garages, etc.

The tax base is defined as the acquisition value, which can be reduced by demonstrable costs incurred for the expert

opinion. Depending on the circumstances, the acquisition value is understood as an agreed price, comparative tax value, identified price or special price. The tax base for most contractual transfers will be determined based on the agreed price, which will mostly be compared with the comparative tax price. The deadline for filing a tax assessment and the 4% tax rate have not been changed

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The Benefits of Cyprus Permanent Residence and Cyprus Citizenship

by Aspen Trust Group



Cyprus is one of the most attractive locations for those seeking to live in a European Union (EU) member state while enjoying the benefits of a Mediterranean lifestyle and low tax environment. The favourable Cyprus immigration regime has generated a significant interest from entrepreneurs, wealthy individuals and investors. The regime provides an opportunity to obtain Cyprus Citizenship through investment and real estate purchase.

In addition to the low tax regime, Cyprus boasts with well developed healthcare system, high quality private and university education and low crime rate. The island nation also has a well developed infrastructure and professional services sector and low barriers of entry for business start-ups. Furthermore, the recent natural gas discoveries are expected to be leading to a boom in the real estate market.

The Cyprus-EU Connection

As an EU member state, Cyprus allows its Citizens to take advantage of increased mobility as they can reside in any EU member state and travel globally with greater flexibility. To sweeten the deal, Cyprus is planning to become one of the Schengen states in the next 18 months, which will allow its residence permit holders even greater flexibility to travel visa-free in Europe.

Cyprus Citizenship by Investment

In addition to the above mentioned advantages, the benefits of Cyprus Citizenship include, for example, the following:

Dual citizenship is permitted. The government estimates the time for processing by the authorities at 3 months

- Physical presence is only required at the final stage to obtain ID and Passport. The requirements, process and government costs are clearly defined and are available in many foreign languages for transparency
- Under the programme, Cyprus Citizenship can be obtained for
 - Applicant and Spouse
 - Children under the age of 18
 - Children between the age of 18 to 28 if studying in a recognised tertiary education institute and financially dependant on the parents
 - Children of any age with disabilities which prevent them from being independent or employed

Cyprus Permanent Residence

In 2012 a fast-track procedure was introduced for granting Immigration Permits to foreign individuals. Nowadays it takes only 1-2 months to obtain a Cyprus Permanent Residence Permit. Other key benefits of the Permanent Residence scheme in Cyprus are as follows:

- actual residence is not necessary and therefore tax residence is also optional. Holders of Residence Permits must visit Cyprus at least once every two years.
- Permanent Residence can lead to Citizenship after 7 years actual residence in the country with at least the last 12 months before application having been continuous
- Physical presence is only required at the final stage to obtain the Permit stamp in the passport and the Alien Registration Certificate
- the requirements, process and government costs are clearly defined and are available in many foreign languages for transparency

Under the programme, Cyprus Permanent Residence can be obtained for:

- Applicant and Spouse
- Children under the age of 18
- Children between the age of 18 to 25 if studying in a recognised tertiary education institute and financially dependant on the parents
- Children of any age with disabilities which prevent them from being independent or employed.

Other Benefits after the Citizenship or Permanent Residence has been obtained:

- Children born or adopted after obtaining the Citizenship or Permanent Residence are automatically eligible for Citizenship or Permanent Residence respectively, regardless of location of birth.
- It is possible to sponsor retired/dependant parents of the applicant/spouse to obtain Residence Permits and, in time, Citizenship through Naturalisation.

The Aspen Expertise

We excel in the implementation and management of practical immigration, tax, and asset planning tailored to discerning investors, corporate and high net worth individuals. We take care of our clients' interests and guide them through the entire process, implement and manage each solution in line with their current and future ambitions and objectives: From analysing the client's specific personal circumstances and recommending the optimal immigration solution tailored to the client's needs, we then proceed to introducing the client to any third parties in Cyprus if required e.g. Property Developers. Further, we will assist the client in completion and review of the respective immigration forms, supporting documentation, and medical tests, following the submission of the required documents to the immigration authorities on the client's behalf and liaising with the authorities on the application process. Finally we assist the client on arrival in Cyprus and finalise any application documentation if required to complete the immigration process.

*Season's Greetings
and best wishes for a prosperous new year!*