

Deputy Minister announces proposed policy for renewed ruling practice

In a letter sent to the Lower House on April 23, 2019, the Deputy Minister of Finance announced the proposed policy statement, in which the measures for reforming the practice for rulings with an international character (hereinafter: international rulings) are elaborated. The intended effective date of the new policy, which includes stricter requirements for concluding international rulings, is July 1, 2019. The ruling practice reform had already been announced in a letter dated November 22, 2018.

The purpose of the reform is a more transparent ruling practice and to further guarantee the quality of the ruling practice for businesses with activities of substance. The proposed changes cover the content and transparency of international rulings as well as the process for concluding such rulings. We refer to [our previous memorandum](#) about this. The main features of the proposed policy statement are addressed below.

Content

The proposed policy statement applies to the preliminary consultation for obtaining advance certainty in the form of an international ruling. This concerns rulings covering the application of corporate income tax and dividend withholding tax and the application of bilateral treaties for the avoidance of double taxation and rules for double tax relief. For example, Advance Pricing Agreements (APAs), rulings on the participation exemption, the Innovation Box, the tonnage regime, whether there is a permanent establishment and agreements about the attribution of assets and profit to a permanent establishment. The proposed policy statement also sets out in which cases the Dutch tax authorities will not conduct preliminary consultation and thus a ruling will not be able to be concluded. In summary, this is the case if:

1. there is insufficient economic nexus in the Netherlands;
2. the sole or decisive reason for the transaction is to save Dutch or foreign tax; and/or
3. a transaction takes place with entities established in countries appearing on the Dutch list of low-taxed and non-cooperative countries.

In an appendix to the letter of April 23, 2019, the Deputy Minister clarified the above using a number of examples.

Economic nexus

An important measure is the tightening of the substance requirements. The current list of substance requirements will be replaced with a requirement for an 'economic nexus' with the Netherlands. There must be a group that performs commercial operating activities in the Netherlands and the commercial operating activities must be performed for the account and risk of the requesting entity, for which there is sufficient relevant personnel available at the group level in the Netherlands.

Procedure

To implement the new policy an International Tax Certainty Board (*College Internationale Fiscale Zekerheid*; College IFZ) will be set up that will be responsible for

the central coordination of preliminary consultation on international rulings. The International Tax Certainty Board's responsibilities include ensuring the coherence of policy and its implementation.

In principle the tax inspector will continue to head the preliminary consultation, but for certain issues described in the policy statement the new IFZ Team (*Behandelteam Internationale Fiscale Zekerheid*; *Behandelteam IFZ*) will also head the negotiations, albeit together with the inspector. The International Tax Certainty Board will always be the second signatory.

Requests for a bilateral or multilateral APA should be submitted directly to the Directorate of International Affairs and Consumer Taxes (*Directie Internationale Zaken en Verbruiksbelastingen*; IZV) of the Ministry of Finance. The IFZ Team will have an advisory role in the formation of a bilateral APA (BAPA).

In situations where there is a 'prospective foreign investor' – an investor that is considering making an initial substantial physical investment in the Netherlands and that meets a number of conditions – a request for preliminary consultation must be submitted to the International Investors Desk (*Aanspreekpunt potentiële buitenlandse investeerders*; APBI).

Transparency

Greater transparency is sought by means of the publication of an anonymous summary of the international rulings. The appendix to the letter of April 23, 2019 contains a number of sample summaries of situations in which rulings were concluded. Anonymous summaries of situations in which preliminary consultation did not result in a ruling, including an explanation of why this did not happen, will also be published, as from July 1, 2019.

Meijburg & Co comments

The measures in any case mean that taxpayers that only establish themselves in the Netherlands for tax reasons and have no economic nexus with the Netherlands will no longer obtain a ruling from the Dutch tax authorities. The same applies to situations in which the desired certainty would cover the tax implications of direct transactions with entities established in a designated low-taxed or non-cooperative country.

The 'economic nexus' concept is expected to raise the threshold for obtaining advance certainty in all cases above that which applies on the basis of the current substance requirements. Moreover, the Deputy Minister has confirmed that no longer concluding a ruling for certain structures does not mean that these structures will disappear, since the new policy will not lead to an amendment of the law.

Of importance is that the new policy will not, in principle, affect existing rulings and rulings concluded before July 1, 2019 (assuming that this is indeed the effective date of the new policy).

The number of BAPA requests are also expected to increase, given the international trend to avoid double taxation.

Lastly, we would like to point out that the renewed ruling practice still has to be debated in the Lower House. This matter is currently on the agenda for June 4, 2019. It remains to be seen whether this will lead to changes, but we will of course keep you informed of any relevant developments.

Please feel free to contact your Meijburg & Co advisor if you have any questions or would like to discuss the above matters.

Meijburg & Co
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