



Global Tax Update

Netherlands

Deloitte Tohmatsu Tax Co.

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New Decree on company merger facility for corporate income tax purposes

On 12 August 2015, the Dutch State Secretary of Finance published a new Decree on the company merger facility for corporate income tax purposes. The Decree also includes the so-called standard conditions.

(1) Company merger facility

The company merger facility for corporate income tax purposes offers taxpayers the option to transfer assets while avoiding early settlement of the goodwill and hidden reserves. As the acquiring party must record the assets it has acquired at the same book values for tax purposes as applied by the transferor, the tax claim is safeguarded. The State Secretary for Finance Wiebes published a new Decree recently.

(2) Updating decrees

If parties involved in restructurings, mergers and acquisitions wish to avoid early settlement with the tax authorities, they have a choice of tax facilities. One option is to apply a legal split-off or legal merger. When the State Secretary amended the policy for application of those facilities in early 2015, it was obvious that the policy on application of the company merger facility would be amended. In terms of content the amendments are in sync, too. The new elements are now briefly listed.

1) Retroactive force

A major element of the company merger facility is the option to have the company merger take place with retroactive force (for tax purposes). If assets are transferred to a newly incorporated private limited liability company (BV) or a public limited company (NV) that has been incorporated within fifteen months after the start of a financial year, retroactive force is possible up to and including the start of that financial year. Although other conditions apply too, they will not be discussed here. If the facility does not apply in any way whatsoever, the new Decree states that retroactive force for tax purposes is not possible. Likewise, it does not apply to assets that fall beyond the facility.

2) Innovation box, full exemption and so on

Standard conditions for coincidence with the innovation box, the full exemption and the setoff in the event of foreign business profits have been added. They are new, or relatively new, facilities that could not have been taken into account in the former Decree.

3) Effective date

The new policy became effective on August 20, 2015. All requests for application of the company merger facility submitted as from that date will be dealt with in accordance with the new policy.

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