KPMG Meijburg & Co Tax & Legal

Letter sent to Lower House of Parliament summarizing internet consultation and setting out follow-up process to strengthen combating of dividend stripping

In practice, large amounts in dividend tax are avoided via various forms of dividend stripping, which the Dutch tax authorities cannot properly combat with the legal instruments currently available to it. The government wants to prevent this improper use without unnecessarily affecting normal stock exchange trading. In order to decide on a measure that will do the most justice to these wishes, interested parties were consulted. The internet consultation, entitled 'Options for strengthening measures to prevent dividend stripping' was launched on December 15, 2021 and closed on January 26, 2022. In our memorandum of December 15, 2021 we discussed this internet consultation and the six potential solutions outlined therein. On July 15, 2022 Deputy Minister of Finance Marnix van Rij sent a letter to the Lower House of Parliament in which he briefly summarized the internet consultation and outlined the government's assessment of it and the follow-up process.

Summary of internet consultation

The following six potential solutions were presented in the consultation document:

A. making the legal ownership of and a beneficial interest in the shares mandatory for dividend tax to be reduced, credited or refunded;
B. introducing a holding period;
C. introducing a net return/tax base approach for the crediting or refunding of dividend tax;
D. documentation obligations;
E. codification of the record date;
F. expanding the scope to cover associated entities.

With regard to options A, B, C and F, the responses to the internet consultation were generally critical and cautious. The main criticism was that these options are to a greater or lesser extent overkill, i.e. that even in bona fide situations there would no longer be an entitlement to a reduction, credit or refund of dividend tax. Most of the responses recognized that the main challenge for the Dutch Tax and Customs Administration lies in the division of the burden of proof and the collection of the required information and not in the legal substance of the legislation. There is therefore in general support for the introduction of additional measures to improve the information and evidence base, and thus especially for options D and E.

The government's assessment

The government firstly noted that the European Commission is currently busy with an initiative to improve withholding tax procedures for non-resident investors. The initiative is aimed at providing Member States with information to prevent tax abuse in the area of withholding taxes, while at the same time enabling requests for the refund or reduction of excess taxes withheld at source to be processed quickly and efficiently. The European Commission has announced that it will present a proposal either at the end of 2022 or the beginning of 2023.

The government will also take one or more measures to strength how dividend stripping is combated. For the government, proportionality is central to any decision to opt for new measures, so that only abuse situations and not bona fide cases will be affected. The government currently sees opportunities in a combination of one or more additional measures based on options D and E. As such, the government is examining measures that focus on improving the information and evidentiary backlog at the Dutch Tax and Customs Administration, including changing the current division of the burden of proof. As an example, measures are also mentioned that would ensure that both domestic and foreign beneficiaries to the income have to provide a number of additional statements and/or information (either in the tax return or in the refund request) to substantiate their position as beneficial owner to the relevant dividend income. An efficiency threshold for the amount of income is being considered.

In the coming period, the government will also be examining whether it is possible to develop a robust, proportional and easily implementable measure on the basis of options C and F.

Finally, the government has received indications that specific situations of dividend stripping involving pension funds are being seen in practice. The government will therefore examine whether and how an additional measure to combat this can be taken that exclusively focuses on pension funds involved with dividend stripping (an accompanying measure to option C).

Follow-up
All this will be examined in the coming period and consideration will be given to how the measures can be further elaborated on in a bill. Partly in light of the wish of the Lower House of Parliament to spread legislation throughout the year and given the complexity of combating dividend stripping, the measures to strengthen how dividend stripping is combated will not be able to be implemented until January 1, 2024. After the measures have been implemented, the government will monitor their effectiveness. Depending on the outcome of this or indications received in practice, the government will consider whether further additional measures are necessary to combat dividend stripping.

Please do not hesitate to contact us if you have any questions about the above. Meijburg's advisors would be pleased to use their expertise to help you.

KPMG Meijburg & Co
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