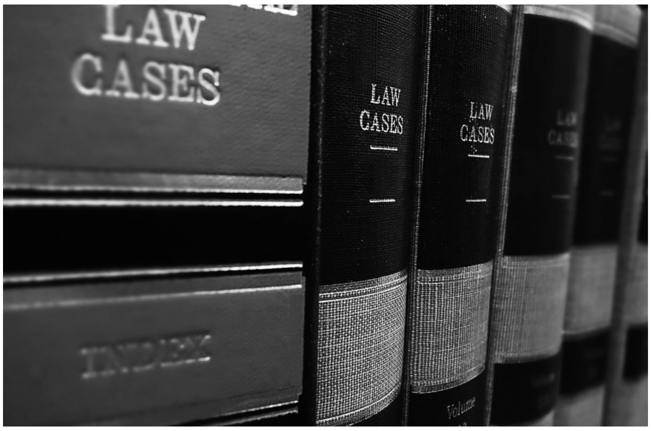
The Netherlands will broaden the scope of the exemption of dividend withholding tax and modify the tax regime applicable to Dutch cooperatives

As part of the measures announced today (Budget Day), the Netherlands will further extend the scope of the withholding tax exemption for dividends which should make the Netherlands more attractive as hub for international investments. Furthermore, certain modifications will be made to the tax regime applicable to Dutch cooperatives. It is expected that these measures will enter into force as per January 1, 2018 (with the exception of certain transitional measures).



1. Introduction

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

2. Holding Cooperative

As from January 1, 2018, cooperatives that meet the following two criteria may have to withhold Dutch dividend WHT on profit distributions on their 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).

In the explanatory notes, it is mentioned that under certain conditions, cooperatives used in private equity investment structures may not be considered a 'holding cooperative' depending on the number of employees, office space and active involvement in the management of the portfolio companies.

3. Dutch Dividend Withholding Tax

As from January 1, 2018, 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/EEA). 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/entity, and;
(ii) part of a(n) (series of) artificial arrangement(s)/ 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 owns office for at least 24 months. As a transitional measure, the 'relevant substance' criteria will only apply as from April 1, 2018.
The distributing entity should, within 1 month after making the dividend available, file a declaration with the Dutch tax authorities confirming that the relevant conditions to apply the exemption have been met.

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. As from January 1, 2018, 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 will affect most cooperatives used in (international) investment structures, we advise you to have those structures reviewed and optimized prior to 1 January 2018.

We are a trusted and independent advisor with extensive experience and knowledge in respect of cross-border reorganizations. We have an excellent network of reputable, independent professionals from all over the world. This combined with our legal, consultancy and tax departments we can provide tailor-made advice for your entire business/investment structure and shift easily between all relevant disciplines.

In case you have any questions feel free to contact us.

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