Netherlands: Government announces plans to reinforce current international tax policy

In a 30 August 2013 letter presented to parliament, the Dutch government clarified its position on the international debate on the taxation of multinationals. The government acknowledges that international tax avoidance and fraud are issues that demand a global response and solutions, and that it fully endorses the OECD action plan on base erosion and profit shifting (dated 19 July 2013) and cooperation with the G20. According to the Dutch government, the OECD plan offers a promising framework for the reinforcement of international tax rules.

In the letter, the government rejects any notion that unilateral Dutch measures should be introduced to combat tax avoidance/evasion because such measures likely would not be effective and actually could be detrimental to the Netherlands’ investment climate. The government does emphasize that any global measures should be binding on all countries to ensure a level playing field for countries and multinationals alike. The government also confirms that the existing Dutch fiscal infrastructure (including the participation exemption, the broad tax treaty network and the advance tax ruling (ATR) practice) is an essential component of the Dutch investment climate, but that it will broaden the existing policies relating to the ruling practice.

There is a growing international consensus that countries have a responsibility for ensuring transparency and the exchange of information as and when needed. The Dutch government acknowledges its own responsibility in this regard and emphasizes that it will focus on these areas, and that the transparency policy of the ruling practice will be expanded:

- The minimum substance requirements (i.e. at least 50% of directors of a company must be Dutch resident and there must be a Dutch address, local administration, etc.) will be expanded to apply in more situations. These requirements currently apply to companies carrying out (intragroup) financing and/or licensing activities that request an advance pricing agreement (APA) – the requirements also will apply even when an APA is not requested by such companies. The Dutch tax authorities can spontaneously exchange information with a tax treaty partner country if the minimum substance requirements are not met (as is currently the case).
- An exchange of information on the content of an APA (relating to (intragroup) financing and/or licensing activities) will be able to take place if a multinational group to which a Dutch entity belongs does not carry out any activities in the Netherlands other than meeting the minimum substance requirements. This is a new ruling policy measure that likely will apply in only a limited number of cases, since most multinationals carry out some level of activities in the Netherlands through operating companies.
- To reduce the workload of the tax authorities’ ruling team in respect of ATR requests for holding companies, a sufficient "nexus" will have to exist with the Netherlands for a company to obtain a ruling. A sufficient nexus will exist, for example, if the minimum substance requirements described above are met. The government also seems to suggest that a sufficient nexus will be present if adequate Dutch (operating) activities are carried out by group companies or the entity itself (even if the minimum substance requirements are not met). This measure generally is in line with current ruling practice. It should be noted, however, that holding companies without an ATR can continue their activities regardless of whether or not they comply with the minimum substance requirements.

Finally, to prevent the unintended use of Dutch tax treaties, the government will make an effort to contact developing countries that already have concluded a tax treaty with the Netherlands to offer to update the tax treaty and add anti-avoidance measures. This policy is in line with many recent Dutch tax treaties.

More details on the policy broadening are expected to be published in the near future as part of the 2014 budget proposals, and at that time affected companies should review their Dutch structures. Nevertheless, the policy expansion likely will have no impact or only a minimal impact on most foreign multinationals that are active in (or through) the Netherlands, since (intragroup) finance and licensing companies generally comply with the substance requirements described above, even in non-APA/ATR situations, and other activities often are carried out in the Netherlands within the multinational group.

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