

New Dutch withholding tax exemption for dividends results in an increase of the administrative burden and responsibilities for managers of Dutch companies

It is expected that as from January 1, 2018, the Dutch dividend withholding tax exemption for dividends will be extended. This however will go hand in hand with an increase of the administrative burden and responsibilities for the managers of distributing entities. Under current law, the withholding tax exemption automatically applies when, in summary, the beneficiary is an entity which resides in an EU Member State and the Dutch participation exemption applies (shareholding of at least 5%). However, in order to apply the withholding tax exemption as from January 1, 2018, the (board of the) distributing entity will have to submit a form (the opgaafformulier) to the Dutch tax authorities and will have to make certain declarations as further explained below.

The form (opgaafformulier)

As from January 1, 2018, Dutch entities distributing dividends to foreign entities are obliged to inform the Dutch tax authorities within one month after the dividend has been declared that all the conditions for applying the withholding tax exemption have been met by using the so-called opgaafformulier. Whether the withholding tax exemption is applied correctly, will be ex-post verified by the Dutch tax authorities.

If one fails to submit the completed form to the Dutch tax authorities within one month after the distribution, penalties can be imposed for not filing, or late filing of, the dividend tax return and/or the (partially) non-payment of the tax due.

The following information must be provided via the form:

- a.** name, address and country of residence of the recipient of the dividend distribution;
- b.** the nominal value of the outstanding shares and the number of voting shares issued by the distributing entity;
- c.** part of the share capital and number of voting shares as mentioned under b above which are held by the recipient of the dividend distribution;
- d.** the amount of the dividend distribution;
- e.** the date on which the dividend has been declared; and
- f.** whether article 4 sub 9 or 10 of the new article 4 sub 11 of the Dividend Tax Act has been applied (these articles deal with so-called hybrid entities).





To apply the withholding tax exemption on distributions to foreign entities, as from January 1, 2018, the following conditions have to be met:

1. the recipient of the dividend must be a resident of:
 - a Member State of the EU;
 - a Member State of the European Economic Area;
 - or a country that has concluded a tax treaty with the Netherlands which includes a provision on dividends;
2. the Dutch participation exemption applies to the interest held by the recipient in the distributing entity (5% shareholding);
3. the activities of the recipient are not similar to those of an Exempt Investment Entity (VBI);
4. the interest is not held with the main purpose, or one of the main purposes, to avoid Dutch dividend withholding tax (subjective test) or the arrangement is not considered to be artificial; and
5. the recipient of the dividend has to be the beneficial owner of the dividend.

By signing the form, the (board of the) distributing entity confirms that all above conditions have been met. In particular condition 4 (the shareholding in the Dutch entity is not held with the main purpose, or one of the main purposes, to avoid Dutch dividend withholding tax or the arrangement is not considered to be artificial), as we expect, might be problematic to confirm in cases where the board is not informed about or aware of all the facts and circumstances regarding the position of the recipient of the dividend distribution.

It is expected that in many cases taxpayers will approach the Dutch tax authorities to get confirmation on the application of the exemption (whether or not in the form of an Advance Tax Ruling).

Conclusion

In case you have any questions regarding this topic, feel free to contact us. HVK Stevens can obviously assist with the analysis whether or not the exemption applies and with the process of concluding an Advance Tax Ruling with the Dutch tax authorities.



Joost van den Berg

+31 (0)20 763 09 16

j.vandenberg@hvkstevens.com



Jeroen van Barneveld

+31 (0)20 210 51 36

j.vanbarneveld@hvkstevens.com