

Alert – Revised international tax ruling practice

Dec. 3, 2018

Introduction

On November 22, 2018, the Dutch State Secretary of Finance announced that the Dutch tax authorities (“DTA”) shall revise their current international tax ruling practice, i.e. advance pricing agreements (APA’s), advance tax rulings (ATR’s) and all other tax rulings which need to be exchanged under EU Directive EU 2015/2376. By introducing these new measures, the Dutch government has taken the next big step in tackling tax avoidance. The revised ruling practice aims to improve the quality of the Dutch ruling practice for companies with real economic activities and to increase the robustness thereof. The new measures are centred around transparency, the issuing process and ruling content.

1. Transparency

The DTA shall publish an anonymous summary of each international tax ruling. In addition, the DTA will continue their annual reporting on APA’s and ATR’s and extend it to all international tax rulings. The APA’s, ATR’s and international tax rulings will also be subject to periodic reviews by independent experts.

2. Issuing Process

The coordination of the international tax ruling practice will be centralized by the so-called Committee International Tax Advanced Certainty (College Internationale Fiscale Zekerheid). This team will be involved in the sign-off of every international tax ruling. As a result, before being issued, all international tax rulings will need to be signed off by a local tax inspector and this newly formed team (two-signature system).

3. Ruling content

Under the revised tax ruling practice, measures will be taken that aim to deny tax rulings to multinational entities (“MNE”) with only limited presence in the Netherlands. The requirements for MNEs requesting international tax rulings will be stricter due to the new economic nexus criteria and the purpose test. Please note, however, that the Dutch law still remains applicable, even when rulings are no longer granted. Structures that have not been granted a ruling will, therefore, not automatically disappear.

3.1 Economic nexus

The current minimum-substance requirements will be replaced by an ‘economic nexus’. The concept of ‘economic nexus’ is yet to be defined, however, the State Secretary indicates that the MNE should perform economic operational activities for the account and risk of the Netherlands-domiciled entity. Amongst other things, the activities should match the company’s functions within the group and there should be sufficient relevant personnel available. This goes beyond the existing relevant substance criteria and, as a result, advance international tax rulings will no longer be granted to mere letterbox companies. Further clarification and guidance on the economic nexus will be published soon.

3.2 Purpose test

In addition to the economic nexus, the Dutch tax authorities shall examine the purpose of the specific structures for which the ruling is requested more closely. If one of the main purposes of the specific structures is to avoid (Dutch and/or foreign) tax, a ruling will no longer be granted. In addition, the Dutch tax authorities will not be granting any tax rulings for transactions that involve companies that are a resident of low-tax jurisdictions or states listed on the EU-black list. A Low-tax jurisdiction is defined as a country that levies a tax on profits at a statutory rate lower than 7%. Please note, however, that following an amendment to the Dutch CFC-rules, the statutory rate for low-tax jurisdictions is established at 9%. As a result, the Dutch CFC-rules define a low-tax jurisdiction as having a statutory rate lower than 9%. It is expected that this will be the new rate for low-tax jurisdictions in general. Finally, all international tax rulings will be concluded for a maximum of 5 years (for exceptional cases a maximum of 10 years) and all international tax rulings will have a standardized format.

Next steps

The revised ruling practice is intended to be implemented on July 1, 2019. The letter indicates that the new measures have no retroactive effect. This means that international tax rulings which have already been issued should not be affected, however, further clarification and guidance is expected to be published soon.

Please do not hesitate to contact us if you have any questions on how the new ruling practice will affect your business.

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