5 July 2019

Global Tax Alert

Dutch Government publishes draft legislation on implementation of EU ATAD 2

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our EY Global Tax Alert Library on ey.com.

Executive summary

On 2 July 2019, the Dutch Government published a legislative proposal on the implementation of the European Union (EU) Anti-Tax Avoidance Directive 2 (ATAD 2) which includes anti-hybrid provisions (the proposal). The proposal is generally in line with the draft proposal, published as part of the ATAD 2 internet consultation (Consultation Document), that was initiated on 29 October 2018.[1]

An EY Global Tax Alert with a detailed discussion of the proposal will be forthcoming; this Alert outlines the proposal's key measures. The proposal includes a number of additional items and some further clarifications compared to the draft proposal which are listed below. This proposal also may change following parliamentary proceedings later this year and is expected to be enacted before 1 January 2020.

Detailed discussion

Additional items

The proposal includes a new requirement for taxpayers to have documentation available which includes an analysis on the application of the anti-hybrid provisions. If this documentation is requested by the Dutch tax authorities, taxpayers will be given a reasonable time frame to provide this.

Building a better working world

Furthermore, in line with ATAD 2, the proposal includes an explicit exemption to the "reverse hybrid provision" for collective investment vehicles (CIV) which are subject to certain financial regulatory oversight.

Further clarifications

In addition to the examples and explanation provided in the Consultation Document, the proposal clearly states that the inclusion of an item of income, for purposes of income tax levied at the level of an individual, also suffices to meet the "dual inclusion income" escape which applies for some of the anti-hybrid provisions. The anti-hybrid provisions do not apply if and to the extent the conditions of this escape are met.

In line with ATAD 2, the proposal explicitly states that any obligation to provide relief for income attributable to a hybrid permanent establishment will override the application of the hybrid permanent establishment provisions. The proposal does note that the Netherlands intends to amend its tax treaties to prevent such override going forward.

CV/BV Decree

As was already announced in the Consultation Document, the Dutch Government noted that it will repeal the Decree relating to the application of the Netherlands-United States tax treaty to hybrid entities (CV/BV Decree). Under the CV/BV Decree, treaty benefits (e.g., lowered or exempt dividend withholding tax rates) may be granted if the investors in a (reverse) hybrid entity are tax-treaty eligible. Upon repeal of the CV/BV Decree as of 1 January 2020, dividend distributions from Dutch companies to reverse hybrid entities such as CVs may become subject to the 15% Dutch dividend withholding tax, unless restructuring takes place before that time.

Endnote

1. EY Global Tax Alert, *Dutch Government opens internet consultation on anti-hybrid measures of ATAD 2*, dated 30 October 2018.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Belastingadviseurs LLP, International Tax Services, Amsterdam

- Danny Oosterhoff danny.oosterhoff@nl.ey.com
- Dirk Stalenhoef dirk.stalenhoef@nl.ey.com

Ernst & Young Belastingadviseurs LLP, International Tax Services, Rotterdam

- Michiel Swets michiel.swets@nl.ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, New York

- Simone Admiraal simone.admiraal1@ey.com
- Annelien Dessauvagie annelien.dessauvagie@ey.com
- Robert Kool robert.kool@ey.com
- Tim Clappers tim.clappers@ey.com
- Rik Jansen rik.jansen@ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, Chicago

- Sebastiaan Boers sebastiaan.boers1@ey.com
- Martijn Bons martijn.bons2@ey.com
- Henrik Stipdonk henrik.stipdonk2@ey.com

Ernst & Young LLP (United States), Netherlands Tax Desk, San Jose/San Francisco

- Dirk-Jan (DJ) Sloof dirkjan.sloof@ey.com
- Shirin Delfan shirin.delfan1@ey.com
- Floris Kruijsen floris.kruijssen1@ey.com

Ernst & Young (China) Advisory Limited, Netherlands Tax Desk, Beijing

- Yee Man Tang yeeman.tang@cn.ey.com

Ernst & Young Tax Services Limited, Netherlands Tax Desk, Hong Kong

- Miranda Baas miranda.baas@hk.ey.com

Ernst & Young LLP (United Kingdom), Netherlands Tax Desk, London

- Randall Hornberger randall.hornberger@uk.ey.com
- Celeste Krens celeste.johanna.krens@uk.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

EYG no. 003233-19Gbl

1508-1600216 NY
ED None

ey.com