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Newsflash: Proposed changes to Dutch ruling practice

Last week, on 22 November 2018, the State Secretary of Finance published a letter in which he described the contemplated changes to the current tax ruling practice. According to the Ministry of Finance, the purposes of the changes is to increase transparency and to improve the quality of the tax ruling practice for companies with genuine economic activities. They furthermore announced that the requirements to obtain a tax ruling will be more stringent. It is intended that the proposed changes will be effective as of 1 July 2019.

Transparency

In order to satisfy the growing call in society for more transparency, it is proposed to publish an anonymized summary of a tax ruling once granted. The State Secretary confirmed that confidentiality is ensured.

Process

To guarantee the quality and the uniformity of the tax rulings, the State Secretary announced to establish a ruling committee that need to co-sign all tax rulings with an international aspect.

Requirements to obtain a tax ruling

The changes with regards to the requirements to obtain tax a ruling with an international aspect include new substance requirements, an evaluation of the purpose of the structure, the duration of the ruling, and templates to conclude a ruling.

Substance

An important aspect of the new ruling practice is that the new substance requirements will be enhanced. The current list with economic substance requirements will be abolished. Instead of these substance requirements, there must be an ‘economic nexus’ with the Netherlands. This requires that economic and operational activities are conducted in the Netherlands by sufficient relevant personnel. Moreover, these activities must fit the function of the entity within the group. Further, the amount of employees and costs must be compared to that of the group. This concept will be further substantiated in a new Decree, including examples.

Tax motives and purpose

Next to the enhanced requirements with regards to substance, the tax authorities will have a closer look at the purpose of the structure. Currently the tax authorities do not conclude a ruling in the event a tax motive is the predominant reason, whereby only Dutch tax motives are taken into consideration. It is envisaged that going forward the tax authorities will also refuse to grant a ruling in the event a foreign tax motive is the predominant purpose of the structure.

Also, the tax authorities will no longer grant rulings regarding transactions with entities that are residing in countries that are included at the EU list of non-cooperative tax jurisdictions or in countries with a statutory rate of less than 9%.

Duration

It is contemplated that rulings with an international aspect will have a maximal duration of 5 years. Only in special circumstances a ruling with a duration of 10 years will be granted, with an evaluation after 5 years.

Standardization template

Currently there are no specific requirements with regards to the template of a ruling. It is contemplated that going forward rulings will have the same template. This will ensure that all rulings meets the requirements and facilitate the exchange of rulings and the transparency of the ruling.

To conclude

Recently politicians in the Netherlands raised serious concerns on the content of tax rulings granted by the Dutch tax authorities. In an attempt to take away these concerns, the Ministry of Finance will publish – like in Belgium – anonymous summaries of tax rulings. Furthermore, they will not negotiate tax rulings in case companies or their activities do not have sufficient economic nexus with the Netherlands.