

DECREE PUBLISHED ON RULINGS WITH AN INTERNATIONAL CHARACTER



On 28 June 2019, the State secretary of Finance published a decree on the revised ruling policy for rulings with an international character (hereinafter: international rulings). This decree replaces three previous decrees on the ruling policy (dated 3 June 2014) and took effect on 1 July 2019. Rulings issued before 1 July 2019 do not fall under the new policy.

The State secretary already outlined the main features of the revision of the ruling policy in a letter to the Lower House in November 2018 and in the draft decree which was published on 23 April 2019. The decree is almost entirely the same as the draft decree. Below, the main features are described.

Conditions to obtain certainty

In order to apply for advance certainty, the list of substance requirements will be replaced by a requirement of economic nexus with the Netherlands. In practice this means that the company submitting the request must be a member of a group that carries on commercial operating activities in the Netherlands and commercial operating activities must be performed for the account and risk of that company for which, at the group level, sufficient relevant personnel is available in the Netherlands.



Besides the cases that do not comply with the requirement of Dutch economic nexus, advance certainty will also not be given in cases if:

- the sole or decisive reason for performing the transactions is to save Dutch and/or foreign tax (motive); and/or
- the transaction involves a country that is put on the Dutch blacklist for low-taxed and non-cooperative jurisdictions (low-taxed states and non-cooperative jurisdictions).

All international rulings will, in principle, have a maximum term of five years (exceptions may apply) and will be concluded in the form a settlement agreement (vaststellingsovereenkomst).

Procedure to obtain certainty

- A new body within the Dutch tax authorities will be installed and it will have the responsibility for the coordination of the ruling process and for the issuance of new rulings: the new International Tax Certainty Board (College Internationale Fiscale Zekerheid)
- A request for preliminary consultation about an international ruling will, however, first have to be sent to the competent tax inspector. In the case of certain specifically described issues, the tax inspector will engage the new IFZ Team (Behandelteam IFZ), which will then hold the preliminary consultation (together with the tax inspector). In all cases, the ruling will subsequently be presented to the IFZ Board.
- In situations involving prospective foreign investors, a request for preliminary consultation should be addressed to the International Investors Desk (Aanspreekpunt potentiële buitenlandse investeerders).
- A request to conclude a bilateral or multilateral Advance Pricing Agreement (APA) must be addressed to the Directorate of International Affairs and Consumer Taxes of the Ministry of Finance.
- In principle, it remains possible to have a pre-filing meeting with the Dutch tax authorities before submitting a ruling request.

Publication

- An anonymous summary of every new international ruling will be published.
- A summary of all cases where a ruling was not issued will also be published, including the reason why. This is also applicable for situations in which pre-consultation has started but no formal request has been submitted.
- The annual report of the Dutch tax authorities will cover all international rulings and not only Advance Pricing Agreements and Advance Tax Rulings.

Observations

Considering the above, we expect that obtaining a tax ruling will become more difficult given the new requirement of economic nexus. This does not mean that certain structures no longer work from a Dutch tax perspective; it only means that no certainty can be obtained in advance. This does entail that a thorough substantiation for certain structures becomes more eminent and that taxpayers may have to rely on a tax opinion of their advisor. Also, taxpayers may wish to explore the possibilities to insure the tax risk of a transaction with an insurance company.