OTTERSPEER, HAASNOOT & PARTNERS
Dutch and International Tax Counsel

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Dutch Government proposes measures against international tax evasion

On 30 August 2013, the Dutch government proposed measures to Parliament to curb international tax evasion. The proposed measures follow a series of national and international studies, reports and action plans on tax arbitrage, base erosion and profit shifting.

The Dutch Government strongly advocates solutions for tax evasion that are binding on all nations, in order to ensure a level playing field. Unilateral measures would only result in restructuring of existing tax evasion schemes, they would not solve tax evasion. This does not however, discharge the Dutch government from taking its responsibility and re-examine its tax regime and tax treaty network. The measures proposed comprise (i) an increased emphasis on minimum substance and tax transparency for “intermediary companies”, and (ii) a re-examination of double tax treaties (DTT’s) with developing countries.

Intermediary companies

Dutch intermediary companies receiving interest and royalties from companies abroad and paying interest and or royalties to companies abroad (“intermediary financing companies”) are currently required to meet minimum substance requirements if they apply for an Advance Tax Ruling (“ATR”) and/or an Advance Pricing Agreement (“APA) with the Dutch tax authorities. These minimum substance requirements, which ensure that management and administration are carried out in the Netherlands with a certain amount of equity-at-risk that is appropriate in light of the functions performed and risks incurred by the intermediary company. Pursuant to the proposed measures:

1. Intermediary financing companies which do *not* apply for an ATR or APA will also be required to meet these substance requirements. In addition, if these companies apply for application of a DTT, they will be required to report in their tax return whether or not they meet the minimum substance requirements. The Dutch tax authorities will spontaneously exchange information with the relevant treaty partner on those companies which do not meet these requirements.
2. The Dutch tax authorities will spontaneously exchange information on the content of concluded APA’s with the relevant foreign tax authorities, when intermediary financing companies do not have any activity in the Netherlands other than receiving and paying interest and/or royalties.
3. Dutch intermediary companies will only be able to apply for an ATR in relation to *holding* activities if they have sufficient nexus with the Netherlands. Sufficient nexus will be deemed present when, for example, the minimum substance requirements (which at this time still only apply to intermediary financing companies) are met.

DTT’s and developing countries

The Dutch Government will offer Zambia to update the existing DTA. In addition, if so requested by any of the 23 developing countries with which the Netherlands has concluded a DTT or is negotiating a DTT, the Netherlands will agree to including anti abuse measures in these DTT’s. The anti-abuse clauses to be included in the respective tax treaty will be considered in close consultation with the developing countries. Furthermore, the Netherlands will offer assistance to strengthen the capacity of tax administrations in developing countries so that they can increase tax revenue, reduce the number of unnecessary tax exemptions and curb tax evasion.

In case of questions, please feel free to contact the tax advisors at Otterspeer, Haasnoot & Partners (+31 10 36 50 44)