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Newsflash: The Netherlands unilaterally introduces a list of low-taxed jurisdictions

The Netherlands has unilaterally published a list of low-taxed jurisdictions. This list will have an impact on the application of the newly introduced CFC rules, on the proposed withholding tax on intra-group interest and royalties payments and on the possibility to obtain a tax ruling.

In order to combat base erosion and profit shifting, the Netherlands introduced a list of low-taxed jurisdictions. The list is exhaustive and consists of the countries mentioned on the EU list of non-cooperative jurisdictions for tax purposes as well as other countries with a statutory CIT rate of less than 9%.

The list for 2019 consists of the following 21 jurisdictions:

- American Samoa
- American Virgin Islands
- Anguilla
- Bahamas
- Bahrein
- Belize
- Bermuda
- British Virgin Islands
- Cayman Islands
- Guernsey
- Guam
- Isle of Man
- Jersey
- Kuwait
- Qatar
- Samoa
- Saudi-Arabia
- Turks and Caicos Islands
- Trinidad and Tobago
- United Arab Emirates
- Vanuatu

The list will be updated in October of every year. This list is relevant for (i) the newly introduced **CFC rules,** for (ii) the anticipated **withholding tax** on intra group on interest and royalty payments which is expected to be introduced as of 1 January 2021 and for (iii) the ability to obtain advance tax rulings.

(i) CFC Rules

As part of the larger ATAD1 package, the Netherlands has introduced CFC rules as of 1 January 2019. The CFC rules aim to combat tax evasion by using low-taxed jurisdictions. The new CFC rules apply in the event a Dutch corporate taxpayer has a direct or indirect interest of more than 50% in a foreign subsidiary or has a permanent establishment in a jurisdiction that is included on the above list.

In case all requirements are met, certain non-distributed income components of the CFC (such as dividend, interest, royalties, benefits from the sale of shares and leasing income, less related costs) have to be attributed to the tax base of the Dutch parent company and taxed against the standard Dutch corporate income tax rates.

As a safe harbor rule the CFC do not apply if the entity performs substantial economic activities which is defined as the minimum Dutch substance requirements.

(ii) Withholding tax on interest and royalties
It is expected that as of 2021 a withholding tax of 20.5% will be introduced on interest and royalty payments in the event such payments are due to *group companies* that are residing in a jurisdiction that is included on this blacklist.

Further, it is expected that there will be anti-abuse rules for interposing (flow-through) companies which are not included on the list.

In case withholding is due under Dutch domestic law, the rate may be reduced by virtue of the applicable double tax treaty. In this respect the Netherlands has concluded double tax treaties with the following countries that are included on the list:

- Bahrein
- Kuwait
- Qatar
- Saudi-Arabia
- United Arab Emirates

(iii) Tax rulings
The Ministry of Finance indicated that the tax authorities are no longer allowed to grant tax rulings involving countries on the list.