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Increased Substance Requirements for Dutch Resident Financial Service Companies from 2021

Introduction

At the end of 2019 the Dutch Secretary of Finance published a draft decree implementing two additional changes to existing substance requirements for Dutch resident intragroup financial service companies. Non-compliance with existing and additional substance requirements is likely to result in an automatic exchange of information with other jurisdictions. All 'relevant substance' requirements will apply from 1 January 2021. IQ-EQ can work with you to ensure your financial service company complies with these substance requirements in advance of that deadline.

Background

Globally, substance requirements for entities have become more and more important from a legal and tax perspective. Essentially, companies that meet the substance requirements in a given jurisdiction are deemed to be tax resident in that jurisdiction. In the Netherlands, the Dutch Central Bank (our supervisor) and the Dutch tax authorities have shown an increased focus on the substance requirements for a so-called Dutch financial service company. A Dutch financial service company is a Dutch corporate income tax payer with activities consisting mainly (70% or more) of the direct or indirect receipt and payments of interest, royalties, rent or lease terms from and to non-resident entities that belong to the same group (hereinafter referred to as 'Dutch company' or 'Dutch companies'). For the assessment of the 70% criteria, holding activities are not taken into account.

To date, various Dutch decrees have been updated to elaborate on the criterion, which requires that a structure is set up for valid business reasons that reflect economic reality. It is highly advisable to have this substance in place and make sure the substance requirements of each company are in order (by taking into account certain minimum thresholds as outlined in this document. By doing so, a Dutch company could ensure that it is not treated as a tax resident by another jurisdiction nor denied the benefits of a tax treaty (or any other treaty, such as a bilateral investment treaty) concluded between the Netherlands and that foreign jurisdiction.

If a Dutch company does not meet one or more of the listed substance requirements (which should be reviewed on a continuous basis in conjunction with local tax counsel), it has to disclose this information in its corporate income tax return. This information will be exchanged by the Dutch tax authorities with the relevant source country. Failure to comply with any of these data requirements is an offence that may result in a penalty being imposed up to a maximum of €20,750.

Current Dutch substance requirements

The minimum substance requirements listed below have been formulated by the Dutch tax authorities and have been in place for several years. A Dutch company must meet these requirements before the Dutch tax authorities are willing to confirm to a foreign jurisdiction that a Dutch company is a tax resident of the Netherlands and entitled to the benefits of a tax treaty. It should be noted that a foreign jurisdiction may require the Dutch company to meet more/other conditions, which should always be reviewed by local tax counsel.

The current minimum substance requirements are:

- At least half of the statutory and decision-making directors of the Dutch company are resident in the Netherlands

- The directors of the Dutch company have the required professional knowledge to perform their duties satisfactorily. Their duties must at least include decision making on the transactions of the Dutch company and should further include taking care of a proper execution of the transactions entered into, on the basis of the own responsibility of the Dutch company and within the framework of normal group influence
- The Dutch company has qualified personnel at its disposal to properly execute and register the transactions entered into
- Board decisions are taken in the Netherlands
- The most important bank accounts are managed and kept in the Netherlands
- The bookkeeping takes place in the Netherlands
- The Dutch company's business address is in the Netherlands
- The Dutch company is not treated as a tax resident of another state
- The Dutch company runs a 'real risk' (i.e. equity amounting to at least 1% of the outstanding loans or €2 million, whichever is lower) with respect to its loans or legal relationships and the corresponding loans or legal relationships from which the payments of interest, royalties, rent or leasing instalments originate
- The Dutch company can substantiate that it has available, at minimum, an equity that corresponds to the required real risks as mentioned under the point above, in accordance with its functions

Two proposed additional substance requirements

The Dutch government has introduced additional substance requirements for Dutch financial service companies in order to increase their substance in the Netherlands. These additional requirements are expected to come into force as from 1 January 2021. From that date, for each year when tax treaty or EU Directive benefits are claimed, these Dutch companies must confirm in their Dutch corporate income tax return that they meet the 'relevant substance' requirements. If the requirements are not met, spontaneous exchange of information by the Dutch authorities with the relevant tax treaty or EU Directive partner will occur.

The relevant substance requirements basically consist of the minimum substance requirements plus the following two additional requirements:

- The Dutch company must incur annual salary costs of at least €100,000, constituting remuneration for the financing, licensing, renting or leasing activities
- The Dutch company must have, for a period of at least 24 months, its own office space in the Netherlands at its disposal, and this property must be used to effectively carry out its financing, licensing, renting or leasing activities
- When claiming tax treaty or EU Directive benefits, the Dutch company should review with local tax counsel whether it meets or is able to meet the above additional substance requirements

Where we can assist?

As your trusted corporate service provider, we are already assisting you with meeting the current Dutch substance requirements (insofar as is applicable). We are also able to do so for these additional substance requirements.

For the first additional substance requirement relating to the salary costs threshold, we can assist by setting up and providing a Dutch payroll, including full administration, processing and payment of wages to employees and income tax to the relevant tax authority. We can also provide seconded employees to your Dutch company, together with a Dutch personal director either from IQ-EQ or a trusted third party.

For the second additional substance requirement, relating to office space, we can provide a dedicated rental space, either at our premises or through an external commercial office space provider that we work closely with.

We can quickly determine whether a relevant Dutch financial service company is present in any client file and subsequently assess whether the two new additional substance requirements are applicable. We can then work with you (the client) and local tax counsel to identify the steps to be taken to meet the two new additional substance requirements for that entity.

Please note that the above cannot be regarded in any way as legal or tax advice and any action taken should be on the advice of local legal and tax counsel.

About us

We are IQ-EQ, a leading investor services group employing over 2,800 people across 23 jurisdictions worldwide. We bring together that rare combination of technical expertise with a deep understanding of the needs of our clients. We have the know how and the know you to support global companies, fund managers, family offices and private clients operating worldwide.

Key contact

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