CHANGES TO TAX RULING PRACTICE IN THE NETHERLANDS ANNOUNCED EFFECTIVE AS FROM 1 JULY 2019

BE UNSTOPPABLE

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On 22 November 2018 the Dutch State Secretary of Finance informed Parliament in a white paper on his plans to change the existing tax ruling practice as from 1 July 2019. This white paper should be seen as a next step of the Dutch government to enforce the Dutch investment climate in a post BEPS international landscape as well as to discourage letterbox companies to make use of the Netherlands. More guidance on the plans shall be provided in legislative documents which will be published in the course of 2019.

The tax rulings in scope relate to so-called 'international tax rulings' within the meaning of the European Directive 2015/2376 as regards mandatory exchange of information in the field of taxation.

According to the Dutch government the existing tax ruling practice requires changes with respect to transparency, the internal administrative process for issuing tax rulings and the contents of such tax rulings.

Content

- Only a tax payer that meets strict substance requirements, i.e. with relevant economic nexus in the Netherlands, will be eligible for a tax ruling. Economic nexus is specified as economical operational activities that are actually carried out for the risk and account of the tax payer in the Netherlands. These economic activities should also be in line with the function of such tax payer within its corporate group. The tax payer should have sufficient adequate employees in the Netherlands in comparison to the overall headcount of the group involved with these activities. In addition, the level of operational expenses should be in line with the relevant activities. Further guidance is expected on the interpretation of economic nexus.

- When reviewing a tax ruling request, the Dutch tax authorities will focus more on the purpose of the specific structure. No ruling will be issued where the main purpose of the arrangement is to save Dutch or foreign taxes.
- Not eligible for tax rulings anymore are transactions involving entities in countries that are on the EU list of non-cooperative jurisdictions or on the domestic list of low-tax jurisdictions.
- The standard term of a tax ruling will be a maximum 5 years. Only in exceptional situations a 10 year term is possible.

Transparency

- Publication by the Dutch tax authorities of anonymized summary of each issued international tax ruling.
- Publication by the Dutch tax authorities of an annual report relating to all international tax rulings.
- Periodical review by a team of independent experts of the international tax ruling practice.

Process

- Centralized approach: any tax ruling will require sign off by a newly established administrative unit: the International Fiscal Security Council (College Internationale Fiscale Zekerheid). Requests for tax rulings can continue to be submitted to the local tax inspector and, only in cases mentioned in the relevant APA/ATR decrees, to the APA/ATR team.

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