New notification obligation on declared dividend for Dutch resident entities

February 2018

As per January 1, 2018 Dutch resident entities declaring a dividend to foreign companies should complete and file a confirmatory notification form with the Dutch tax authorities in case no Dutch dividend withholding tax is due because of an exemption. This notification is new and was not applicable before 2018. Not filing this notification within one month after declaring the dividend could lead to fines!

Background and history

On December 21, 2017 the Dutch Senate approved certain changes in the Dutch dividend withholding tax act. Cooperatives were brought in line with Dutch private companies (BV’s) and public companies (NV’s). Furthermore, the Dutch dividend withholding tax exemption was expanded to qualifying recipients in most tax treaty countries. We have included a high level overview in the appendix of the conditions that need to be fulfilled to apply for the Dutch dividend withholding tax exemption. One area that has been underexposed is the new compliance obligation for declared dividends.

New filing requirements

As per January 1, 2018 Dutch resident entities declaring a dividend to foreign companies should file a confirmatory notification form with the Dutch tax authorities to notify them of such declarations in cases where no Dutch dividend withholding tax is due because of an exemption. In the form the entity declaring the dividend confirms that each shareholder meets the conditions for the Dutch dividend withholding tax exemption.

Please note that this is a new requirement. Until 2018 such notification was not required in case no Dutch withholding tax was due, unless a Dutch dividend withholding tax return was issued by the Dutch tax authorities.

In case Dutch dividend withholding tax is due, the declaring entity of the dividend needs to file a regular Dutch dividend withholding tax return and pay any dividend withholding tax due to the Dutch tax authorities. For sake of completeness we note that this notification does not apply to active real cooperation’s (i.e. non-holding cooperation’s as set out in the appendix).
Timing and fine for not or late filing

Upon a declared dividend to non-Dutch taxpayers whereby the domestic exemption is applied, the declaring entity should notify the Dutch Tax Authorities within one month after the declaration of the dividend that the requirements to apply for the domestic exemption are met. After this deadline, corporations might face a default penalty, amounting up to 5,278 euro.

In case Dutch dividend withholding tax is due the declaring entity should file a Dutch dividend tax return one month after declaring the dividend. The fine for no, partially or late payment of the Dutch dividend tax due could lead to a default penalty amounting up to 5,278 euro. In case of deliberate intent or gross negligence the Dutch tax authorities could issue an additional fine of 100 percent of the Dutch withholding tax due. The fine for not or late filing of the Dutch dividend tax return could amount up to 131 euro.

Concluding remarks

The expansion of the dividend withholding exemption is something which will benefit a lot of companies. However, this new administrative burden is also a part of the expansion. In order to complete the notification form the declaring entity of the dividend needs to confirm that the requirements for the Dutch dividend withholding tax exemption are met. Especially, the requirement for the anti-abuse rule could sometimes be difficult to assess. We are of course more than willing to assist you in this respect.

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Appendix: New legislation per January 1, 2018

Changes regarding Holding cooperatives
The Dutch government has aligned the treatment of Dutch cooperatives with the treatment of Dutch NVs and BVs in case the following two conditions are met:

1. the cooperative is a “holding cooperative” – i.e., its actual activities in the year preceding the profit distribution consisted primarily (i.e., for 70 percent or more) of the holding of participations or the direct or indirect financing of related entities or individuals;
2. and the members of the cooperative have “qualifying membership rights” – i.e., membership rights that grant an entitlement of at least 5 percent of the annual profits or at least 5 percent of the liquidation profits. In assessing whether there is a qualifying membership right, the membership rights of a member and the entities and individuals related to that member will be taken into account.

Non-holding or “real” cooperatives (cooperatives running a business enterprise and/or with a large group of members) will remain exempt from dividend withholding tax.

Expansion of the Dutch withholding tax
The Dutch government has expanded the withholding tax exemption for declared dividends by Dutch companies where their non-resident shareholder is an entity that:

1. holds an interest of at least 5 percent in the Dutch company;
2. and resides (for tax treaty purposes) in a jurisdiction that has concluded a tax treaty including a dividend clause with the Netherlands.

In addition, a new anti-abuse rule is introduced in the dividend withholding tax act, according to which the exemption will not apply if:

1. the interest is held with the principal purpose, or one of the principal purposes, to avoid dividend withholding tax from being levied;
2. and the interest is part of an artificial structure or transaction or series of transactions, which will be the case if there are no valid business reasons.

Furthermore the following conditions should also be met:

- the recipient of the dividends is not an entity with a dual place of residence;
- and the recipient of the dividends is not similar as the Dutch fiscal investment institution or tax-exempt investment institution;
- and the recipient of the dividends is the beneficial owner of the dividends.