

In our newsletter of September 21st, 2016 [<http://bit.ly/2jHysSf>] we informed you about the proposed new legislation to limit the use of cooperatives in international holding and financing structures. Changes are proposed to the way in which dividend distributions by cooperatives - in principle not subject to dividend withholding tax (DWT) - and private limited liability companies (BVs)/public limited companies (NVs) - in principle subject to DWT - are currently treated differently for tax purposes. The Ministry of Finance announced its intention to limit the existing exemption for holding cooperatives, under the precondition that real cooperative businesses are not affected. The amendments to the Dutch Dividend Withholding Tax Act require a legislative proposal, which is expected in the course of 2017. The amendments are likely to enter into force on January 1st, 2018. On 16 December 2016, the Ministry of Finance provided more guidance in response to questions from the Parliament concerning the proposed amendments.

The following can be derived from the Ministry's guidance:

- A holding cooperative will be legally defined as a cooperative whose actual activities primarily (i.e. for 70% or more) consist of the holding of participations or the direct or indirect financing of related entities and individuals.
- Holding cooperatives will, in principle, become subject to DWT. However, the withholding obligation for holding cooperatives will only apply to qualifying membership rights, i.e. membership rights that grant an entitlement to at least 5% of the annual profit or to at least 5% of the liquidation dividends.
- The 5% threshold is based on the own membership right along with membership rights of individuals or entities related to the member.
- The 5% threshold is in line with the new term 'cooperating group' of Section 10a Corporate Income Tax Act 1969 (which provides for an interest deduction limitation) as included in the 2017 Tax Plan.
- With regard to participation dividends distributed in an active business structure, holding cooperatives will be able to apply for a withholding tax exemption for dividends distributed to a parent company which is established in an EU/EEA Member State or in a country with which the Netherlands has concluded a full-scale tax treaty (a treaty that for example only covers the exchange of information will not qualify for the withholding exemption) if there is no abuse involved.
- Unlike the current anti-abuse provision, the future anti-abuse provision will no longer focus on the withholding obligation for cooperatives but on the application of the withholding exemption by both companies with share capital and holding cooperatives. International developments with respect to the principal purpose test of the BEPS project will be taken into account.
- Furthermore, there should also not be a withholding obligation for real cooperative businesses, i.e. cooperatives not being holding cooperatives.

On the basis of the abovementioned proposal, dividend distributions by a holding cooperative to members that own 5% or more and are not resident in the EU/EEA or in a tax treaty jurisdiction will be subject to 15% DWT as from 1 January 2018.

Please note that the draft bill and the details of these rules have not been made public yet. It is however clear that the proposals in their present form are expected to have a significant impact on the use of cooperatives in international structures. If your corporate structure includes a (holding) cooperative, we highly recommend to analyze the potential impact of the proposed revisions and to take appropriate action. HVK Stevens would be pleased to assist you with this.

Should you have any questions, feel free to contact:



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