

Proposed Dutch withholding tax amendments affect Dutch Coop and legal entities

In order to increase the competitiveness of the Dutch corporate tax system, the Dutch Ministry of Finance has introduced draft legislation that will result in the abolishment of Dutch dividend withholding tax in more cases. Furthermore, measures are introduced to counter abusive tax planning in which tax payers try to avoid the dividend withholding tax. The aim is to implement the legislation as per January 1, 2018. Furthermore, the (Dutch) tax community is invited to provide comments to this draft legislation.

Current

Currently, profit distributions of Dutch legal entities are subject to 15% Dutch dividend withholding tax, unless a possible tax treaty requires a lower rate.

The Dutch Cooperative is generally not subject to Dutch dividend withholding tax. As a result, the Dutch Cooperative is used in many international tax structures. Furthermore, corporate shareholders of Dutch entities in the EU/EER are often also exempt from Dutch dividend withholding tax due to the application of the Parent-Subsidiary directive.

Proposal

In the new proposal all distributions to corporate shareholders of all Dutch entities are no longer subject to Dutch dividend withholding tax if the following conditions apply:

- The corporate shareholder (owning at least 5%) is located in a country that has concluded a tax treaty with the Netherlands; and
- The tax treaty should have a dividend article; and
- The new anti-abuse provision does not apply.

The anti-abuse provision is normally not applicable if the Dutch entity is directly owned by an operational entity in another country. For (passive) intermediate holding companies owning shares, still Dutch dividend withholding tax will be levied if the structure is:

- a) artificial; and
- b) the primary objective is to avoid the levy of Dutch dividend withholding tax

Changes to the Dutch Cooperative

Dutch Cooperatives will no longer be exempt from Dutch dividend withholding tax if they would qualify as so-called Holding Cooperative.

A Coop is considered a Holding Coop if its activities mainly consists (at least 70%) of holdings of participations or direct and indirect financing of related companies or individuals. The activity test is based on the activities of the Coop in the year prior to the dividend distribution.

There is generally still an exemption possible to members of these Holding Cooperatives if they are entitled to less than 5% of the profit or liquidation proceeds. Interest of other affiliated members in the Cooperative will be included in the calculation to determine if the 5% threshold has been breached.

For private equity structures, the dividend withholding tax exemption may still apply. Further clarification is required on the nature of the conditions.

Although dividend distributions of Holding Coop may become in the scope of Dutch dividend withholding tax, still no dividend withholding tax may be levied in relation to distributions to corporate shareholders located in:

- EU/EER countries
- Tax treaty countries

We refer to our comments regarding the broadening of the dividend withholding tax exemption to all Dutch legal entities.

Going forward

After the closing of the consultation a final proposal is expected on Dutch Budget Day (19 September, 2017). It is expected that new legislation will be effective as per 1 January, 2018.

As the draft proposal does not contain transitional provision or grandfathering rules for current structures it is best to evaluate the consequences for your company as soon as possible.