

## The Netherlands broadens the scope of the exemption of dividend withholding tax

The Netherlands will become more attractive as hub for international investments as the Dutch Ministry of Finance published a proposal on 16 May 2017 which further extends the scope of the withholding tax exemption for dividends. The proposal is now open for consultation and thus may be amended. If enacted, the proposal is expected to become effective as of 1 January 2018.

### 1. Introduction

In general, Dutch corporations (e.g. BV/NV) are subject to Dutch dividend withholding tax ("WHT") whereas cooperatives are exempt, unless anti-abuse rules kick in. The Netherlands now wants to eliminate the difference in treatment between cooperatives and other Dutch entities but at the same time extends the scope of the general WHT exemption.

### 2. Holding Cooperative

Under the proposal, cooperatives that meet the following two criteria may have to withhold Dutch dividend WHT on profit distributions on its membership rights.

- i. in the year prior to the profit distribution, the activities of the cooperative consisted for more than 70% of holding participations or of group financing activities (i.e. the 'holding cooperative'), and
- ii. the member is entitled to at least 5% of the annual profit or the liquidation proceeds via its membership rights (i.e. 'qualifying membership rights'). Under certain conditions, these profits may still be exempt (to be discussed below).

### 3. Dutch Dividend Withholding Tax

Under the envisaged rules, profits distributed by a Dutch corporation/cooperative to its foreign parent company may also be exempt if the parent

company is located in a country with which the Netherlands has concluded a tax treaty that includes an article on dividends (currently, this exemption is limited to parent companies located in the EU). In addition to this, the interest in the Dutch corporation/cooperative may not be:

- i. held with (one of) the main purpose(s) to avoid Dutch dividend WHT, that otherwise may have been due by another individual and/or entity, and;
- ii. part of a(n) (series of) artificial arrangement(s) and/or transaction(s).

In other words, the structure should reflect economic reality and have valid business reasons. Valid business reasons may exist if the interest held in the Dutch corporation/cooperative can be allocated to the foreign parent company which carries on a business.



If the foreign parent company qualifies as an intermediate holding company ("linking function"),

it will have to meet the following 'relevant substance' criteria (in addition to current substance requirements): (i) allocate salary costs of at least EUR 100,000 to its activities, and (ii) have its own office for at least 24 months.

#### 4. Dutch Corporate Income Tax

Currently foreign parent companies that hold at least 5% interest in a Dutch company/cooperative may be subject to Dutch corporate income tax ("CIT") on dividends and capital gains realized.

Under the proposed rules, such foreign parent companies may not be subject to CIT on dividends any more as to avoid an overlap with the WHT rules.

#### 5. Way Forward

As the rules above are likely to affect existing international holding structures, we advise you to have your structure reviewed and optimized prior to 1 January 2018.

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