Update Dutch Controlled foreign companies: List of non-cooperative countries

As part of the implementation of ATAD 1, so-called ”CFC rules” have been introduced in the Netherlands as per January 1, 2019. As a result foreign operations of Dutch tax payers could become subject to additional Dutch corporate income taxation. To fall under the scope of the CFC legislation, the activities must take place in a country listed on the EU non-cooperative countries list and/or on the Dutch list of low taxed countries. On March 12, 2019 the EU updated their list of non-cooperative countries. As such 10 more countries are blacklisted by the EU.

Dutch CFC legislation in general as per January 1, 2019

An entity will be considered a CFC if:
(i) a Dutch taxpayer (in)directly holds an interest exceeding 50% (in vote or value) in a foreign entity or branch; AND

(ii) the income of this entity or branch consists of more than 30% passive income; AND

(iii) this entity or branch is tax resident in a jurisdiction listed on the EU list of non-cooperative jurisdictions (EU Blacklist) or in a low-tax jurisdiction (i.e., a jurisdiction with a statutory corporate income tax rate below 9%).

The relevant EU Blacklisted jurisdictions and low-tax jurisdictions are annually listed by the Dutch Government.

Calculation of the CFC income

If a foreign subsidiary is considered a CFC, the undistributed tainted income of that CFC should be included in the Dutch taxable base and calculated in accordance with Dutch corporate income tax standards. That means that for instance application of the Dutch participation exemption regime, interest deduction limitation rules and transfer pricing corrections should be taken into consideration when determining the CFC income.

Exemption

The CFC rules do not apply if the CFC carries on genuine economic activity in the foreign jurisdiction e.g., if it has sufficient relevant substance in the foreign jurisdiction as demonstrated by satisfying a certain set of minimum substance requirements.

In addition to this minimum substance safe harbor, a taxpayer can also demonstrate the existence of a genuine economic activity by e.g., means of organizational, economic or other relevant characteristics of the group as well as the structure and strategy of the group.

Countries listed on the EU blacklist/Dutch list

If your company owns an entity or permanent establishment in one of the below stated countries (2019 list), your company could be subject to the CFC rules.

- Jurisdictions on the EU black-list:
  American Samoa, the US Virgin Islands, Guam, Samoa, and Trinidad and Tobago.

- Jurisdictions on the Dutch low-taxed country list:
  Anguilla, the Bahamas, Bahrain, Belize, Bermuda, the British Virgin Islands, Guernsey, the Isle of Man, Jersey, the Cayman Islands, Kuwait, Qatar, Saudi Arabia, the Turks and Caicos Islands, Vanuatu and the United Arab Emirates.

Update EU blacklist on March 12, 2019

The EU updated their list on March, 12 2019 with the following countries: Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates and Vanuatu.

As such the number of countries which are listed has expanded (for as far as they were not already on the Dutch list).

Way forward

In case you have a subsidiary in one of the countries mentioned above the Dutch CFC rules may be applicable and lead to adverse tax consequences. Please inform us if this is the case so we can determine the tax consequences and if needed provide options for restructuring.

Contact
Do you have questions or do you need more detailed information, please do not hesitate to contact us.

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