



ICEbreakers: Unlocking Netherlands



Hot topics

Dividend withholding tax (DWT) and cooperatives: An updated legislative proposal was released with the proposed 2018 budget on September 19, 2017 that includes two key changes to the DWT act: (i) an alignment of the DWT treatment of Dutch holding cooperatives with that of private limited liability companies (BVs)/public limited companies (NVs); and (ii) a broadening of the scope of the (intragroup) DWT exemption to apply to parent companies resident in countries that have concluded a tax treaty with the Netherlands. The legislative proposal also includes specific rules regarding interests held in a Dutch BV/NV or a holding cooperative through hybrid entities, as well as changes to the foreign substantial shareholder regime to prevent an overlap with the new DWT rules. Under the proposed rules, distributions by cooperatives would become subject to DWT if the owner(s) is/are located in non-treaty jurisdictions. In addition, the explanatory notes to the draft legislation provide some guidance on what the Netherlands will regard as sufficient substance in a holding structure in a “post-BEPS world.” If approved, the new rules would apply as from January 1, 2018.

Hybrid debt instruments: The State Secretary of Finance issued a decree dated August 29, 2017 that contains a “policy decision” on whether certain types of hybrid debt instruments should be treated as equity for tax purposes (and possibly eligible for the participation exemption), and whether payments under such instruments are subject to DWT.

OECD multilateral instrument (MLI)

The Netherlands was one of the countries that signed the MLI on June 7, 2017. The MLI will affect treaties where both treaty partners sign and ratify the agreement. The MLI includes provisions on the following topics:

- Hybrid mismatches;
- Treaty abuse (minimum standard);
- Permanent establishment;
- Improving dispute resolution (minimum standard); and
- Mandatory binding arbitration.

The Netherlands has opted to apply nearly all articles included in the MLI, only making a reservation to apply article 11 (a clarifying clause stating that a treaty does not restrict a jurisdiction’s right to tax its own residents, except with respect to certain treaty provisions).

Other legislative updates

EU anti-tax avoidance directive (ATAD): The government has issued a consultation document containing a draft bill and explanatory memorandum on the ATAD 1. A formal bill is expected to be released in the first half of 2018, with the rules taking effect on January 1, 2019.

The draft bill contains new rules on interest deduction limitations (30% EBITDA rule) and CFC rules, as well as an amendment to existing exit tax rules to bring them in line with the standards described in the ATAD 1. Rules on hybrid mismatches in relation to third states are not included in the draft; these rules are expected to be addressed separately, since they do not have to be implemented until January 1, 2020.

Other developments

Elections: Following the general election held in March 2017, the various political parties are negotiating the formation of a new government. It has been confirmed that the ratification of the MLI is deemed to be “non-controversial,” which means that the ratification process may be set in motion even before a new government is formed.

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