Internet consultation on the Introduction of a conditional withholding tax on dividends Act

On September 25, 2020 the government launched an internet consultation to give interested parties the opportunity to respond to the draft bill to introduce a conditional withholding tax on dividends as of 2024. This proposal is addressed below.

Context of the draft bill

In the 2017 coalition agreement it was agreed that the current dividend tax would be abolished and that a conditional withholding tax on dividends, interest and royalties would be introduced. The government ultimately decided not to abolish the dividend tax and to withdraw the bill for the introduction of a conditional withholding tax on dividends that had, in the meantime, been presented to the Lower House. The government subsequently indicated that it would examine whether elements of the proposed withholding tax could be integrated into the current dividend tax. The Withholding Tax Act 2021 has now taken effect. This Act provides for a conditional withholding tax, effective as of 2021, on interest and royalties that, in short, are paid to group companies in jurisdictions designated as low tax. The intention is now to expand this withholding tax as of 2024 to cover dividends, as had been announced by the Deputy Minister of Finance in a letter to the Lower House of Parliament dated May 29, 2020 (see our previous memorandum).

The draft bill

The draft bill means that the tax base for the withholding tax will be expanded to cover dividends. With regard to the withholding obligation and the tax base, this is largely in line with the Dividend Withholding Tax Act 1965. This means that a withholding tax at the high corporate income tax rate (currently 25%) will be levied on dividends that are distributed within a group, if the shareholder is established in a jurisdiction appearing on the Dutch list of low tax jurisdictions or on the EU list of non-cooperative jurisdictions, and in certain cases where the interest is held by a hybrid entity and in abuse situations.

Aside from the tax rate, there are a number of differences compared to the current dividend tax. An important difference with the current dividend tax is that cooperatives that do not qualify as a holding cooperative will also, in principle, be obliged to withhold the conditional withholding tax. Another difference is that there is no exemption for the redemption of shares if this entails a redemption for the purposes of temporary investment. Incidentally, the latter difference is less relevant in practice, because the conditional withholding tax will only be levied on group structures and, in practice, the exception for the redemption for temporary investment especially plays a role in the case of listed companies.

If the dividend tax and the conditional withholding tax cumulate, the withholding tax will be reduced by the dividend tax levied. On balance, the withholding tax rate will be payable.

A difference with the previously proposed, but later withdrawn, proposal for a conditional withholding tax on dividends is that no withholding tax will be levied on the sale of shares (unlike in the case of redemption) and that the possibility of the untaxed repayment of capital will remain intact (even if there is distributable profit) under the same conditions that also apply to the current dividend tax.

Meijburg & Co comments

An initial analysis of the draft bill leads to the expectation that the proposal, if it ultimately becomes law, will particularly impact cases where the dividend tax exemption currently does not apply, because the shareholder is established in a non-contracting country. If the non-contracting country is a designated low-tax jurisdiction, the tax rate on the group dividend will rise from 15% to 25%. Distributions by non-holding cooperatives to members in designated low-tax jurisdictions that currently do not fall under the dividend tax, will also be taxed at 25%. Also in abuse situations where the direct shareholder is not established in a low-tax jurisdiction but the underlying group shareholder(s) is/are, the tax rate may rise to 25%. This may, for example, also occur in certain circumstances, if the direct shareholder is established in a contracting state.

The internet consultation closes on October 23, 2020. The responses will be published afterward, if consent is given for this. After the internet consultation, the responses can be included in the drafting of the final bill.

Meijburg & Co
September 25, 2020