THE NETHERLANDS PROPOSES A CONDITIONAL WITHHOLDING TAX ON DIVIDENDS

On March 25, 2021, a legislative proposal introducing a Dutch conditional dividend withholding tax ("CDWT") on dividends was published. If adopted, dividend distributions to related entities established in low taxed or EU non-cooperative jurisdictions will be subject to a CDWT of 25%, effective per January 1, 2024.

Effective per January 1, 2021, the Netherlands introduced the Conditional Withholding Tax Act 2021 ("CWHT Act") in which a conditional withholding tax was introduced on interest and royalty payments to low taxed or non-cooperative jurisdictions or in certain cases of abuse.

It is now proposed to amend this CWHT Act to also include dividend payments to related entities established in Low Taxed Jurisdictions[1] . The changes to the CWHT Act serve as an anti-abuse measure and the CDWT will typically apply in the following situations:

- Dividend distributions to a related entity that is established in a Low Taxed Jurisdiction. Kindly note that this CDWT would thus also apply in case the recipient is established in a Low Taxed Jurisdiction which has concluded a tax treaty with the Netherlands;
- In case of certain abusive situations, including indirect payments to related entities in Low Taxed Jurisdictions whereby for example an intermediate flow through company is interposed without sufficient substance, and in case of payments to related hybrid entities; and
- Dividends distributions by a non-holding cooperative to an entity that is established in a Low Taxed Jurisdiction. Under the current general dividend withholding tax act, qualifying non-holding cooperatives are not subject to dividend withholding tax.

For purpose of the proposed CDWT, withholding tax will only be levied on payments between related entities. A related entity in scope of the CDWT is an entity that can - indirectly or directly– exercise decisive influence (also known as a "qualifying interest") in a Dutch taxpayer. In any case a qualifying interest covers interests that represent more than 50% of the statutory voting rights in an entity. It should be noted that a group of shareholders can also qualify as a cooperating group of shareholders which together hold a qualifying interest.

Taxable base

In line with the conditional withholding tax on interest and royalties, the tax rate will be the highest Dutch corporate income tax rate set at 25% (in 2021) and tax should be levied on all benefits that also qualify as a regular benefit under the current dividend withholding tax rules (e.g. regular dividend distributions, liquidation distribution, repayments of capital). The CDWT is due at the time that the dividend had been paid and/or is made available. The Dutch taxpayer must report and withhold the CDWT within thirty days at the end of a calendar year.

[1] A jurisdiction with statutory rate lower than 9% or a jurisdiction on the EU list of non-cooperative countries. For 2021 the following countries are listed: Anguilla, Bahama's Bahrein, Barbados, Bermuda, British Virgin Island, Cayman Islands, Fiji, Guam, Guernsey, Isle of Man, Jersey, Oman, Samoa, Seychelles, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, United Arab Emirates, US Samoa, US Virgin Islands and Vanuatu.

Tax treaty jurisdictions

The CDWT will be effective per January 1, 2024 and will also become applicable to tax treaty countries that qualify as Low Taxed Jurisdictions per January 1, 2021.

Tax treaty jurisdictions which qualify as Low Taxed Jurisdictions after January 1, 2022 will have a three-year grandfathering period in which the CDWT should not apply. Thus dividends paid to these countries may still give an entitlement to a reduced or zero withholding tax rate for the time being. However, it is expected that the Dutch Government will approach the tax treaty partner to renegotiate the relevant treaty.

Concurrence with the existing Withholding Tax Act

The proposed legislation indicates that the new CDWT should be levied alongside the current existing Dutch dividend withholding tax. Thus the situation can occur that a dividend distribution will be subject to both the existing dividend withholding tax (at 15%) and the new CDWT (at 25%). For these situations an anti-cumulation provision will be put in place so that the withholding tax levied at 15% may be set off against the CDWT of 25%.

What does this mean for you & next steps

As this is still proposed legislation, the amendments are still subject to further review. However, as this is a much anticipated proposal we strongly advise to be prepared for the new CDWT and recommend that all dividend payments made from the Netherlands to related entities in low taxed jurisdiction will be mapped and reviewed. Moreover, it is recommended to analyze whether the specific anti abuse measures in respect of hybrid entities and in respect of interposed entities do not apply.

More information?

For additional information with respect to this alert, please contact your trusted RSM adviser.