Netherlands/Cyprus

This article sums up the changes to Dutch tax law concerning dividend withholding tax, which entered into force on 1 January 2012, and provides commentary regarding benefits of restructuring using Cyprus features.

Due to the present financial crisis, the Netherlands started protecting its dividend withholding tax regime. The most adverse measure introduced for 2012 attack on abusive Co-operative Associations (commonly referred to as "Co-ops"). Up to now the Co-ops have not been subject to Dutch dividend withholding tax of 15%, resulting in being very common among internationally based companies with Dutch holding or trading structures.

It should be noted that the general law will continue in place, hence Co-op distributions will not be subject to Dutch dividend withholding tax unless deemed to be "abusive".

The Bill defines bona fide structures as involving Dutch Co-ops which do not have as their sole or primary goal, the avoidance of Dutch dividend withholding tax. Furthermore, the Co-op should also not fall under Article 17 of the Dutch Corporation Tax Act, namely the "substantial interest test".

It will be imperative that the taxpayer be able to prove honest business reasons for having set up a Dutch Co-op, or to demonstrate sufficient non-tax reasons for setting up a Co-op.

The conditions generally considered to be abusive are:

1. Cooperative that, directly or indirectly, holds shares in another entity with the main purpose of avoiding dividend withholding tax or foreign tax of another entity whilst the membership in the cooperative is not considered a business asset at the level of the member, or
2. The membership in the cooperative is considered a business asset and the cooperative is or was interposed in a structure to avoid triggering a deferred Dutch dividend withholding tax claim.

Co-op restructuring into Cyprus

Based on the application the EU parent-subsidiary directive, Dutch dividend withholding tax should not be appropriate upon distribution to a Cyprus legal entity. In cases where a Co-op is deemed to be abusive, the two main restructuring options will be as follows:

1. Replace Co-op with Cyprus company.
2. Establish a new intermediate holding company in Cyprus.

The most important characteristics of Cyprus tax system are:

- No withholding tax on outward payments (Dividends and interest, and royalties under certain conditions);
- Taxation based on residency status;
- 10% flat corporate tax rate, being the lowest in Europe;
- No CFC rules;
- No thin cap rules;
- Capital gains tax from the sale of immovable property situated outside Cyprus is tax exempt;
- Taxable losses carried forward indefinitely;
- Capital gains on sale of securities: 100% exemption;
- Group relief availability (75% holding);
- Tax free re-organizations (cross border permitted);
- Foreign Permanent Establishment (PE) profits exempt;
- Tax free corporate re-domiciliation permitted;
- Possibility for establishing an SE (European Company);
- Applicability of all EU directives;
- Advance ruling practice exists;
- Capital duty on issue of share capital 0.6% (no capital duty on share premium);
- Very stable tax regime;
- Extensive Double Tax Treaty network;
- Most beneficial Double Tax Treaty with Russia, Ukraine, CIS, South Africa, India, and Poland.

Please feel free to contact us with any questions or queries.

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