Amendments introduced to the Netherlands-Ukraine tax treaty

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Автор: Roderik Bouwman | Illya Sverdlov

On 12 March 2018, Ukraine and the Kingdom of the Netherlands signed the Protocol (Protocol) amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Property (Convention).

It is expected that the Protocol will enter into force not earlier than 1 January 2019 after finalization of the ratification procedures.

Main changes

The official text of the Protocol has not been published yet. According to the Ministry of Finance of Ukraine, the Protocol introduces the latest standards of the BEPS action-plan for the exchange of tax information and changes the rates of withholding tax on passive income provided by the Convention.

Dividends

The Protocol abolished the exemption from taxation of dividends provided for by the current Convention.

After the entry into force of the Protocol, the following rates of dividends withholding tax will apply:

- Reduced tax rate of 5% - if the parent company owns at least 20% of the capital of the subsidiary and is the beneficial owner of dividends
- General tax rate of 15% - in all other cases

Interest

Tax rate on interest paid in connection with deals presented below, is increased from 2% to 5%:

- Interest paid for a loan granted by any financial institution
- Interest paid in relation to the sales of equipment and machinery on credit

For all other cases, the overall rate remains at 10% (except for those, which are exempted from the taxation of interest under the Convention).

Royalties

The tax exemption from royalties paid in relation to scientific works, patents, trademarks, design and some other intellectual property items is abolished.

Royalties paid for the use of such items will be taxed at the rate of 5%, since the entry into force of the Protocol.

The royalties withholding tax rate for the use of copyrights for literature or art remains at the rate of 10%.

Exchange of information

The Protocol also improves the exchange of tax information procedure between fiscal authorities of both parties and aligns it with the latest OECD recommendations.

Key takeaways

The Protocol significantly changes the taxation of passive income between the parties to the Protocol, as well as broadens the powers of the fiscal authorities of both countries in exchange of tax information.

Given this, we recommend:

- To review and evaluate the long-term tax implications of the use of holding companies in the Netherlands by the Ukrainian businesses, considering the increase in the dividend withholding tax rate
- To review and evaluate licensing arrangements with Dutch licensors, including the assessment of the beneficial owner risk
- To review and evaluate the current structures in order to find out whether they qualify for relief under the latest changes introduced to the Dutch tax legislation:

The Netherlands expanded, as of January 1, 2018, its unilateral dividend withholding tax exemption for dividends distributed to corporate residents of a country that has concluded a double tax treaty with the Netherlands, provided there is no abusive situation involved. Additionally, the Dutch cooperatives have also been brought under the scope of the Dutch dividend withholding regime as of that date. However, in most cases these companies could benefit from the expanded Dutch dividend withholding tax exemption.

The current Dutch dividend withholding tax regime will be abolished as of January 1, 2020. Instead, a conditional withholding tax regime will be introduced for dividend distributions to: (i) low-tax jurisdictions; or (ii) EU blacklisted countries. As of January 1, 2021, the conditional withholding tax regime will also enter into force for interest and royalty payments satisfying the same criteria.

AUTHORS

Roderik Bouwman
Партнер
Амстердам | T: +31 (0)20 541 98 88

Illya Sverdlov
Партнер
Киев | T: +380 44 490 95 75
