KPMG Meijburg & Co Tax & Legal

Internet consultation on dividend stripping

Six options to prevent dividend stripping

Introduction

On Wednesday, December 15, 2021 an internet consultation entitled 'Options for strengthening measures to prevent dividend stripping' was launched. In practice, substantial (albeit not easily quantifiable) amounts in dividend tax are avoided via various forms of dividend stripping, which the Dutch tax authorities cannot properly combat with the current legal instruments. 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 are being consulted. The consultation document contains six potential solutions and various general questions. The government is explicitly offering the scope to propose options that fit within the preconditions. In the following sections we will especially focus on the solutions.

Background and the dividend stripping problem

Dividend stripping involves splitting the beneficial and legal entitlement in order to obtain a tax advantage, for example a dividend tax refund, reduction or credit for which the beneficial owner itself is not eligible. The tax benefit is usually split between both parties. For example, lending out shares, buying a put option or writing a call option are ways to ensure that the one party receives the dividend under civil law (a limited benefit amounting to a part of the tax benefit), while the beneficial interest in the share and the dividend goes to the other party. There are currently measures in place to combat dividend stripping, but due to the heavy burden of proof resting on the tax authorities it is not possible to adequately tackle dividend stripping.

The six solutions

The government has identified the following alternative measures:

A. A dividend tax reduction, refund or credit is only possible for the party that is the shareholder (the document talks about 'legal ownership') and has the *beneficial ownership* of the shares. In this option, the holder of the right of usufruct is therefore no longer entitled to a reduction, refund or credit. The consultation document says nothing about an equal status with share certificates.
B. A dividend tax reduction, refund or credit is only possible for the party that, during a certain period before the record date and for some time thereafter, has the entire legal ownership and the beneficial ownership of the shares. The holding period can be combined with a rebuttal provision (whereby the shareholder must prove that it is pursing business-motivated objectives in splitting off the beneficial interest, or does indeed hold the beneficial interest), and with an efficiency threshold (per distribution or per period).
C. The crediting of dividend tax against corporate income tax is limited to the net amount of corporate income tax payable on the dividend. This option may also be combined with an efficiency threshold. This option will not apply to pension funds.

D. To ensure that only one party is entitled to a credit, refund or reduction, additional documentation obligations can be introduced, for example (i) to verifiably only issue one dividend voucher per dividend distribution, (ii) to register dividend vouchers with the Dutch tax authorities, and (iii) to require a dividend voucher to be presented in order to obtain a credit, refund or reduction.
E. In order to provide clarity on who is entitled to the dividend and thus is entitled to a dividend tax credit, reduction or refund, the legislation can state that this depends on who the shareholder is on the record date. This option could have an effect in combination with option A, B or D.
F. In combination with other options a legal provision can be included under which any assessment of the beneficial interest in the shares must also take account of the interests that are held by associated natural persons and associated entities.

In assessing the solutions, the following preconditions apply:

a. it must be feasible (for the Dutch tax authorities and market parties);
b. attention is paid to the impact on normal stock exchange trading and the consequences for citizens and companies;
c. is sustainable under international and EU law.

Follow-up

The government will consider the options further based on the reactions received and then inform the Lower House of Parliament, probably in the spring of 2022.

Comments by KPMG Meijburg & Co

Option A has profound implications for a wide range of situations unrelated to dividend stripping and contains a high degree of overkill. At first sight Option B appears the most realistic, certainly if the efficiency threshold is set at a somewhat higher level. Option C has the risk that it will lead to excessive tax on dividends received by service providers in the financial sector (for example, insurers and market makers). Options D, E and F are only supplementary in nature.

We will of course keep you informed about the next stage of the process.

KPMG Meijburg & Co
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