

UPDATE

Dutch government announces new legislation for co-ops and extends the scope of the dividend withholding tax exemption

21 September 2016 - The Dutch government yesterday announced new legislation to limit the use of co-operatives in international holding and financing structures. Co-ops have been popular as holding entities in international tax planning as distributions by a co-op are in principle not subject to withholding tax (unlike distributions by for example Dutch BVs and NVs). This does not apply to co-ops which are considered abusive (i.e. their main purpose is to avoid Dutch dividend withholding tax or foreign tax and their interposition entails an artificial construction). The intention of the new legislation is that co-ops will become subject to dividend withholding tax from 1 January 2018 to the extent a member owns 5% or more of the co-op.

At the same time, the government is considering extending the scope of the dividend withholding tax exemption to parent companies outside the EU/EEA. The exemption will apply to participation dividends relating to active business structures. Additionally, the parent company will need to own an interest of 5% or more and should be resident in a country with which the Netherlands has concluded a tax treaty. Under these conditions, dividends paid by a Dutch entity (BV, co-op etc.) to such a parent will not be subject to dividend withholding tax. The legislation will incorporate appropriate regulations to combat abuse and improper use.

Further details will be released later this year but it is expected that, in particular, co-ops which are not part of an active business enterprise (such as those used in private equity/fund structures) and co-ops whose members are not resident in a treaty country will fall within the scope of this new legislation and so any distributions they make will become subject to 15% dividend withholding tax.

Should you like to learn more about the new legislation, please contact Joost van den Berg or Wilbert van Vliet via +31 (0) 20 763 09 00.