

## Netherlands: Opposition party proposes inclusion of an exit tax in the *Dutch Dividend Withholding Tax Act*

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### Executive summary

On 10 July 2020, an opposition party (GroenLinks) submitted a private member's bill (i.e., a bill not initiated by the executive branch) to the Dutch House of Representatives. The proposal introduces a conditional exit tax as part of the Dutch dividend withholding tax regime in the case of certain cross-border reorganizations. If the bill becomes law, it will have retroactive effect to noon, 10 July 2020, under the current proposal. It is uncertain whether there is a majority in the House of Representatives for this proposal.

### Detailed discussion

#### Transactions in scope

Currently, a Dutch dividend withholding tax claim cannot be effectuated in the case of certain cross-border reorganizations. The proposal aims to retain the Dutch taxing rights on (deferred) profit reserves, by introducing a conditional exit tax in the case of the following cross-border transactions:

- (i) Transfer of the company's place of effective management, as a result of which the company shall no longer be considered a Dutch tax resident under either domestic law or the applicable tax treaty

- (ii) Legal merger
- (iii) Demerger
- (iv) A share-for-share merger

### **Jurisdictions in scope**

Only cross-border reorganizations with a "qualifying jurisdiction" shall be in scope of the conditional exit tax. A qualifying jurisdiction is a jurisdiction that:

- a. Does not levy a dividend withholding tax comparable to the Dutch dividend withholding tax; or
- b. Provides for a step-up of the paid-in capital to the company's fair market value for local withholding tax purposes.

It is important to note that for the foreign withholding tax to be comparable, the withholding tax rate does not have to be at least equal to the Dutch dividend withholding tax rate (15%), as long as the foreign withholding tax rate is not (almost) 0% or de minimis. Furthermore, if a foreign withholding tax only has limited scope and e.g., only applies to distributions to certain identified jurisdictions, the foreign withholding tax shall not be considered comparable.

### **Limited to large multinational groups**

The conditional exit tax shall only apply to Dutch entities that are part of a group with a consolidated group turnover equal to or exceeding €750 million (similar to the Dutch Country-by-Country reporting threshold).

### **Conditional exit tax due**

The conditional exit tax is proposed as a deemed distribution of all (deferred) profit reserves, including built-in gains, immediately prior to the tainted cross-border reorganization.

The Dutch withholding tax due, considering for example the domestic exemptions that would have applied on regular distributions, must in principle be paid at once. There is no right to a credit or refund in the case of full payment. This is especially relevant for domestic shareholders. However, the proposal introduces the possibility to defer payment until actual distributions of the (deferred) profits, with a right to a credit or refund.

### **Miscellaneous**

Simultaneously with the introduction of the conditional exit tax, the proposal introduces rules under which the Netherlands shall provide for a step-up of the paid-in capital to the company's fair market value for Dutch dividend withholding tax for foreign companies migrating their place of effective management to the Netherlands. For cross-border mergers, demergers and share-for-share mergers such step-up is already available.

Lastly, a foreign company that was a Dutch tax resident for at least two years shall, for the purpose of the conditional exit tax, be deemed to remain a Dutch tax resident for 10 years after migrating its place of effective management out of the Netherlands.

### **Next steps**

The above proposal is subject to review and discussion by the House of Representatives. As the proposal is submitted by an opposition party (instead of the executive branch), it is uncertain whether there is majority support in the House of Representative for this proposal. The House of Representatives is in summer recess until 31 August 2020.



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