

Poland and the Netherlands sign protocol to revise tax treaty

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On 29 October 2020, government representatives of the Netherlands and Poland signed a protocol to revise the convention between the Republic of Poland and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the treaty).

The protocol has not been published yet. However, according to the information shared publicly by the Polish Ministry of Finance, the protocol covers a number of substantial areas of the treaty, which include:

- ▶ Introduction of a real estate clause (taxation of transfers of shares of real estate rich entities in the country where real estate is located)
- ▶ Introduction of a general anti-avoidance provision in the form of a "principal purpose test"
- ▶ New rules related to the tax treatment of a permanent establishment
- ▶ Introduction of a transparent entity clause
- ▶ New rules regarding tax residency of persons other than natural persons with dual tax residence

The exact wording of the changes have not been released as of the publication of this Alert. Although the Polish tax authorities indicated the need to reflect the developments under the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI) in the treaty, this will only be known after the protocol is published.

As Dutch holding companies are regularly used to structure investments into Poland, the changes, specifically regarding the real estate clause and principal purpose test, could have a significant impact on such structures.

When assessing the impact on Dutch holding structures, taxpayers should also consider the proposed changes to the *Polish Corporate Income Tax Act*, currently being discussed in the Parliament, which are scheduled to be effective as of 1 January 2021.

Effective date

The protocol will be in force after both countries exchange notes confirming ratification of the protocol according to the local legislative procedures. The dates relating to the application of the protocol provisions are yet to be publicly announced.

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