

## **Final policy statement on preliminary consultation on rulings with an international character published**

On June 28, 2019, the Deputy Minister of Finance published a policy statement elaborating on the revised ruling policy for rulings with an international character (hereinafter: international rulings). This policy statement replaces three previous ruling policy statements (dated June 3, 2014) and took effect on July 1, 2019. The revision is aimed at further safeguarding the quality of the ruling practice for businesses with activities of substance as well as enhancing its robustness. There will be more stringent requirements for issuing rulings and the rules on the issuing of these rulings will also be more transparent.

The Deputy Minister had already outlined the main features of the revision of the ruling practice in a letter to the Lower House on [November 22, 2018](#), and on [April 23, 2019](#) a draft of the policy statement was published. The final policy statement is almost the same as the draft policy statement, so that what follows is an overview of the main features; for the rest we will suffice with reference to our previous memorandums.

### **Procedure**

- In future all international rulings applied for as of July 1, 2019 or not yet issued on that date, will in any case be sent to one central team for assessment: the new International Tax Certainty Board (*College Internationale Fiscale Zekerheid*; IFZ)
- A request for preliminary consultation about an international ruling will, however, first have to be sent to the competent tax inspector. In the case of certain specifically described issues, the tax inspector will engage the new IFZ Team (*Behandelteam IFZ*), which will then hold the preliminary consultation (together with the tax inspector). In all cases, the ruling will subsequently be presented to the IFZ Board.
- In situations involving prospective foreign investors, a request for preliminary consultation must be addressed to the International Investors Desk (*Aanspreekpunt potentiële buitenlandse investeerders*; APBI).
- A request to conclude a bilateral or multilateral Advance Pricing Agreement (APA) must be addressed to the Directorate of International Affairs and Consumer Taxes (*Directie Internationale Zaken en Verbruiksbelastingen*; IZV) of the Ministry of Finance.
- It will, in principle, continue to be possible to have a pre-filing meeting with the Dutch tax authorities precede a ruling request.
- With regard to the APA request, small enterprises can receive help from the Dutch tax authorities in providing comparable figures for independent market parties.

### **Transparency**

- An anonymous summary of every new international ruling will be published.
- A summary of all cases where a ruling was not issued will also be published, including the reason why.
- The annual report of the Dutch tax authorities will in future cover all international rulings and not only APAs and Advance Tax Rulings (ATRs).

## **Content**

- In order to obtain advance certainty, as of July 1, 2019 the list of substance requirements will be replaced by a requirement of an economic nexus with the Netherlands: the company submitting the request must be a member of a group that carries on commercial operating activities in the Netherlands and commercial operating activities must be performed for the account and risk of that company for which at the group level there is sufficient relevant personnel in the Netherlands.
- Besides the cases that do not comply with the requirement of a Dutch economic nexus, advance certainty will also not be given in cases where:
  - o the sole or decisive reason for performing the transactions is to save Dutch and/or foreign tax (motive); and/or
  - o the requested advance certainty relates to transactions with entities established in countries appearing on the Dutch blacklist (low-taxed states and non-cooperative jurisdictions).
- Furthermore, in future all international rulings will, in principle, have a maximum term of five years. Only in exceptional cases (for example, in the case of long-term contracts) can this be extended to 10 years. According to the policy statement, in that case an evaluation will have to take place mid-term.
- In all cases, an international ruling will be laid down in a settlement agreement (*vaststellingsovereenkomst*, VSO).

## **Meijburg & Co comments**

The measures mean in any case that taxpayers/groups that only establish themselves in the Netherlands for tax reasons and have no further economic nexus with the Netherlands will no longer obtain a ruling from the Dutch tax authorities. The 'economic nexus' concept most likely means that the threshold for obtaining advance certainty will in all cases be higher than was the case based on the list of substance requirements. The Deputy Minister had moreover previously confirmed that, given that the law will not change as a result of the new policy, the fact that rulings will no longer be concluded for certain arrangements does not mean that these arrangements will disappear. Rulings issued before July 1, 2019 do not fall under the new policy.

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

Meijburg & Co  
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