

UPDATE

Dutch Tax Package 2017

22 September 2016 - The Dutch Tax Package 2017 proposes considerable changes to the tax treatment of trusts, Stiftungen etc. The proposed changes will be implemented with retroactive effect to 3.15 pm on 20 September 2016. Among other things, the changes affect structures in which substantial interest shares (box 2) or investments are held by a trust.

We have the following comments.

At the moment, the assets of a trust are generally attributed to the contributor. This attribution is ignored if the trust pays realistic tax by Dutch standards: in other words of at least 10%. This 'attribution restriction' will be abolished with retroactive effect and only applies in the future to the extent that the trust actually runs an active business. This will not be the case if the trust only has investment assets or owns shares in a holding company (or a non-resident company).

The main rule will, therefore, be that shares will almost always be attributed to the contributor. To avoid double taxation, tax payable by the trust will be set off against income tax payable in the Netherlands.

The regulations offer very limited transitional arrangements. Shares that were contributed to a trust in the past (after 1 January 2010) will again be attributed to the contributor and the historical acquisition price of the shares will be revived for the contributor. The historical acquisition price will be increased by:

1. sales income, to the extent this was taxable;
2. the increase in value of the shares on which tax of at least 10% has been paid (between January 1st 2010 – September 20th 2016, 3.15 pm).

The acquisition price will be reduced by income received from the shares in the period from January 1st 2010 - September 20th 2016, 3.15 pm. This concerns income that under the attribution restriction was not counted as income from a substantial interest and on which tax of at least 10% has not been paid.

Recommendation:

We recommend that any trust structure in use is re-examined to assess whether it is still efficient.

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