

## New ruling policy in the Netherlands

In December 2018 the Dutch State Secretary of Finance announced that he would introduce a new policy for obtaining tax rulings with an international character. On 23 April 2019 a new (draft) Decree for international tax rulings was published. In the coming weeks this new policy will be discussed in Dutch Parliament and the expected implementation date is 1 July 2019. The new (draft) Decree will replace former APA and ATR Decrees.

### The new ruling policy

The draft Decree provides an overview of the current Dutch ruling practice and relevant legislation. Furthermore, as announced in December 2018, it contains several new items, of which the most important are discussed below:

- A new body within the Dutch Tax Authorities will be installed and it will have the responsibility for the coordination of the ruling process and for issuing new rulings.
- No tax rulings will be issued anymore in the following situations:
  - There is no **'economic nexus'** with the Netherlands; for example in case of an APA on the interest or royalty spread, we need people in the Netherlands who are involved with the financing or licensing activities.
  - The **decisive purpose** of the transaction is to reduce Dutch or foreign taxes; this may be relevant for so-called informal capital rulings and certain hybrid structures.
  - The transaction involves a country that is put on the Dutch **blacklist** for low-taxed and non-cooperative jurisdictions (refer to our [news alert](#))
- Tax rulings with an international character will be published:
  - The publication shall be in the form of an anonymized summary.
  - In case a pre-consultation does not lead to a ruling, a summary will be published explaining why a ruling was not issued.
- Although the majority of the rulings are unilateral, the Ministry of Finance indicated that they aim to issue more bilateral or even multilateral tax rulings.

For each of the above situation for which no ruling shall be issued, the Dutch State Secretary has published an appendix containing examples when rulings will be issued or not. These examples can be found on the [website of the Dutch Government](#).

### Observations

As mentioned, the draft Decree still needs to be discussed in Dutch Parliament. However, in view of the current political environment, we expect no significant changes and therefore it is likely that the current draft Decree shall be effective for tax rulings issued of as of 1 July 2019. In view of the fact that it takes several weeks to obtain a tax ruling, it is fair to say that the new ruling policy already applies.



Considering the above, we expect that obtaining a tax ruling will become more difficult. This does not mean that certain structures no longer work from a Dutch tax perspective; it only means that no certainty can be obtained in advance.

This does entail that a thorough substantiation for certain structures becomes more eminent and that taxpayers may have to rely on a tax opinion of their advisor. Also, taxpayers may wish to explore the possibilities to insure the tax risk of a transaction with an insurance company.

Feel free to contact us to discuss the possibilities.