

## **Dutch State Secretary of Finance shares views on impact of CJEU Danish cases to anti-abuse provisions in Dutch dividend withholding tax and corporate income tax**

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On 14 June 2019, the Dutch State Secretary of Finance (State Secretary) answered questions from the Dutch Parliament on the impact of the so-called "Danish cases" addressed by the Court of Justice of the European Union (CJEU)<sup>1</sup> to the anti-abuse provisions of the dividend withholding tax exemption ('DWHT exemption') and the foreign taxpayer provisions.

The State Secretary's position is that these Dutch anti-abuse provisions are generally in line with the CJEU's rulings in the Danish cases. However, in his view, legislative changes are necessary with respect to the substance requirements.

Under current law, these requirements which include for example wage costs, staff, and office space act as a safe harbor for these anti-abuse provisions. The State Secretary announced that following a legislative change, these requirements would no longer be a safe harbor but only relevant factors to determine the burden of proof for the anti-abuse provisions as of 1 January 2020.

The legislative proposal is expected to be published on 17 September 2019 and enter into effect on 1 January 2020. The State Secretary stated that taxpayers can continue to rely on existing rulings (including rulings that rely on the "relevant substance" requirements) after 1 January 2020, unless and until the Dutch tax authorities pro-actively inform the taxpayer that the ruling can no longer be relied upon under the new legislation where the structure or arrangement is perceived to constitute an abuse of law by the Dutch tax authorities.

## Impact

Foreign intermediate holding companies that currently rely on the "relevant substance" requirements to qualify for the Dutch domestic DWHT exemption, or to disqualify as nonresident corporate taxpayers, should assess the impact of the legislative changes as of 1 January 2020.

Taxpayers should review their position in light of any upcoming dividend distributions made by a Dutch company or disposition of shares in a Dutch company. This applies regardless of whether a ruling is currently in place.

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## Endnotes

1. See EY Global Tax Alert, [CJEU rules on application of Danish withholding tax on dividends and interest payments](#), dated 26 February 2019.

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