

Revised ruling policy effective as of July 1, 2019

July 17, 2019

On June 28, 2019, the Dutch State Secretary of Finance published a revised decree revising the ruling policy on the basis of which advance certainty may be obtained regarding certain matters of corporate income tax, dividend withholding tax and tax treaties. The new policy will be effective as of July 1, 2019 and applies to rulings with an international character.

The amended ruling policy applies to the following matters

1. The application of the participation exemption with respect to shareholdings in non-resident companies;
2. Qualification of hybrid financing arrangements or hybrid entities in international structures;
3. The application of the CFC rules implemented on the basis of the Anti-Tax Avoidance Directive (ATAD) and the related credit for foreign taxes;
4. Whether a non-resident entity has a permanent establishment in the Netherlands or qualifies as a foreign taxpayer for CIT purposes for other reasons;
5. Whether a non-resident entity has a substantial shareholding in a Dutch entity;
6. Whether a resident entity has a foreign permanent establishment;
7. Whether a cooperative qualifies as an active cooperative (as opposed to holding cooperative), and whether a member of a cooperative is regarded as belonging to a group or not;
8. Whether the domestic dividend withholding tax exemption applies;
9. Whether a tax treaty anti-abuse rule (principal purpose test or main purpose test) applies with respect to dividends, interest or royalties;
10. The attribution of assets to a permanent establishment;
11. The conclusion of an advance pricing agreement (APA) with respect to cross border transactions;
12. Whether an entity is a related party for transfer pricing rules;
13. Whether a group service has been rendered or an activity in the capacity of shareholder.

Procedure

The taxpayer sends a request for a preliminary consultation to the inspector who is competent for his tax affairs. The tax inspector engages members of the ruling team to deal with requests concerning the above matters. The ruling team discusses the request with the taxpayer, in consultation with the competent tax inspector.

The board of international tax matters of the Dutch tax authorities is also engaged to agree on the ruling. This board is responsible for guarding the uniformity of policy and the technical quality of the rulings to be concluded. It may

consult the relevant knowledge- and coordination teams within the Dutch tax authorities.

Rulings will in principle apply to not more than five years, unless the situation of taxpayer warrants a longer term. For example, in case of long term contracts, the ruling may last up to 10 years, subject to an intermediate evaluation of the facts and circumstances.

Instead of first sending a written request, it is also possible to have a pre-filing meeting first. In such meeting, it can be estimated what the chance is of entering into a ruling, as well as the information and documents needed to conclude the agreement.

No advance certainty

A ruling cannot be obtained if a party (or a director of a party) to the agreement is mentioned on the EU sanction list, and/or the arrangement or transactions does not have a real function or is in conflict with the object or spirit of the law or treaty provision, and/or the interest of a tax treaty partner may be harmed, and/or tax saving is the sole or predominant reason to enter into an arrangement or transaction.

In addition to the general rules, no advance certainty can be obtained if:

- i. The ruling concerns a transaction with a party in a country of which the statutory tax rate is less than 9%, or a country that is on the EU list of non-cooperative countries; and/or
- ii. The ruling applicant does not belong to a group that carries out operational activities in the Netherlands (no economic nexus); and/or
- iii. No operational activities are performed in the Netherlands for the risk and account of the ruling applicant; and/or
- iv. No sufficient relevant employees are resident in the Netherlands to perform these operational activities for the risk and account of the ruling applicant; and/or
- v. The operational activities performed in the Netherlands for the risk and account of the ruling applicant do not fit within the function of the ruling applicant in its group.

Clauses (ii) through (v) do not apply in case of non-residents with respect to matters 4 and 5 mentioned above.

Publication

For each ruling, a summary of the facts and circumstances, the analysis and the conclusion will be published. The same applies to discussions that have not resulted in an agreement, and the reason why no ruling could be concluded.

The summary will be anonymized so that it should not be possible to trace back the summary to a specific taxpayer.

It is noted that a summary of the ruling was already uploaded in the EU-database, that could be consulted by other EU tax authorities.

Source

Besluit van 19 juni 2019, nr. 2019/13003, Algemene wet inzake rijksbelastingen. Vennootschapsbelasting. Dividendbelasting. Zekerheid vooraf; Rulings met een internationaal karakter.

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